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CONTENTS.

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THE PADRONE SYSTEM AND PADRONE BANKS.

BY JOHN KOREN.

Although the Italian padrone discovered in the United States a field peculiarly suited to his activity, he must be considered as a distinct product of European soil, however much he for a time prospered under American conditions. His prototype is to be sought in the country whence he came, among the *camorristi* (*a*) of Naples, perhaps, and a germ of the practice of extortion, which has become known as the padrone system, may be found in the custom of the Italian peasantry of seeking the good will of the padrone (master, landlord) and others whom they recognized as superiors by habitually making them presents in addition to required payments or fees.

The beginnings of the padrone in this country are not easily traced. He appears, however, to have come into prominence some time after the close of the civil war. The period marking the industrial recovery from the great struggle was, it is well known, one in which capital sought labor with almost reckless eagerness. Special legislation was framed to promote this quest. Thus the act of 1864, for the encouragement of immigration, gave manufacturers, contractors, and other employers the right to import foreign laborers under contract. This privilege naturally gave rise to a not overscrupulous speculation in cheap labor; and nowhere did the agents who were dispatched to distant lands in search of workmen find more ready victims than among the unenlightened peasants of Italy. Unlike the inhabitants

a The *camorristi* of Naples were members of a secret organization, at one time more powerful than the police, who subsisted largely by extorting money from the peasants. The term *camorristi*, in the sense of one who unduly exacts money, is still applied to the present-day padrone.

of Northern Europe, but few of the earliest Italian immigrants came over of their own accord to seek freedom and a home. Usually they were already bound out to service.

The American contractor, wishing to secure the cheapest possible labor wherewith to carry out some new enterprise, would apply to a resident Italian immigration agent (soon to be dignified by the name "banker") for a stated number of men. The latter, having through subagents in Italy collected as many as required, shipped them across on prepaid tickets, for which he received a stipulated commission. On the arrival of these immigrants the agent would make an additional profit by boarding them at exorbitant prices until they could be sent to their destination, the expense being deducted from their prospective wages. The further privilege of supplying them with food and shelter while at work was also commonly granted the agent, and, if a banker, he could from time to time add to his profits by charging unreasonable rates for sending the scanty savings of the laborer to Italy. Finally, he had in prospect a commission on the return passage to Italy when the contract expired, for the immigration then, as now, was chiefly of a migratory character. Few remained here beyond the time of their contract—that is to say, seldom over two or three years.

Yet this was not the padrone system as understood by the Italians. Although often subject to much imposition and hardship at the hands of the agent or banker, the immigrant brought hither in the manner described recognized the former simply as a middleman between himself and the contractor, and in no sense as a padrone. The contractor, it should be remembered, invariably belonged to another nationality. The position of the real padrone differed essentially from that of the go-between referred to, or "boss," as he is now called. The padrone acted for himself alone. From serving as an agent for others, whom he perceived to gain so much from taking advantage of the ignorance of the Italian laborers, it was but a step to exploiting them solely for his own benefit. By fair promises and golden tales he persuaded men, women, and children to follow him to the New World under contract to work for a stated length of time, covering generally from one to three years, but extending in some instances to seven years. The men were farmed out to any person who saw fit to employ them at the padrone's prices, usually to engage in the occupation designated by the Italian as *sciabola* (*a*)—that is, all work done with the shovel. The padrone boarded his people, received their wages, and gave them the merest pittance in return for hard work, accompanied by much abuse. Forty dollars for a whole year's service was a fair padrone wage. Instances are known in which no larger sum accrued to the laborer after steady employment for two years and a half. The women fared worse, since they were frequently placed in houses of prostitution and

a Sciabola, a sword, has probably acquired the above meaning on account of its similarity to our word shovel.

never heard of again. The children were sent out on the streets as bootblacks, to sell newspapers, fruit, and flowers, and to beg—all for the benefit of the padrone. Minors were occasionally bought outright from the parents. On the whole, the padrone outrages as depicted in various publications of twenty-five or thirty years ago were not exaggerated. The number of persons who have come to the United States under the conditions mentioned can of course never be estimated, but it is striking to note how many of those arriving after 1870 admit that they were brought here by padroni.

It is this species of semislavery which suggests itself to the Italian when asked if the padrone system still flourishes in this country. The answer is invariably negative, and for sufficient reasons. The traffic in women and children was gradually stopped through governmental intervention, but more efficiently, perhaps, through the endeavors of philanthropic organizations. The padrone continued, however, to import men in spite of the law. Indeed, he had by no means ceased to ply his vocation when the first act to regulate immigration was passed by Congress, August 3, 1882, and he has only become practically extinct through the more stringent enforcement of the contract-labor law, which was made possible in this instance by the hearty cooperation of the Italian Government. Nevertheless, it is stated on competent authority that a few old-time padroni still linger. They are said to control a number of organ grinders, itinerant harp and violin players, peddlers, etc.

Those directly interested in the manipulation of Italian labor deny also the existence of the first-mentioned form of the padrone system, or that under which a labor contract is made before the immigrant takes passage for America. It is on the whole true that the former system does not exist, but not in the sense that the Italian laborer always comes unpledged or that he escapes all the evils of the former labor contract under what at the present time is termed the padrone system.

Before examining in detail the operation of this system, its extent, etc., it is necessary to consider briefly the magnitude and general character of the Italian immigration in order to comprehend why the system has obtained such a firm footing in this country. The census of 1890 showed the number of foreign-born Italians living in this country to be 182,580. Yet, according to the figures furnished by the Superintendent of Immigration, the number of Italians arriving at our ports from 1873 to 1890 reached a total of 356,062. The migratory character of this immigration is thus clearly indicated. The majority, especially of the laboring class, come not as settlers, but with the intention of returning to their homes after some years. Many of them, it is true, have come back to us again, but both from the briefness of the stay of these "birds of passage" and their unfamiliarity with the English language they fall naturally and almost inevitably into the hands of labor bosses of their own nationality. They can not shift for themselves nor make an intelligent appeal to the natives. Of late years the Italian immigration has

tended to more stable settlement. This is shown by the increase of females and children among the new arrivals. Of the total immigration from 1881 to 1890 of 307,309 only 20.6 per cent were females and 15.3 per cent were children under 15 years of age. These percentages have since increased from year to year, and the period from July 1, 1895, to April 1, 1896, shows the females to have constituted 30.2 per cent and the children under 15 years of age 19.4 per cent of the total immigration. The proportion of Italian immigrants who have been in the United States before is also known to be steadily growing. The same is true of those who come to join their immediate families or relations, and are thus probably to a large extent put out of the reach of the padroni. During the first four months of 1896 the total number of immigrants from Italy entering the port of New York reached 27,149, of whom 6,948 had been in the United States before, and 6,966 joined their immediate families, leaving 13,235 as newcomers without relatives to receive them. The latter were almost exclusively males. (*a*)

The padrone, then, does not lack for fresh material with which to maintain full ranks. It should further be borne in mind that the bulk of Italian immigration comes from the southern and perhaps least favorably known provinces, Abruzzi, Avellino, Basilicata, Sicily, Naples, and Calabria. Most of them are of the peasant class and accustomed to hard work and meager fare, generally illiterate, but of a childlike mind and imagination, quick to forget, and easily led astray by schemers. The majority are booked for New York, comparatively small detachments being landed elsewhere. Nearly all who come for the first time and have no relatives to join make at least a temporary halt in New York. This city has thus, as a matter of course, become the Italian center of the country, and hence the home as well as the stronghold of the padrone system. How the system operates in actual life is told in the following:

Even the Calabrian or Sicilian who finds no friends or relatives to greet him is rarely at a loss where to go on being released from Ellis Island. He brings at least the address of some banker, perhaps that of the man who furnished the ticket on which he came over. The banker has many connections abroad who are able to play more or less into his hands, regardless of the provisions of the contract-labor law and give the immigrant the cue how to start out on his American career. Should he be penniless, the banker may go on his bond to insure that he will not become a burden to the community, and stands ready to provide him with food and shelter without immediate compensation until work is found. The next step is for the new arrival to look for employment with the pick and shovel, for he is usually an unskilled laborer. Besides, the labor unions might bar the way should

a All figures for the period from July 1, 1895, to April 30, 1896, are taken from an article in the North American Review for June, 1896, on Immigration from Italy, by Dr. J. H. Senner, United States Commissioner of Immigration.

he at once seek to exercise the handicraft he may have learned. Employers of his own nationality are scarce, and unfamiliarity with the language prevents him from applying to others for work, so he turns to one of that numerous fraternity who make it their vocation to supply contractors with cheap labor, the bosses. The common laborer, or *cafone* as he is vulgarly called, recognizes only these middlemen as bosses, not the contractors themselves, unless they happen to be Italians, in which case they are distinguished as boss contractors. The *cafone* might also hesitate to make a personal search for employment, fearing the vendetta of his countryman boss, who, for reasons that will appear later, often stands high in the graces of the contractors. There is thus little choice. He must go to the boss (the term padrone is no longer used) to get a job or remain idle.

The modus operandi of the average boss is simple enough. He knows the street and steam railway corporations and the principal contractors and others who from time to time employ large forces of men, and keeps posted about new work about to be undertaken. He may deal directly with the representative of a corporation or with the contractor and obtain from them a definite order for a number of men. If unable to fill such order at once, he has recourse to his friend the banker, to whom he states how many men are wanted, the daily wage, the amount of the *bossatura* (so is called the commission the laborer must pay to the boss as a bonus for obtaining employment), and whether the men shall be boarded by him while at work, etc. A mutual understanding having been reached, the banker posts a notice in his window calling for the number of laborers required, and sends out his runners "to make the men" (*fare gli uomini*, they say). Enough applicants having been found without much difficulty, verbal information is given concerning the place of work, the wages, the probable duration of the job, the *bossatura*, and the railway or steamboat fare. When the several stipulations have been agreed to, the men are considered "made," the boss takes them in charge, and eventually ships them to their destination.

The amount of the *bossatura* depends on the period of employment, the wages paid, and on whether the men are to find themselves, in which latter case the commission is always somewhat higher. Ordinarily it varies from $1 to $10 per man. For an assured job, lasting five or six months, $10 is considered a reasonable fee. The commission rates in New York appear to run higher than in other cities, owing to the more plentiful supply of labor. The *bossatura* is usually paid in advance and secretly, the boss knowing very well that the transaction is illegal, since he is not licensed to conduct an employment bureau. Taking advantage of his countryman's ignorance, the boss does not hesitate to overcharge the regular rates for transportation. When moving a considerable body of men, he is often able to secure reduced rates, but charges a full first-class fare. If the place of work is in the country at

some distance from the starting point, the boss is generally permitted to board the men, or he buys this privilege from the contractor at so much per head monthly, according to the time of employment and the wages paid. In such a case the men are occasionally sent out from the city a week earlier than necessary, in order that the boss may profit the more. The boarders are threatened with heavy penalties for purchasing elsewhere food or any other article kept for sale at the shanty. Notices to this effect are sometimes posted. The penalty for disobedience is a fine or dismissal. In some instances the boarders are compelled to buy food to a fixed daily amount, under threat of immediate discharge. Generally, however, they are allowed to spend at pleasure. The provisions are furnished in a raw state, and cooked, if at all, by the men themselves. The food furnished by the boss is usually of an inferior quality, and often unfit for consumption. In the table below is given a list of articles sold at a shanty store not very far from the city of New York, together with the prices charged by the boarding master and the average market prices in New York.

PRICES OF COMMODITIES AT SHANTY STORES AND AT NEW YORK MARKET, COMPARED.

Article.	Unit.	Shanty price.	Market price.
Macaroni	Pound...	$0.10	$0.03
Bread	Loaf....	.10	.04
Lard	Pound...	.20	.06
Cheese	Pound...	.25	.08
Vegetables (sold by weight)	Pound...	.10	.00½
Codfish	Pound...	.10	.05
Olive oil	Gallon...	2.00	1.00
Meat (when sold)	Pound...	.15	.05
Tobacco	Pound...	.50	.25
Beer	Bottle...	.15	.04
Wine	Gallon...	.80	*a*.30

a Approximate.

The shanty prices were copied from an original list. The market prices given are those at which articles of the kinds mentioned can be bought.

The boss is oftentimes prepared to supply other useful things needed by the men, such as underclothing, shoes, and overalls, at fancy prices. A 5-cent postage stamp costs 10 cents at the shanty, and an envelope 5 cents; for writing a letter a charge of from 10 to 25 cents is made, and for bringing a letter from the post-office a similar amount. But there may still be other items of expense to the laborer. The boss must make good the cost of the boarding privilege, and accordingly exacts from $1 to $3 per head for the huts in which the laborer sleeps, although they may have been furnished gratis by the contractor. To the rent are sometimes added regular fees for medical service, drugs, and accident insurance. The latter is of course not effected, and the case must indeed be serious if a regular physician is called in. In some camps weekly or monthly taxes are levied under the heads *diritto di Madonna*,

diritto di lampa, contribution to (literally, the right of) the Holy Virgin and for lamplight.

The Italian laborer submits to these extortions because he has no other alternative; he must work for the bosses or starve. Complaints are useless, for to whom could he complain? He knows that the boss may welcome a pretext for discharging him and thus have the opportunity of exacting a new *bossatura* from his successor who is so easily found.

It should be noted that the laborer is frequently unable to pay cash for the articles of daily need. He may have to wait a month or even longer before receiving his dues, from which are deducted the board bill and other indebtedness he may have incurred. The fact that in many instances wages are paid about as often as it may please the employer or boss gives rise to much hardship, since it makes it easier for the boarding master to practice fraud with immunity. In out-of-the-way places the employee is sometimes paid in scrip, which is taken at a substantial discount by the tradespeople.

This is in outline the present-day padrone system in its more favorable aspects as it exists among the Italians of the Eastern and Middle States. Its perpetuation does not, as is commonly assumed, depend solely on fresh accessions of immigrants. The laborer working for $7 a week under a boss who boards him must count himself fortunate if he can save more than one-half of his earnings. A number of men who were interrogated on this point assured the writer that their weekly savings during the part of the year when work is plenty did not average over $3. Protracted periods of idleness ensue, a goodly share of the earnings are sent to Italy or squandered, and the laborer may face the winter months with empty pockets. Yet he need not fear starvation, nor is he forced to seek charity. The boss or banker-boss is again ready to tide him over until spring comes. He invites him to the boarding house with the understanding, of course, that he shall enter the boss's employ at the first opportunity. Large tenement houses owned by bankers can be pointed out on Mott and other New York streets that serve as winter quarters for the *cafoni*. There they are huddled together, a dozen or twenty in one room, in violation of all sanitary regulations. Like conditions prevail to some extent in Boston. It is not incredible, as the writer has repeatedly been told, that the bosses encourage their guests in all manner of extravagance in order to get a firmer grasp on their future earnings. Another method by which the boss retains his hold on the men is by employing them one week and keeping them idle the next, under the pretext that work is scarce. The boss then appears to the men in the rôle of a truly benevolent master. This plan is pursued by one of the most notorious bosses in New York, who is reported to keep from 100 to 200 men constantly on hand in his boarding houses.

The abuses under the padrone system are likely to assume an aggravated form when, as frequently happens, a gang of men is sent to a

remote country district in charge of a padrone who acts as boss, boarding master, and foreman of the job. Then cruel treatment of the hands is not uncommon. Cuffs and kicks have to be endured, and the laborer may at the end of several months' hard work find himself possessing funds barely sufficient to take him back to the place whence he came. Or the boss may abscond with the men's wages, leaving them to shift for themselves as best they can. Such happenings, while by no means rare, seldom obtain publicity. Poverty and lack of intelligence keep the victims from prosecuting the absconder, although some complaints reach the authorities. The mining regions of Pennsylvania and West Virginia have harbored a number of the worst padroni. They are said to have accomplices in each gang, who share the spoils in return for protection when threats of violence are made and act as "council of war" in case of trouble.

Among the minor bosses in the large cities are some who subsist in part by swindling their countrymen in the manner indicated by the following incident, which has been thoroughly investigated: Boss ——— went to a banker in Mulberry street, New York, choosing a moment when about a dozen workmen were present. He showed a telegram to the banker, who at once proceeded to translate it about as follows: "We need 100 men; wages $1.50, railway fare $8. Must start work day after to-morrow. If necessary, pay $1.60." Those present signified their willingness to accept the employment offered, and the *compari* (*a*) (so the bankers' runners are called) were sent out to secure the full complement of men. The *bossatura* was settled at $3 per head. The other customary stipulations having been made, the men were told to assemble at the same place in the evening, when the journey would be undertaken. Before the departure the banker, carefully counting it out in the presence of the men, handed the *bossatura* and passage money to the boss. In Jersey City tickets to a station a few miles beyond were distributed among the men, who were told not to quit their places until given the word to board a certain train. The boss absented himself on some excuse and returned to New York. Having waited hour after hour, it at last dawned upon the men that they had been duped. The banker, to whom an appeal was made the next day, protested his innocence. Had they not seen him give the money to the boss? Had he not spent his time in securing them work without any compensation? But rather than to risk further unpleasantness he would present them with $1 apiece. This closed the incident. (*b*)

In general, the Italian padroni may be divided into three classes: (1) The small bosses (*bossachi*), who are by far the most numerous and subsist by securing odd jobs for individuals and small groups or by resorting to petty fraud in various ways; (2) the bosses who regularly

a Compare, literally, godfather.

b For other instances of the same character see Report of the Immigration Investigating Commission, 1895, pp. 122 and 123.

supply contractors and others with laborers in considerable numbers, and (3) those who are in the employ of corporations or act both as bosses and independent contractors. The last class is very small. In New York not over half a dozen men belong to it, in Philadelphia about four, and in Boston three or four. These men are usually graduates from class 2. It must be said of them that they treat their subordinates far more humanely than do the others. The petty bosses have the reputation of being the worst *camorristi* — that is, extorters of money. By the best informed the number of bosses in New York and the adjoining cities is placed at about 2,000. This is the minimum estimate and includes those who may be regarded as assistants to the bosses.

So far as could be learned, not a single one of them undertakes to supply any but unskilled labor to contractors doing work in New York. Careful inquiry among the labor unions did not bring to light a single instance showing that the organized trades are affected by the padrone system. It may happen that strikers are temporarily replaced by Italian hands, but how far the latter in such cases may be controlled by bosses is not known. Few Italians have joined the unions. The so-called Italian International Marble-Cutters' Union of New York was only recently organized. It is understood to be dominated by bosses and does not affiliate with any American organization. For work in the country and small towns the bosses are ready to furnish all manner of skilled workmen, such as masons, carpenters, stonecutters, machinists, etc.

Formerly the bosses drove advantageous bargains with the street-cleaning department of New York. When proof of citizenship was required before employment could be given, they were said to make the same papers do service for many or to present fraudulent documents.

The contention that the Italian laborer is always underpaid or receives less wages than the market price seems unfounded so far as employment in the large cities is concerned. Exceptions are perhaps not wanting. Satisfactory data on the subject of wages paid under the padrone system were unobtainable. In outlying places, however, the newcomer may not infrequently be found to work for less than the price of local labor, but then it is the contractor rather than the boss who reaps the advantage. On the other hand, the Italian is everywhere handicapped by reason of having to pay the *bossatura* and other commissions to the boss.

So far all efforts made in New York to exterminate the padrone system have failed, so firmly is it rooted. Within a few years the bosses have prevented legislation at Albany aiming at the amelioration of the lot of the Italian laborer. Another instance is that of the Italian Independent Labor Union, organized for the purpose of protecting the immigrant "from the tyranny and extortion of that class of employers or labor brokers called the bosses or padroni, to prevent his

being held in involuntary servitude in the United States, and to assist and care for those who may require help because of misfortune, poverty, or sickness." Within a short time the membership of the union rose to more than 1,000, who paid annual dues of $2 each. The bosses made war against it, assisted by the suspiciousness and strongheadedness of the laborers themselves, who, according to their own countrymen, always take the worst advice. The society is now defunct. It should be said that the attempts at reform have suffered for lack of intelligent backing from outsiders.

To make the Italian bosses and bankers shoulder the entire blame for the existence of the padrone system were manifestly unjust. That contractors and other employers are more or less in league with them can not be doubted, no matter what their nationality. It has been established beyond denial that they sell boarding privileges, ask a bonus from the padrone for giving employment, refuse to pay for overtime, and the like. Cases have, moreover, come to the surface showing that American employers have adopted padrone methods, sometimes on a large scale. A single incident may suffice as an illustration. The writer has before him a list containing the names of 23 Italians and the sum each one paid to an American connected with one of the largest railroads in New York in hopes of securing permanent situations. The total amount aggregates $1,605, and ranges from $40 to $115 per man. The men, at least some of them, were put to work for a short time and then discharged. The dishonest official, be it said, finally suffered the same fate, but his victims obtained no further satisfaction. The matter was brought to the attention of the courts without being settled. This was the St. John's Park case, which is typical of many.

It is obviously impossible to state with any claim to accuracy what proportion of the Italian population of New York and adjoining municipalities is subject in some degree to the padrone system. One may not wander far from the truth by placing it at two-thirds, at least, of the male population. An attempt to express the matter in figures would be the merest guesswork, since one can but guess at the number of Italian-born inhabitants of the places in question. The census of 1890 gives New York 39,951 Italians, Brooklyn 9,563, Jersey City 1,495, and Newark, N. J., 2,921, a total of 53,930. From July 1, 1890, to April 30, 1896, 323,621 (*a*) Italian immigrants arrived at the port of New York, or not far from twice as many as the total Italian-born population in the United States recorded at the last census. But a great many of them had been in the United States previously; of the

a This total is made up as follows: For the years ending June 30, 1891 and 1892, the figures are taken from the reports of the Bureau of Statistics on foreign commerce and navigation, immigration, and tonnage; for the years ending June 30, 1893, 1894, and 1895, from the reports of the Superintendent of Immigration, and for the period from July 1, 1895, to April 30, 1896, from Dr. Senner's article referred to in a preceding note.

arrivals from July 1, 1893, to December 31, 1895, for instance, no less than 21,692. (*a*) Another bewildering factor is the number of Italians who annually leave our ports for the home land. Dr. Senner estimates that during the last-mentioned period of two years and a half 62,678 Italians took passage from the United States, a number greatly exceeding that of the persons who arrived for the first time. The estimate is based on returns furnished by the steamship companies. All that can be said, therefore, without assuming what is not capable of proof, is that the Italian residents of New York and vicinity are more numerous than ever, and that a majority of them, since they are unskilled laborers, feel the touch of the padrone system.

The Italian colony of Philadelphia, which is estimated at over 20,000 (census of 1890, 6,799), is third in point of numbers. Here also the bosses have intrenched themselves, but do not appear to carry things in such a high-handed manner as in New York. Several reasons may account for this. Few immigrant ships carrying Italians reach Philadelphia, perhaps four or five in the course of a year. Many of those joining the colony are not strangers to the ways of the country, having lived for some time in New York and Brooklyn, and come with an idea of more permanent settlement. The Italian quarter contains only a few tenement houses of considerable size, smaller homes being the rule, many being owned by the occupants. The politicians have taken a goodly number of Italians in hand, had them naturalized, and formed them into clubs. While this may not per se be equivalent to greater protection from the bosses, it has brought the Italian into prominence and opened avenues of employment beyond the immediate control of the bosses. Thus the Italians seem to have an exclusive claim on the work of keeping the streets of Philadelphia clean. Yet, since this work is allotted by contract, and no Italian is engaged unless he is a member of an organization known as the *Societa Operaja di Mutuo Soccorso*, which is controlled by the bosses, the padrone system shows its hand here, too, although in a milder form. The bosses are mainly active in sending laborers to inland towns and, during the summer, to the fruit farms of New Jersey, Delaware, and Maryland. In proportion to the population they are not so numerous as in New York, nor are they so powerful. Their methods and ways do not differ essentially from those already described.

The Italian colony of Boston is the fourth in size, with over 15,000, according to popular estimate (census of 1890, 4,718). Its increase has largely taken place through direct immigration. That the padrone system is extensive in Boston has long been known. Its features are practically identical with those noted. The many bosses, mainly *bossachi*, continue to supply nearly all there is of unskilled Italian labor to the railroads and for the multitude of contract jobs carried on in the cities and towns of Massachusetts. Many instances of the crooked

a Dr. Senner's figures.

doings of the bosses have been printed in *L'Amico del Popolo*, the one-time organ of the Italian Workmen's Aid Association of Boston. Probably in no other city in the country have efforts led by people outside the colony been made to dislodge the bosses and improve the condition of their victims. So far the attempts of the society just mentioned have not been wholly successful. It has, however, succeeded in calling public attention to many abuses, found employment for a number through its own bureau, and secured the enactment of an important legal measure. Formerly the Italian laborers, on finishing a job, would often find themselves defrauded out of the last week's wages, which were withheld by the contractor. In order to recover the amount it was necessary for each man to bring a separate suit against the employer. But since the court expenses would amount to at least $13, they naturally preferred to lose the week's wages. The law enacted at the suggestion of the Italian Workmen's Aid Association and approved May 28, 1896, enables persons to whom small sums are owing for manual labor to pool their issues by allowing one man to sue for the recovery of the money due all.

The full text of the law follows:

> In actions of contract for the recovery of money due for manual labor two or more persons may join in one action against the same defendant or defendants when the claim of no one of such persons exceeds the sum of twenty dollars, although the claims of such persons are not joint; and each of such persons so joining may recover the sum found to be due to him personally. The claim of each person so joining shall be stated in a separate count in the declaration, and the court may make such order for the trial of issues as shall be found most convenient and may enter separate judgments and issue one or more executions, and may make such order concerning costs as in its opinion justice may require.

In addition to the difficulty experienced in keeping alive a feeling against the padrone system among the impulsive Italians after the first indignant outburst has subsided, a serious obstacle to reform is found in the shifting character of the population. A local Italian pastor states that membership in his congregation lasts, on an average, something over two years, which period would thus fairly indicate the average length of residence.

The existence of the padrone system in other large cities, notably Baltimore, New Orleans, and Chicago, is well established. San Francisco, notwithstanding its large Italian colony, seems to form an exception in this respect, principally for the reason that the cost of transportation across the continent is a barrier to a considerable direct immigration and precludes the arrival of the impoverished and least intelligent. Since a majority of Italians come to San Francisco after a more or less protracted residence in this country, it may be supposed that they have outgrown the necessity of seeking employment through bosses of their own nationality. Hard times, causing the practical suspension for several years past of works requiring unskilled laborers

in large numbers, would also have made a successful operation of the padrone system impossible. (*a*)

It is interesting in passing to observe the degree of notoriety the system has attained in the labor world. The letters received from labor leaders by the United States Commissioners of Immigration, in reply to a circular requesting information about the padrone system, and printed in their report for 1895, disclose these facts: Out of 30 letter writers 8 did not answer the questions put, 4 confessed themselves as ignorant on the subject or as not comprehending the term "padrone," 1 states that the system has not reached his locality, 2 that it does not exist in their respective trades, while 15 claim knowledge of it. Among the latter are representatives of labor unions in the large cities of Massachusetts, New York, Illinois, Louisiana, and California. Several of them mention that the system flourishes among the Armenians, Poles, Hungarians, and probably other nationalities represented in the United States as well as among the Italians—a statement of undeniable truth—but not one asserts that it has affected the organized trades except in times of strikes.

The peculiar system of banking in vogue among the Italians of this country deserves special attention. Its close alliance with the padrone system has been intimated. The boss supplies a large share of the patronage of the banker, at least indirectly. More often than not the boss requires his men to bring their savings for deposit with a named banker under threat of discharge. The banker frequently shares the *bossatura* and other moneys extorted from the laborer. The men who work under a boss during the summer fill his boarding houses in winter, etc. How invaluable the banker becomes to the boss has already been shown. Many of the present-time bankers are said to be retired bosses. Hence their institutions may also for this reason properly be called padrone banks, although they are not known under this appellation.

It has not been learned who came first, the bankers or the bosses. The former, however, have some excuse for their being in the fact that, in addition to the many facilities their places of business afford the Italians, as will presently be shown, they supply a distinct want. The laborer apparently cares little for ordinary rates of interest. A bank is to him not a place where his savings are increased, but simply a big safe where they may be kept intact until he wishes to send them to Italy. The American savings banks are unwilling to have deposits withdrawn at the end of two or three months after the fashion of the Italian laborer, and they do not make it a business to transmit small sums abroad. Aside from the difficulties of language, which often debar the Italian from our own institutions, the savings banks do not seek his patronage as a depositor.

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a The information concerning conditions on the Pacific Coast has been obtained through Mr. O. Albert Bernard, an expert of the United States Department of Labor.

The Italian quarter of New York contains about 150 so-called banks. Most of them are found on Mulberry, Mott, Elizabeth, and Spring streets, some having branches in Little Italy uptown. Probably not a single one of them has a legal status under the banking laws of the State, not excepting the half dozen or so which are held to be honest in all transactions. Many of the bankers are presumably ignorant of the law, since they can neither read nor speak English. The number of these banks is not surprising when it is known that it does not require capital to open one. Not long ago a man who had just fitted up banking apartments sent a pitiful appeal to a friend requesting a loan of $10, as he had no money to buy food with.

Most of the banks in New York are shabby little affairs, run in connection with lodging-houses, restaurants, grocery stores, macaroni factories, beer saloons, cigar shops, etc., but under imposing names, such as *Banca Roma*, *Banca Italiana*, *Banca Abbruzzese*, and the like. Other signs read simply *Banchiere*, *Cambio Valute*, and *Avvisi Legali*. Some try to attract attention through a display in the windows of American currency, Italian lira notes, a few gold pieces, along with worthless duplicate drafts, old express receipts, and Confederate money. How multifarious are the occupations of the Italian banker may be gathered from the translation below of a letter head obtained from one of the profession:

"Remittances in any sum whatever to all the post-offices in Italy, Switzerland, France, and Austria, in paper money, gold francs and florins, in the quickest and safest way. Telegraphic orders. Drafts, payable at sight, on all the principal cities of Europe. Notary public; legal advice free. Ocean and R. R. tickets. Intelligence office. Shippers by package post. Custom-house brokers. Depot for Marsala and table wines. Depot for S. Antonino tobacco, imported, prime quality."

Most bankers have their own *compari*, one to four, according to the magnitude of the establishment, who may be seen loafing on the premises at all hours. How they facilitate the operations of the boss we already know. For the rest, their business is to attract customers and, by singing the praises of the bank, induce the laborer to deposit his money there, buy steamship tickets, or obtain any favor he may call for. They are also the ones who are to meet the new arrivals and conduct the immigrant to the wharf or railway station. The relation of the banker to his customer is of a peculiarly confidential nature. He writes the laborers' letters and receives them, the post-office branch of the bank being one of the most important. This work, called *franco bollo*, is invariably paid for. He becomes, furthermore, the *cafone's* marriage broker for a compensation, and acts frequently as his legal adviser. It is thus plain that the banker has exceptional opportunities for petty extortions. His principal business as a banker is, of course, to exchange, remit, and receive money on deposit. On turning over his dollars to the bank, the laborer is not given a regular receipt,

much less a bank book, but a slip of paper on which only the sum deposited is written. After several deposits and withdrawals have been made it commonly happens that the figuring of the banker does not agree with that of the customer. Since the latter is generally unable to read, it is easy for the banker to persuade him that he is mistaken. In any case a mistake can not be rectified after the customer leaves the bank. The profit remains with the banker, and the other, childlike as he is, soon forgets all about the possible injury done him. In exchanging money, both for immigrants and emigrants, dishonesty on the part of the banker is very common, but not easily detected on account of the ignorance of the average Italian. A third transaction which must be described is that of remitting money to Italy. No complaint is made because bankers allow themselves a liberal fee for this service. But it sometimes happens that the money never reaches its destination. Yet the banker retains a reputation for honesty, for did he not give the customer back 50 cents or a dollar, saying that it represented the exchange (*cambio*), and that he would not be guilty of taking more than his dues? Or, if this excuse is too threadbare, the banker may say that the steamer carrying the mails has foundered, or, better, he blames the American post-office, against which he will at once bring suit for the recovery of the loss. It is, in fact, a part of the policy of the Italian banker to instill suspicion of American officials into the minds of his countrymen for the purpose of retaining their trade. Few of the bankers are licensed to conduct an employment office, still this is generally one of their most important occupations. As notaries they find opportunity for charging all sorts of imaginary fees under the pretense that so much must be paid for *registro*, *protocollo*, and the *bollo scrittura*. Their legal advice is either of a selfish nature or else plain humbug. They are, of course, not members of the bar. The services of the banker as a peacemaker are sometimes sought, or he may be said to sit as a kind of justice of the peace. Finally, the banker is the one man who can furnish bail when one of his countrymen is arrested. Some establisments have a fixed tariff for giving bail or going on bonds. An instance was discovered in which $100 had been charged for furnishing bail to the amount of $200.

It is an old story that several Italian bankers have no other purpose than that of waiting until they have accumulated large deposits, when they abscond, leaving no trace behind them. In order to draw customers, they promise an unusual rate of interest (in a recent instance 12 per cent), while they stipulate that no deposits shall be withdrawn within a specified time. During the progress of this investigation two bankers in New York left for parts unknown, taking with them, so it was reported, over $50,000 in workmen's wages. The affair created hardly a stir. No effort was made to find the defaulters, and they left no bondsmen who could make good the losses. The apprehension and conviction of a defaulting Italian banker is an exceedingly rare occurrence.

There is a class of bankers in New York occupying a still lower level than the one described. Their places are the haunts of the most degraded of their countrymen. The laborer is always made welcome there. A back room is reserved where he may drink and gamble by day and sleep at night. To this chamber he may bring women. The banker gets rent from one and a share of the profits of the other. It is notorious that liquor is sold in these places seven days in the week.

It is interesting to note that an Italian savings bank is about to be opened in New York under the auspices of certain bosses.

Statements relative to the vast sums sent out of this country through the medium of Italian banks should be taken with a grain of allowance for imaginative facts. The Senate Committee on Immigration, sitting in 1893, is said to have "developed" the fact that in an average year the Italian banks of New York send abroad from $25,000,000 to $30,000,000. It is known that other cities, even those in the immediate vicinity of New York, have their own Italian banks; furthermore, that the prominent Italian business man does not patronize the institutions on Mott and Mulberry streets. The vast sums mentioned must thus be taken to represent the earnings of laborers and small tradespeople. Assuming, therefore, that New York in 1892 contained 50,000 Italian wage earners, which would very nearly equal the total Italian population of New York, Brooklyn, Jersey City, and Newark together, according to the census of 1890, with no allowance for women and children, the average savings of these 50,000 would have to reach the sum of $500 per head annually in order to foot up the lesser of the two sums referred to. It is needless to say that the average gross earnings of the Italian in this country is much less than $500 per annum, let alone his possible savings.

Philadelphia has about twenty-five Italian banks. Most of them are to be sought in the so-called slum districts, on South Seventh street and near-by thoroughfares. In general character they are on a par with the better of the New York banks. One of them, a very uninviting place, advertises itself as representing two well-known strong banks under the control of the Italian Government (*rappresentanti del Banco di Napoli e del Banco di Sicilia*). A few years ago eight or nine of the bankers in Philadelphia defaulted at brief intervals. This gave a setback to the others and induced many Italians to trust their savings to American institutions. About 4,000 members of the colony are now stated to be regular depositors in ordinary savings banks.

The banking business carried on in the Italian colony of Boston has gained a good deal of notoriety through the attempts made at exposing its abuses. It, as well as conditions generally, is pictured as follows in a recent public appeal of the Italian Workmen's Aid Association of Boston, a society under the supervision of prominent Americans:

"There are more than 15,000 Italian residents of Boston. Of these the greater part consists of peasants from the country districts of

Italy, who are almost entirely unacquainted with the language and laws of our land. They are thus in a condition of such helplessness as makes them ready victims to the extortion and abuse of a small fraction of their number, who, under the pretense of finding them employment or of investing their savings and making transmittances of money to Italy, are simply robbing them and keeping them in squalor and misery. The former, as padrones or bosses, charge extortionate commissions whenever employment is provided, and sometimes even exact it without furnishing the work. The latter, under the name of bankers, demand extravagant rates for the transmission of money, and even then, in many cases, neglect to forward the sums that have been intrusted to them."

To meet the situation, the association just referred to opened a bank of its own. Thus far it has not been able to compete with the Italian banks on an equal footing, partly for lack of funds, which allow it to keep open at intervals, while the others are accessible at all times, especially on Sundays, the banking day par excellence, and partly because it has not yet won the necessary confidence of the Italians.

Of the majority of the Italian banks in Boston it is enough to say that they are neither better nor worse than those of the other cities. There are about twenty of them all told. Notwithstanding the many lessons had, the forgetful Italian continues to trust them with his all. Owing to the movement of the population and the fresh immigration, the least scrupulous of the bankers experience no difficulty in finding customers who have not yet learned their ways.

THE DUTCH SOCIETY FOR GENERAL WELFARE.

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The conditions of existence in the Netherlands are such as to develop charitable impulses and the spirit of cooperation. Since the greater part of the land is below the level of the sea, the liability to loss of life and property from overflows engenders sympathy, for the fortunate who escaped this year may be the ones who next year will be compelled to ask for assistance. One person alone can not build a dike, neither can he check in time a threatened break. Labor, therefore, can never be selfish and individual. The lesson learned in the war with the sea becomes a guide in organizing the battle with competition, and guilds and corporations are the result.

It is, therefore, not surprising to find, with its headquarters in Amsterdam, a society for general welfare, whose members are taken from all classes, and whose purpose is "to advance general prosperity and to strive for the promotion of the intellectual, moral, and social condition of the people, especially by fostering education, by ennobling their concept of life, by increasing the earning capacity of the wage earner, and by enabling him to better enjoy the fruits of his labor."

The originator of the society was Jan Nieuwenhuizen, a pious exhorter (pastor) of Monnikendam. He set before himself the task of raising the moral, educational, and material standard of his fellow-citizens; to prepare them, as far as possible, for the enlarged citizenship, which he thought would soon be their portion. Together with his son Martinus, a physician, he founded in 1784 the society bearing the simple but comprehensive name, "Tot Nut van 't Algemeen" (for the welfare of all), having in view "the increase of knowledge, justice, and morality among the common people." He considered that equality had its basis in equal attainments; that without a clear conception of justice liberty would be a menace, and that universal brotherhood could not be recognized unless the claimant was morally beyond reproach. The economic and social conditions of Europe in general, rather than of the Netherlands in particular, formed the background against which this society stands out. Constitutional and social freedom dawned with the close of the eighteenth century; hence it was necessary to aid the people by precept and example in becoming qualified to enjoy this freedom. Freedom had been a precious word to the Dutch. They had inherited it from William the Silent, and their loss of all that the word meant during the reign of

some of his successors insured for the founders of this society a reverential hearing when they declared freedom to be an inalienable right of man; nor was there any open dissent when they added that "in the enjoyment of that freedom the immediate welfare of the people must be considered, and such instruction given to them as to make them capable of self-government." There was an intimation of the far-reaching hopes of the society in the first article of the constitution, adopted in 1786, which read: "Anyone of whatsoever religious faith, wherever residing, and of whatever age, shall be eligible for membership in this society." In 1788 the words "religious faith" were changed into "Christian belief," with the intention to exclude thereby those of the Jewish faith. This restriction was ignored in 1864, and in 1888 the original article was reenacted.

The first society was organized at Edam in 1784, and in 1789 it removed to Amsterdam, when it announced as its purpose "to spread abroad good, popular, and cheap books, to improve the schools, and to reward deeds of valor and virtue." In the beginning it was difficult to outline clearly and definitely the way in which such purposes were to be carried out. Good books were not easily obtainable at this time. The scientific works were too technical to be understood by the "common man," and were also too expensive. Hence one of the first things to be done was to encourage the writing of such books as were wanted. To this end topics were proposed and a prize offered to the writer of the best essay or treatise submitted. The first subject proposed was "The existence of God." The essay to which was adjudged the first prize was of such merit that it was translated into other languages, and people outside of the Netherlands learned of the existence of this ambitious society. During the early years the subjects thus discussed included religion, morality, philosophy, oratory, natural science, history, manual training, agriculture, botany, medicine, chemistry, architecture, commerce, navigation, jurisprudence, vocal music, gymnastics, drawing, and music. These were followed by a variety of publications which bore directly upon the moral and social life of the people, written in a style comprehensible to all, and circulated by the society as widely as possible. This work was very important, coming as it did at a time when the interest in such subjects was at a low ebb and the purchase and reading of books were restricted to the rich. The writings not only assisted in the development of the intellectual and moral character of the people, but in carrying the thoughts of the wisest and best thinkers into the homes of the less fortunate these little books helped to unify the people by making them better acquainted with the nation's language.

The founders fully realized that the greatest power of the society lay in its avowed purpose to extend education, and they asserted more than once that the education of the youth would give to the country men and women of culture. Just what the schools were at this period

can be seen by a visit to the School Museum of Amsterdam, where the school furniture as well as schoolbooks are exhibited. The schoolmasters were masters in fact as well as in name, and the pupils were driven by fear rather than led on by love of knowledge. It was necessary, therefore, to teach the teachers. This the society did in part by the publication of 45 books—in 180 editions—on educational topics, between the years 1786 and 1834. This general movement of the society, penetrating as it did all classes, soon elevated the teaching profession both in the minds of the teachers and of the patrons, and better schools were the result. As early as 1795 the Government appreciated the importance of the work which the society was doing along educational lines and asked its opinion regarding the establishment of public schools. From its experience the society was enabled to advocate the project, and also to outline the general plan for carrying it out. In 1806 public schools were established, and it is well to know that the scheme actually followed is in a large measure the one proposed by the society. It might be added also that to the same source is due the remodeled plan adopted in 1857. In providing educational facilities for the people at large, the State did not consider it was its duty to furnish technical or professional training. But the society, recognizing that many of the persons whom it sought to benefit were either too old to attend the public schools or that they must early become wage earners, soon added to its curriculum drawing and the useful trades. In this connection attention might be called to the way in which the society's influence for technical and higher education has permeated the Netherlands, as shown in the department at Nymwegen, which, with its 311 members, sustains without aid a free kindergarten, a pay kindergarten, and a school for girls, and collected within a single year $16,000 for educational purposes.

This much attention has been given to the origin of the society and its educational work during the first years of its existence in order to show how its present functions have developed from the primal idea of teaching. To recapitulate, it might be said that the founders realized the importance of educating the people up to the most wholesome use of the rights which were believed to be at hand. The people responded so heartily to these efforts that broader courses were offered and other classes reached, and finally, when their intellectual attainments were such as to demand better hygienic surroundings, broader spheres of usefulness, more remunerative occupations, and less enforced idleness, the society saw that it must meet these wants which it had in part created and promptly began its enlarged work.

In order to see how this larger work is accomplished, it will be necessary to examine the salient features of its constitution. But before doing so it must be said that an important feature of the organization is that the power of the society lies in the departments, not in the central or executive committee—in the members, not in the officers alone. As

already stated, the purpose of the society is "to strive for the betterment of the intellectual, moral, and social conditions of the people," and this purpose is to be attained "independent of any religious sect or political party," nor can anyone be excluded from membership because of his church or party affiliations. Each member pays annually $2.10, or more if he feels so disposed, into the local treasury, and of this 74 cents is handed over to the central organization for general purposes. Whenever as many as eighteen persons in one locality express a desire to become members by sending their dues to the central committee, they can be organized into a department. But in order to avoid a dissipation of energy only one department is permitted in the same place.

In the plan thus outlined appear two quite distinct organizations—the department with its own local officers, and the central committee, which is composed of twelve members, six of whom must reside in Amsterdam. Two members of this committee retire each year and their successors are elected by the delegates of all the departments at their annual meeting. The general work of the society is directed by this central committee, together with the general secretary. However, any department can propose a line of work or suggest any special investigation which it may deem advisable. If such a proposition should require an appropriation for its carrying out, it must be discussed at the annual meeting. To avoid undue haste in disposing of a proposed scheme or investigation, it is required that the proposing department send its measure to the central committee at least four months before the annual meeting. The committee, some weeks before this meeting, distributes to the members of the society the propositions which have been submitted, together with its opinion regarding each. In this way the departments can discuss these propositions and give, if they like, instructions to their delegates as to how they are to vote. To this annual meeting, which is held at Amsterdam on the Wednesday after Whitsuntide, each department can send one or two delegates, who, in voting, have the following number of votes: For 8 members the department has 1 vote; for 9 to 25 members, 2 votes; for 26 to 50 members, 3 votes; for 51 to 75 members, 4 votes; for 76 to 100 members, 5 votes; for 101 to 150 members, 6 votes; for 151 to 200 members, 7 votes; for 201 to 300 members, 8 votes; for 301 to 400 members, 9 votes; for 401 to 600 members, 10 votes, and for each 200 members in excess of 600 1 vote. The constitution must be explicit, as it is for the guidance of a large number of persons of varying degrees of intelligence, all of whom feel that they have a financial interest, if no other, in the society. This is evidently attained in the 74 articles of which the constitution consists. In order to keep up with the growth of the organization, as well as to meet any new demands that may arise, it is provided that the constitution must be referred to a revisory committee every ten years.

The work accomplished is of a dual character—that of the department, which is of its own devising and execution, and that of the central

committee, which is carried on only under the instruction of the society, given at the annual meeting. In order to realize what the 312 departments are doing, it will be necessary merely to glance at the following figures, showing the number and kinds of institutions which they sustain, viz, 4 bathing establishments, 17 burial funds, 20 committees for securing better attendance on the schools, 68 playgrounds for children, 34 libraries for the young, 7 normal kindergarten courses, 2 courses in cooking and housekeeping, 7 workingmen's funds, 23 flower societies, 2 common schools, 24 schools for gymnastics, 6 Sunday schools, 36 loaning banks, 2 industrial schools, 2 lying-in funds, 3 intermediate schools, 5 reading clubs, 6 committees for bringing about broader courses of study in the schools, 4 musical clubs, 5 aid funds, 31 schools for hand work, 33 schools for woman's work, 2 schools for bookkeeping, 13 school libraries, 11 school savings banks, 164 savings banks, 5 savings funds, 32 drawing schools, 2 industrial expositions, 2 Toynbee organizations, 16 committees for hiring playgrounds, 2 building associations, 4 committees for the distribution of fuel, 9 committees for the distribution of food, 333 public libraries, 3 reading rooms, 51 courses of public lectures, 3 committees for alleviating poverty, 11 committees for securing work for the unemployed, 20 singing schools, 32 sick funds, and one of each of the following: Crèche, building fund, school for marble carving, school for basket making, school for domestic service, trade school, school for wood carving, normal school, directory for nurses, industrial museum, school for English, nautical school, pension fund, school for adults, and drawing school for adults—in all, 1,071 distinct lines of work, primarily for the working classes, managed and supported by 13,690 members, laboring in 312 groups. It is quite impossible to estimate the amount of good thus accomplished in a country where the total population is only about 4,800,000.

This large membership of 13,690 practically permeates the entire citizenship, and those agencies which are agreed upon as beneficial can, by a concerted act, be placed in a short time before the people. It might be thought that the different departments waste time and energy in experimenting, in trying to ascertain the best means of carrying out the work decided upon. This, however, is not so. In each case when some new line of activity has been devised, the department originating it asks the central committee to investigate the project and report upon it. As a result of these investigations many futile projects have been abandoned, while those which contributed most to the general welfare are conducted along the most promising lines.

It will be noticed that public libraries lead the institutions in point of number. The library is a recognized teacher and, therefore, contributes to the carrying out of the original purpose of the society. The central committee is in a position to aid these libraries by buying books for them at wholesale rates. It also publishes and issues gratuitously a list of books suitable for youths between 12 and 18 years of

age. It is a matter of great importance to recommend good books to persons who are at a formative age, especially to those whose parents are not in all cases capable of advising. The result of this effort to cultivate the taste of the youths and to elevate their standard shows itself in each rising generation, who, in turn, take a greater interest in the society and become safer counselors for their children.

Each department holds its regular meetings as often as it likes, and in all respects it is independent of the central committee and of all the other departments. Its chief relation to the central committee is in its contribution to the society at large and in the reports which it periodically renders. Some of the departments own buildings in which the work is conducted. Such a building would contain a large room for public lectures and meetings, with smaller apartments for reading room, library, and other purposes. In many instances the department takes on the functions of a people's club, and its weekly meeting is an occasion when the members' families meet in social intercourse. The membership being more or less mixed, these gatherings afford an opportunity for the meeting of the different classes. The lower will learn by observation from the higher and will lose much of the prejudice and envy which is so often felt, while the higher will become more tolerant toward the lower as they realize the burdens which the latter carry and appreciate the obstacles which block their progress, thus leveling many of the artificial class distinctions. In many instances there is a prearranged programme, consisting of short speeches, recitations, and music, with a cup of coffee at the close of the evening. These entertainments perform an important function in a country where the winters are so long and so cold as to restrict the amusements of all except the rich. Then, too, the departments frequently conduct art exhibits, flower shows, and expositions of agricultural products and hand work. In such exhibitions prizes are offered, and a great stimulus is thus given to entire communities. Long ago, at the suggestion of the central committee, there was put in operation the plan of giving out each spring small plants which were to be cared for and returned on a given date, so that awards might be made to those who showed the greatest skill and care in handling the growing flowers.

As has been said, the departments merely report to the central committee the lines of work which they have in hand. They may ask for assistance in carrying out their plans or that the advisability of any particular scheme be looked into and reported upon. The first-named privilege leads to the general question of grants, while the second opens up the work of what we shall call the society, as all are interested in the reports of each investigation. For the year 1896 the following grants were made: For contributions to the schools in the less prosperous districts, $2,000; for public entertainments, $200; for the purchase of books for the department libraries, $600; for the publication of six popular pamphlets, $320; for public lectures, $900; to aid in the establishment of loaning banks, $400; to continue the investigation as to

the cause of idleness and the best means of eliminating the same, $400; to aid schools for domestic science, $400; to furnish instruction during hours of leisure to persons in restraint, $200; to the school commission, $400; to the Netherlands school of acting, $200 (for the next year, $400); for outcast children, $800; for public crèche, $400; for normal kindergarten school, $400; for renting playgrounds for children during school vacations, $200; for distributing the publications of the society, $200; in all, $8,020 as special grants in addition to the current expenses and cost of publishing reports authorized at some previous time. This general work of the society, reaching as it does all parts of the kingdom, brings the village communities into relation with the life of the larger cities, and thus tends to unify the people by eliminating local peculiarities. It also concentrates the attention of the active element in the country upon some line of work which promises to contribute to the general welfare. An avowed purpose of the leading spirits of the society is to become better acquainted with the thoughts, aims, and desires of the people; to know their needs, and to alleviate, if not remove, their wrongs and sufferings.

We saw what the society did for popular education, how it evolved a practical plan and allowed the State to profit by its experience and assume control over the schools. In the economic unrest with which the last century closed it was realized by the thoughtful men that a great safeguard lay in the acquisition of habits of economy, that self-respect is implanted in the minds of those who save from their earnings, and that a person with money to his credit is seldom a revolutionist. Hence the work of establishing savings banks was at once taken up. Since none but philanthropic motives actuated the movers in this enterprise, every inducement was offered to the wage earners to deposit, and all possible precautions were taken to protect their savings. Beginning under such favorable auspices, it is not surprising that savings banks conducted by the departments rapidly increased in number and efficiency. In fact, it was this successful experiment which showed to the officials of the State that a postal savings bank would be a public benefit, and when the Government gave evidence of its desire to look after the savings of the people the society cooperated by again turning over its chapter of experience and urged the members to patronize the postal savings bank. Still, while this bank is one of the very best in the world, the departments have found the local savings banks so beneficial that one-half of the total number conduct such institutions.

Before leaving the subject it ought to be said that a commission appointed by the society submitted in 1891 a very comprehensive report on the subject of people's banks in general. In this report they gave in great detail the best way for securing the pledges for a guaranty fund, how to invest the deposits, a safe rate of interest to pay under varying conditions, and such cautions as should be given to beginners in the banking business. They also submitted a model draft for a constitution for these banks, prescribed the form of note and security

which should be exacted in case of loans, and added copy for all blanks that would be required in the conduct of the bank's business. When such a bank is organized, if solely for the benefit of the members of a department, the society supplies it with requisite daybooks, journals, pass books, and ledgers. In nearly all cases the savings bank has as one of its functions a loaning feature, but the borrower must be a member of the society. It has often been argued that the postal savings bank is harmful in one respect—that is, it withdraws from a neighborhood the spare money which might be used to better advantage by loaning it to the farmers and merchants at home. This argument can not be made against the department banks. They invariably earn the interest, which they pay out, from neighborhood loans.

This principle of economy has been industriously extended along other lines. The Belgian war for independence, 1830–31, disturbed Dutch finances, and State bonds, which had been a favorite investment for the banks, rapidly depreciated in value, so that for a time there was a lack of confidence in banks of all kinds, and new inducements to save had to be offered. The first that suggested itself was doubtless the sick fund, the importance of laying aside something for the periods of enforced idleness, especially during sickness, being fully realized. This fund arose outside of the society, and of the 650 now known to be in operation in the Netherlands a few antedate our society.

Since the class of persons to whom such funds appeal is a class that can not investigate an organization, the society rightly deemed it advisable to examine the character of these funds, ascertain their reliability, give encouragement to those that were meritorious, and to urge upon the poorer people to profit by the advantages offered. In 1891 a commission was appointed by the central committee "to examine into the condition and workings of the sick funds and burial funds in the country, to submit a critical report upon the same, and give as far as possible suggestions for their betterment." The report of this commission was published in 1895 and distributed to all of the departments, if not to all the members. The general subject was discussed at considerable length under the following headings: A general examination of sick funds, the field of operation of sick funds, their management, their financial condition, their legal status, and defects in their organization, with suggestions for their improvement. As can be readily understood, it was no easy task to look carefully into the 650 organizations which allowed their workings to be investigated, to collate their reports, and exhibit in lucid form the fees, special rules, and benefits granted during sickness; but the society has never hesitated to undertake any work whose results promise a contribution toward the welfare of the people. The commission charged with this work evolved from their investigations and study the rules of an ideal sick fund, which, if the future does not belie the past, will soon exist as a reality and suggest valuable modifications to those now in operation.

Closely related to the sick funds are the species of funds known as burial funds, or a sort of insurance in which there is an agreement on the part of the organization to inter the deceased or to pay at the time of the death of the contributor a sum sufficient to cover the cost of interment. Organizations of this kind, usually called societies, are of long standing in the Netherlands, the oldest being the "Linnenweversbus" at Delft, which was founded in 1622. They have a strong hold upon the people, especially among the working classes, as can be seen from the fact that the 12 societies located at The Hague have a membership of 300,000, while all of the 411 within the kingdom are more or less prosperous. It was long ago that a great evil seemed to be associated with this general scheme of burial funds. It was this: It was necessary for these societies to secure additions to their membership by agents, who put the heaviest pressure of persuasion upon the poor people to insure their children's lives. Such agents were not slow to intimate the profit that would arise in case of the child's death, and the large number of deaths among children suggested that the best possible care was not bestowed upon the insured children in times of illness. Thus mortuary statistics from the State board of health in 1886 showed in nine villages the following:

DEATHS PER 100 IN NINE VILLAGES OF HOLLAND.

Village.	Persons above 6 years.	Children under 1 year.
Ysselstein	1.80	28.66
Maarsen	1.75	27.34
Breukelen	1.59	28.60
Montfoort	1.58	31.10
Veenendaal	1.53	13.23
Jutphaas	1.26	23.54
Kockengen	1.24	34.34
St. Pieters	1.22	39.18
Maartensdyk	1.18	22.61

This surely suggested a most demoralizing effect, and that upon people who, needing relief in time of misfortune, naturally seize whatever offer of assistance is most promising. It was, therefore, just such a case as fell within the province of the society, and in 1888 a commission was appointed to investigate the entire subject, report upon the condition of burial funds, and recommend such changes as might bring about their improvement and eliminate the injurious feature just referred to. After three years of patient investigation, in which two university professors took part, a report of 217 pages was published and widely distributed. Without fear or favor they executed the work intrusted to them, and in those cases in which the officers declined to submit answers to the inquiries sent out by the commission their declinations were published. Side by side in the report are exhibited the rates of insurance, the premiums promised, the conditions of membership, and as far as possible such special rules as might give information regarding

the workings of that particular organization. Such a report can not help being of the greatest assistance to the people who desire accurate information regarding the funds in which they are now interested or into which they contemplate entering. The report contains also the draft of some clauses which it was thought should be added to the laws of the State regulating the conduct of these funds. Perhaps the most important of these clauses is the one which, if adopted, would place all of these funds under State control. Another important one is that limiting the age of children who could be received into membership. The patronage which is accorded the two organizations last named (the sick funds and the burial funds) shows what a strong hold the principle of insurance has upon the Dutch. Incidentally, the commission just referred to ascertained that 49.37 per cent of the entire population of the Netherlands are insured and that $1,000,000 annually is paid as premiums.

It has been the policy of the society to encourage habits of economy. One of the opinions firmly held was that thriftlessness, dissipation, and idleness could best be eradicated by encouraging the people to save, and when possible to induce them to enter upon the systematic saving that is inseparably connected with insurance. Consequently the work which the society has done in connection with all forms of people's funds has had in view the popularizing of economical habits. Just here it might be mentioned that the society published for gratuitous distribution a popular treatise on political economy, one on hygiene, and one on domestic economy, having the unique title, "Where does the money go?" In this last named are given, in addition to many valuable suggestions regarding economy in general, the specific amounts which a workingman receiving a given wage should expend for the various articles of food and clothing in order to attain the best possible results. It also shows how household accounts should be kept, and in many ways illustrates how the wife can be made a helpmate in fact as well as in name. As a further help toward increasing the efficiency of the wage earner, the society has prosecuted a number of investigations into the nutritive properties of foods, the evils resulting from the use of impure food ingredients, and the methods for detecting some of the common adulterations. The result of the publication of the popular pamphlet on this subject has been greater care on the part of dealers to procure for their customers more wholesome supplies and the corresponding higher regard for healthful diet.

While speaking of the household it might be well to merely repeat the titles of some pamphlets which were written for the society, published by it, and sold at the rate of 1 cent each or given away when necessary. They are as follows: "Our clothing, why and how we ought to dress," "Individual houses or collective houses?" "The art of becoming rich," "Your house and your home," "The education and care of children during their early years," "Manual training as an educational

agency," "Precautions against contagious diseases," "Water from a hygienic point of view," "How the pennies may be expended," "Labor laws," "Superstition and how to suppress it," "The State and vaccination," "The influence of alcoholic drinks upon the human system," "Idleness as a phenomenon in society," "Forestry," "The trade relations of middle Europe," "The art of housekeeping," "The love of truthfulness," etc. It would be idle to attempt to estimate the amount of good which these small treatises have done. They are written in a simple style and freed as far as possible from confusing technicalities, consequently they are not only readable, but interesting, and coming as they do into the hands of those who would otherwise be deprived of the opportunity of learning in schools or colleges the lessons which they wish to impart, these little tracts have been veritable missionaries.

Before leaving the household something needs to be said regarding the work which the society has undertaken in connection with the question of homes for the working classes. The larger cities of the Netherlands were at one time fortified towns, and all the dwellings were for reasons of safety built within the fortifications, so that the growth of the cities resulted in a crowding of the population. Cellars were used as dwellings, and entire families lived in single rooms. It was noticed that the death rate among people living under such unhealthful conditions was abnormally great, and that contagious diseases frequently had their starting point in the crowded quarter, where they were dislodged with the greatest difficulty. It became necessary to bring about a change in these conditions, not only for the benefit of the occupants of such unhealthful dwellings, but for the welfare of all. This being such a broad subject and of interest to so many, while of financial profit to none, it naturally devolved upon the society to take the matter in hand. In 1887 a commission, consisting of two engineers and one lawyer, was appointed to investigate the general question of workingmen's homes and submit a report. First of all, they laid down the general proposition that since the household affairs are in the hands of the wife and since she spends more of her time in the home than the husband does, any efficient sentiment in favor of improving the house must emanate from her. She must be taught to place a higher estimate upon cleanliness and neatness and be impressed with the knowledge of how unsanitary conditions endanger the lives of her children. To this end hygiene should be taught in the schools, especially in the classes for girls. When there is awakened a feeling of dissatisfaction with houses unfit for occupancy, the builders will meet the demand for a better class of houses by at once erecting them. The commission, therefore, in its report, submitted in 1890, dwelt at great length upon the conditions which render a house undesirable from the standpoint of health and difficult for the housewife to keep in order. Abundant statistics were given, showing just where such localities were in the principal cities of the kingdom.

The second part of its task was to show what constituted an ideal home for a workingman, and under this head were discussed such topics as location, choice of materials, thickness of walls, internal arrangements, ventilation, and cost. Since the item last named would be the one first considered by builders, the commission submitted a number of designs, many of which could be adapted to old buildings, showing the most economical distribution of space, the area of each room, and the estimate of the cost per square meter. In these plans the available room varies from 65 to 89 per cent of the ground covered. It is desirable to cultivate as far as possible a home-like feeling, consequently individual houses are preferable, especially when a piece of ground is attached. This can be cultivated, and in hot weather a man can escape the heat of indoors without leaving the family circle to seek refuge perhaps in a neighboring barroom. Such considerations as these have influenced to a marked degree builders of houses for the working classes and have been duly regarded by factories and corporations which are providing homes for their employees. Cities also are weighing the question. It is impossible for city manufactories to prosper if the wages demanded are made exorbitant because of the rent demanded of the workmen; nor can the laborers, who accept the wages which the employer can afford to give, pay a high rent and have enough money remaining with which to procure suitable food. The housing of the working classes, therefore, becomes a municipal question.

The ideal condition is attained when the laborer becomes the owner of his home; and to the praise of the Netherlands it must be said that many successful schemes have been put in operation which are aiding in bringing about this condition. These associations in themselves would furnish a fruitful field for investigation. Some involve an insurance feature—that is, the rent is such that it is regulated by the age of the renter, and at the end of a fixed number of years, or prior death, the house becomes the property of the occupant. In other cases the payments are such that the excess over and above a certain per cent of the cost of the house is set aside as a reserve fund out of which arrears for rent that accrued during enforced idleness can be paid or payments be made on the house itself. Of course there must be some central organization with capital enough to hold property while it is being paid for in this manner. These organizations, somewhat like the building associations in this country, are independent of State and municipalities; but in several instances the cities have aided them, as, for example, Leyden advanced $40,000 to enable these societies to purchase land on which to erect houses for workingmen, and on this sum the city receives only 3½ per cent interest. Savings banks also which are conducted on the mutual plan have loaned them money. In addition to this it has been proposed that all city lots which are sold for taxes should be bought in by the city and utilized as sites for workingmen's homes, but a bill providing for the employment of a part of the funds of

the postal savings bank as loans to building associations was recently defeated in the National Congress by a vote of 47 to 21.

The Society for General Welfare has never been in a position to give financial assistance to the building associations, but it has spread abroad a large amount of information regarding the housing of the working classes and contributed more than any other agency to the general sentiment in favor of home owning. In addition to that, it has most carefully investigated the status of the building laws and recommended improvements in them, several of which will at once go into effect. More important still, it has, through its publications, informed the people, to whom such information would scarcely come otherwise, just what they have a right to expect from landlords in the way of hygienic arrangements. It has shown even the day laborer how he may in time become the owner of a home, and in every way possible it has urged him to attempt the undertaking. It is interesting to note that practically all of the building associations refuse to admit to membership men known to be drunkards, so that when the society induces a man to make a start toward acquiring a home through their agency it also places an obstacle in the way of intemperance at the same time it inculcates habits of economy.

References have been made to reports and other publications through which the society reaches those whom it seeks to benefit. There is still another channel, even older than these, which has been used with good results—that is, public lectures.

The society in 1896 made a grant of $1,000 toward aiding those departments desiring to have a course of lectures. It secured the services of 26 speakers and announced for the winter 89 topics. In order to secure a speaker, the department is assessed 10 cents for each member, but if the membership exceeds 80 the fee demanded is only $8. It has been estimated that the average cost for traveling and entertainment is about the sum named, and if the assessment is not sufficient the society makes good the deficit from the appropriation available for this purpose. The speakers give their services gratuitously.

In the range of topics announced may be found all the subjects which the society has had at heart, and the lectures frequently amplify and accentuate the reports which recently appeared. In the arrangements for the lectures the departments have absolute freedom. They can admit the public with or without charge for admission, issue tickets of invitation, or restrict the attendance to the members and their families, just as they wish. No attempt has been made in this connection to introduce the so-called university extension, but the matter is under advisement, and if it should be found adaptable to the functions of the society and within the power of the departments to carry it on, we may expect to find the work in operation before long.

The relations of the Society for General Welfare to society at large and its attitude to the family unit have been discussed at some length.

It now remains to give an account of what it is doing more especially for the individual, specifically for the individual as a wage earner. Incidentally this feature has received some attention. Thus the man can not render efficient service unless he be well clothed, well housed, and properly fed. Hence these points occupied the society and have been referred to already. The man who is saving appreciates the value of property and wastes less of his employer's time and material; one who drinks is seldom trusted and, therefore, with difficulty finds work, and the man who has a high moral standard and intellectual attainments is all the more desirable in positions of responsibility. But there are many persons seeking work whose only capital is muscle, and who have but little to offer besides a pair of hands. What is the society doing for these? Such persons usually cry out when want comes near, "I can not find work." This the society well knows and devotes a large amount of time to the study of the general question, "Idleness."

There are in all communities persons capable and willing to work who suffer because of insufficient compensation. In their enforced idleness much valuable labor is lost to the community. It is also true that many inexperienced and hence unsatisfactory laborers are engaged upon work when skilled workmen might be had if they only knew where work was awaiting them. In this failure of the employer to find the class of workmen best suited to the tasks he has in hand indifferent men are employed, and they, finding work for whose execution they have made no preparation, see no necessity for undergoing special training. Others, recognizing this state of affairs, enter upon their struggle for existence without the requisite training, and the number of poorly prepared workmen tends to increase. This is especially true in the Netherlands, where the working classes move about but little and, in their ignorance as to what is going on in other parts of the kingdom and the demands there for workmen, stay at home and help to perpetuate the conditions just described.

The society appreciated the fact that there were many unemployed persons within the boundaries of all of its departments, and years ago decided to put forth its best endeavors to keep down the number of inefficient artisans, to inform all sections of a scarcity or superfluity of laborers, to stimulate the founding of saving, help, and invalid funds, to prevent the migration of workmen from the country to the city, to collect funds for worthy workmen out of employment, and to arouse an interest in those classes whose work is not continuous. In addition to this the society has sought to encourage emigration—not that spurious sort which takes a helpless man into unsympathetic surroundings where his lot is all the harder, but the better kind that brings muscle and the opportunities to use it into profit-yielding relations. It has also awakened dormant energies, and in suggesting new industries capital has in many instances found better fields and large numbers of persons have been given employment. Experiments too

costly for individuals to undertake have been made in the reclaiming of worn-out lands, and towns have been urged to purchase unoccupied tracts and to let the same on easy terms to men who are seeking something to do.

In contributing to the schools for manual training the society has assisted in securing better-equipped workmen, and in organizing industrial exhibitions, with prizes for the best manufactured articles, the standard of work has been materially raised. At the recent fair in Alkmaar the first prizes were taken by a blacksmith and by a carpenter. Just here it might be remarked that in the guilds, which were peculiarly popular in the Netherlands during the eighteenth century, personal freedom and independence were pronounced characteristics, so that with their dissolution the system of apprenticeship was in a disorganized condition. The laxity of the guilds was inimical to the discipline so necessary in the apprenticeship system, so that conflicts between master and learners were frequent. The society in its early days performed valiant service in adjusting the differences which arose from these conflicts. It also encouraged the workmen of all sorts to remain with their employers by giving medals to those whose terms of service reached a certain number of years. There is now in the society a survival of this custom. It has a die and furnishes at cost such a medal to those departments that continue to reward faithful continuous service.

The society seeks to collect at as frequent intervals as possible reports of the condition of the working classes in all of the communities reached by the departments, the number and trades of the unemployed, and the demands for laborers. The compiled results of these reports are distributed, and from the information thus obtained much useless wandering in search of work is avoided. Frequently a new enterprise or some municipal or State work calls for workmen in a given place. The reputed demands thus created, as well as the compensation offered, are exaggerated as the narration of the same passes from one neighborhood to another, and dozens hasten to obtain work which is sufficient for but one, and the familiar spectacle is again repeated of a man who, after spending all he had to make the journey, finds himself far from home, penniless, and without work. It can be readily seen that by attending to the reports of the society one might learn that some work is to be undertaken in such and such a place, but that there is available in that immediate neighborhood more help than is needed to complete it. A task similar to this is the effort which the society is making to prevent men from migrating from the country to the cities. In realizing the great attraction which the larger towns have it has been very energetic in giving out information regarding the cost of living in the cities, the wages that can be expected, the periods of enforced idleness which are to be provided for, the fierce competition that exists there in obtaining work, and the helplessness of the unemployed city man who must have money to give in return for even the

water which he drinks. In the poor colonies of Holland (*a*) it has been found that the worst results are obtained with the families who are sent from the larger cities, showing that if a man is eventually to become an object of charity his life in the city makes the task of caring for him all the more difficult.

Some of the departments conduct a labor exchange, and publish each day the number of persons who registered the previous day, together with their trades and the wages expected. In the same connection they publish the demands for laborers under the head of "Situations wanted."

What the society is doing in the way of stimulating the founding of savings banks, sick funds, and burial funds has already been stated. While its labors in this direction have been most successful, it might well regard as its crowning work the interest which it has awakened in those classes whose work is not continuous and the attention which it has directed to the general subject of idleness. First of all, the society distributed very widely a treatise, written by one of the ablest Dutch economists, on "Idleness as a phenomenon in society," and after allowing time enough for the press to discuss the topic and economists and philanthropists to weigh the subject, the proposition was made that each department take up the matter of idleness in its own neighborhood, investigate its causes, devise means for its relief, and report the results to the central committee. By the year 1894, 248 such reports had been received. To eight of the departments where the necessities were the greatest the society made grants to enable them to conduct untried experiments.

The following abstracts will give an idea as to how the departments sought to give relief to the unemployed, and in some cases what conclusions were reached regarding the causes of idleness:

In the vicinity covered by the department of Dantumadeel, where there is a population of 9,000, 150 heads of families and 7 single men were without work and in need. The department bought flax and had it dressed, giving in this way employment to 114 persons. In this section the land is overflowed during high water, and if a freeze occurs at this time the ice or even the frozen ground permits but little farm work, so that those entirely dependent upon their labor are reduced to want.

In Oldeboorn, a stock-raising district, where there is but little work in the winter time, the department bought standing timber and employed those in greatest need to cut, haul, and house the wood. This wood was kept until seasoned and ready for the market, when it was sold and the proceeds used to repay the amount advanced for purchase money and wages. Here it was noticed that the men required considerable supervision. So many were inclined to shirk that it was necessary to change the compensation from pay by the hour to pay by the quantity of work done. Employment was given to 26 men for three weeks, and much suffering was thereby alleviated.

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a See Bulletin of the Department of Labor, No. 2.

At Steenwyk 80 persons were given work cleaning out the city canals. Each had work for forty days, and to make the period of employment as long as possible only three days a week were set aside for work. The wages paid were from 24 to 27 cents per day. Three men were given regular work cutting rope for oakum, and 34 families were supplied with rope to pick, from 10 to 30 men drained lands belonging to the city, 4 broke stone, and 6 families were aided in mat weaving. Most of this work was given out by a local organization which had for its purpose the suppression of mendicancy, but the city and the society contributed largely to the general fund. It was found that there was a net loss to the city, but it was less than would have been the expense of supporting 150 persons during the three winter months when there was no farm work.

In two departments the grants made by the society were expended in conducting schools for hand work, such as net making, brush making, chair seating, and mat making, the purpose being to qualify men to utilize with profit the long winter nights and the days when their ordinary vocations are not in demand.

At Wissekerke on one occasion, when it was evident that families would come to want before the close of the approaching winter, it was decided that indiscriminate giving was injurious and that money given to the poor fund should be refunded in work. A popular subscription was, therefore, made for the construction of a dike which was a public need, and to this purpose the poor fund was added. In digging this dike 16 persons were employed for eleven weeks at a compensation of from 32 to 56 cents per day.

The department at Heerenveen organized a joint-stock company with a capital of $10,000 for the purchase of unproductive lands and for their improvement. Work was given to those in need in draining and improving this ground, which was thereupon subdivided and let out to the poorer people at a low rental, with the agreement that all of the rent should be expended in the betterment of the soil. This experiment has not continued long enough to give any pronounced results, but if it succeeds it will go a long way toward solving the problem of idleness in farming districts. Those who contribute to such a fund merely give outright the interest on their subscription; nor even all of that, since the company retains ownership of the ground, which, under the favorable conditions here existing, becomes more valuable each year.

The farmer, assuming the risks of season and price, if free from debt, raises enough for his own wants and hires as little as possible. If he be in debt, he is liable to become discouraged or more involved and sells his land. During the past ten years the selling of small holdings and their purchase by large owners has been very marked. Again, the farmers, thus dispossessed, in their inability to find employment in the vocation which they were just forced to relinquish, usually go to the cities with their small capitals and become consumers instead of producers.

Such articles of food as milk and eggs seem to be the ones which must find the nearest market. Flour can come from a distance, so can animals on foot or dressed meat in refrigerator cars. The growing cities, therefore, demanding more and more milk, butter, eggs, etc., tend to transform the adjacent grain-producing lands into dairy farms or kitchen gardens, and these, requiring less labor to the acre, are daily throwing farm hands out of work. On the farms more remote from the large cities the introduction of agricultural machinery, especially steam threshing machines, mowers, and reapers, is depriving men of work. Since all available land is under cultivation, the use of machinery, instead of increasing the acreage farmed, diminishes the number of workmen needed to handle the crop.

At Vlaardingen, where the majority of the men are engaged in fishing, there is a long period of enforced idleness, so that the experience of those charitably inclined is quite extensive in all matters pertaining to the unemployed. The conclusion reached is that the first idler is usually idle because of vicious habits or incapacity, but the necessities or poverty of this person are at a maximum, since the very characteristics which kept him idle would make him a poor provider. Therefore, idleness can best be diminished by developing the workingman, by improving his morals, and teaching him to be reasonable and sensible. The morals ought to be improved by the churches and their officers, while culture should be given in a large measure by the society through its reading clubs, lecture courses, and schools—both ordinary and manual-training institutions.

In many of the agricultural districts men have been thrown out of employment by the decline of agriculture. In the Netherlands this is especially marked.

The society is fully alive to the seriousness of the question which it is now studying. The Government has appointed a commission to report upon the best form of agricultural banks, intending through them to assist the people. This idea came from the society, making the third time that the State has taken its cue from its helpful friend and adviser, and it is safe to say that any general scheme which may be adopted for diminishing the amount of idleness by removing its principal causes will rest upon the experience and observation of the Society for General Welfare.

Such is a part of the work of the society—that part which is immediately related to the workingman—but outside of this there are other activities which are along charitable lines. Thus, the orphans of Friesland, undaunted by the fate of their fathers, long to follow the sea, and the society aids in the maintenance of a school for seamanship. The poor colony at Frederiksoord has a partially endowed school for forestry, and the society comes forward with its aid to place it on a sure footing. Many persons have been members practically throughout life, and now comes the question of granting pensions to those who are unable to work because of the infirmities of age.

The society has laid before its members the question, "What is the duty of the more fortunate toward those less fortunate?" and in its attempt to answer emphasis is laid upon unselfishness, and a high ideal of living is held up before all. It has described the Toynbee work in London, the Hull House in Chicago, and "Ons Huis" in Amsterdam, and left it to the cities of the Netherlands to decide if they can afford to remain inactive in these lines of charity. The causes of poverty in the land have been carefully studied, and a charity recommended that strengthens the recipient, places him on a higher plane, and aids him in self-support. It is hardly necessary for the society to apologize for apparently overstepping its bounds in this instance. In all of Europe the material breach between the rich and the poor is becoming wider, and social disturbance can be avoided only by awakening in the hearts of the former a sympathy for those whose lines are cast in harder places.

Such is the work accomplished by the Society for General Welfare, an organization having only $110,000 of invested funds and an annual income of about $18,000. That so much is possible can be ascribed to the hearty cooperation of its members, many of whom as members of commissions devote months of time to gratuitous labor in its interests.

In a close study of this society, toward which members, officers, beneficiaries, and lecturers freely lent their aid, the conviction has been strengthened that with the Dutch charity not only begins at home, but finds there its most attractive field; that sympathy grows with use, and that the hand extended in aid brings back to its owner that greater blessing which comes to the cheerful giver.

RECENT REPORTS OF STATE BUREAUS OF LABOR STATISTICS.

CONNECTICUT.

Twelfth Annual Report of the Bureau of Labor Statistics of the State of Connecticut, for the year ending November 30, 1896. Samuel B. Horne, Commissioner. 315 pp.

The following subjects are treated in this report: Taxation, 242 pages; general investigations, 32 pages; statistics of manufactures, 18 pages.

TAXATION.—The object of this investigation was to show the extent of the inequalities arising from the existing system of assessments for purposes of taxation in Connecticut. The law of the State requires that all real and personal property shall be put into the assessor's hands for taxation at its true market value. There is provision made for State, county, and town tax.

With respect to the assessment of real and personal property information was obtained by the bureau by means of schedules of inquiry mailed to the boards of assessors of the 168 towns in the State and by personal visits by special agents. The result shows that, on an average, property is assessed at 69.6 per cent of its actual value in the entire State. In only 50 of the 168 towns reported is property assessed at its full value, while in 17 towns it is assessed at one-half or less than one-half of its value. In 4 towns property is assessed at 33⅓ per cent, which is the lowest reported. The average valuation of property for assessment purposes for each county varies from 47.6 to 81 per cent.

Another method adopted by the bureau for ascertaining the extent of undervaluation of property for assessment purposes was by comparing the valuation placed upon estates of deceased persons during 1895 by appraisers appointed by probate courts with the amounts assessed against the same property on the tax lists of 1894. This work was done by personal investigation. Seven hundred and thirty-two probated estates were compared. The assessed value of this property was $3,450,964, or 61 per cent of the appraised value, namely, $5,626,212. Individual estates were assessed at from 10 to 284 per cent of their appraised value. The average assessed value of probated estates for each county varied from 43 to 89 per cent of the appraised value.

A further comparison was made of the assessed and actual value of the property of corporations. The results were obtained by comparing the assessed value of corporation property with that reported in the sworn returns of the financial condition of corporations made by their officers to the secretary of state, as required by law. The 291 corporations in the State covered by this investigation show a net taxable property of $23,685,205, which was assessed at $10,508,327, or 44 per cent of its reported value. The percentages of assessed valuation of the property of individual corporations vary from 5.9 to 207.9 of their reported value. By counties, the averages vary from 29.1 to 76 per cent.

This subject is concluded with a review of the early methods of taxation, suggestions as to remedial legislation, and abstracts of tax laws of Connecticut and some other States.

GENERAL INVESTIGATIONS.—The condition of bake shops and bake-shop employees is the principal subject treated under this head. An inspection was made by agents of the bureau of 181 bake shops in different parts of the State. Of these 97 were reported clean, 57 dirty, and 27 filthy. Ninety-five were situated in cellars. In 30 shops water-closets were found in either work or store rooms, 46 had sewer pipes in the work or store rooms, and 3 shops were used for sleeping purposes by employees.

Of the 664 men employed in the shops inspected 2 worked 7 hours per day; 30, 8 hours; 70, 9 hours; 352, 10 hours; 97, 11 hours; 105, 12 hours; 4, 13 hours; 2, 15 hours; 2, 17 hours. Nearly one-half, or 324, were night hands. The weekly wages ranged from $5 to $20.

The bureau suggests a law for the inspection and regulation of bake shops.

Other subjects treated under this head relate to alien laborers and to the protection of motormen.

STATISTICS OF MANUFACTURE.—Information in reference to the number of persons employed, weekly hours of labor, number of days closed during the year, changes in rates of wages, and proportion of business done was received from 789 establishments by means of schedules of inquiry. Following is a summary of some of the facts reported:

WAGES AND HOURS OF LABOR OF EMPLOYEES AND BUSINESS CONDITION OF ESTABLISHMENTS FOR YEAR ENDING JULY 1, 1896, BY INDUSTRIES.

Industry.	Establishments reporting.	Employees, July 1, 1896.					Wages per day of ten hours.	Average weekly hours of labor.	Per cent of business done of greatest capacity of establishments.
		Men.	Women.	Boys.	Girls.	Total.			
Brass and brass goods	67	9,520	2,202	350	224	12,296	$1.87	55.01	83.49
Brickmaking	13	628	6	5	.....	639	1.30	a39.68	94.29
Buttons, buckles, and pins	14	402	451	47	205	1,105	1.47	54.91	77.52
Carriages and carriage parts	31	933	23	14	.....	970	2.29	52.32	72.01
Corsets	11	471	3,467	71	146	4,155	1.24	51.75	87.58
Cotton goods	36	2,662	2,524	482	473	6,141	1.23	54.02	85.75
Cotton mills	20	1,540	1,499	444	520	4,003	1.09	53.52	87.28
Cutlery and tools	38	1,754	126	132	22	2,034	1.81	52.70	89.13
Firearms	7	687	10	2	.....	699	2.15	55.01	57.26
General hardware	64	8,424	484	508	231	9,647	1.04	54.96	82.53
Hats and caps	24	1,881	706	42	14	2,643	1.68	51.45	75.80
Hosiery and knit goods	20	1,165	1,349	111	280	2,905	1.25	57.31	79.30
Iron and iron foundries	39	4,342	14	147	4	4,507	1.92	54.69	83.66
Leather goods	16	496	45	40	8	589	1.66	54.83	80.15
Machine shops	75	7,915	68	156	20	8,159	2.04	58.18	87.06
Musical instruments and parts	8	648	85	9	.....	742	2.74	48.77	69.36
Paper and paper goods	45	1,107	889	61	89	2,146	1.31	55.45	74.50
Rubber goods	12	1,365	594	60	52	2,071	1.87	50.88	63.72
Shoes	11	313	185	10	15	523	1.51	53.60	83.37
Silk goods	14	1,411	1,579	126	101	3,217	1.37	54.89	62.96
Silver and plated ware	30	3,221	531	134	114	4,000	2.15	43.71	73.61
Stone cutting and quarrying	15	666	.....	23	.....	689	1.85	50.76	72.21
Wire and wire goods	15	697	56	66	25	844	1.78	54.70	78.37
Woodworking	49	1,609	69	16	.....	1,694	1.76	54.63	76.81
Woolens and woolen goods	37	2,596	1,413	286	224	4,519	1.38	50.58	70.74
Miscellaneous	78	1,583	306	135	90	2,114	1.78	55.79	82.20
Total	789	58,036	18,681	3,477	2,857	83,051	1.66	53.79	79.69

a Establishments in this industry are in active operation only during the open season; hence the low average of hours of labor.

As will be seen by reference to the above table, the total number of establishments reporting, 789, had on their pay rolls on July 1, 1896, 83,051 employees. The same establishments at the same date in 1895 had 83,696 employees, a reduction in number in 1896 from that in 1895 of 0.77 per cent. The average weekly hours of labor during the year was 53.79, exclusive of hours lost by reason of days closed. The proportion of business done, reported by the manufacturers as being the per cent of actual or full capacity of the whole number of establishments reporting, was 79.69 per cent. The amount paid in wages by the 789 establishments was $38,509,484 for the entire year. The average daily wages for actual hours worked during the entire year by all employees in all industries, based on the assumption that the number reported as being on the various pay rolls on July 1, 1896, was the average number employed for the entire year, was $1.66 per day of ten hours. Sixty-six establishments, employing 2,212 persons on July 1, 1895, and which appeared in the report for that year, were found to have been closed on July 1, 1896.

NEW YORK.

Thirteenth Annual Report of the Bureau of Statistics of Labor of the State of New York, for the year 1895. Transmitted to the Legislature March 2, 1896. Thomas J. Dowling, Commissioner. Vol. I, 588 pp.; Vol. II, 668, xxvi pp.

The report is presented in four parts and an appendix, and treats of the following subjects: Part I, Progress of organized labor, 418 pages; Part II, Special investigations (practical operation of the mechanics' lien law, life and limb law, and eight-hour and prevailing rate of wages law, and tenement-house cigar making in New York City), 138 pages; Part III, Investigation of bake shops, 394 pages; Part IV, Labor laws of New York State, 113 pages; Appendix, Proceedings of the eleventh annual convention of the National Association of Officials of Bureaus of Labor Statistics, 158 pages.

PROGRESS OF ORGANIZED LABOR.—This investigation was made chiefly with the view of ascertaining whether or not labor has been benefited by reason of labor organizations, and, if so, in what respect and to what extent. The returns compare the general condition of organized working people on July 1, 1895, with the corresponding date of the preceding year. The subjects of inquiry include wage rates and working time, success of the movement for the shorter day, employed and unemployed labor, membership of labor organizations, organized working women, and remarks and suggestions regarding the labor movement in the State and the legislation needed for the improvement of the condition of the working people.

The replies to inquiries sent to the labor organizations in the State in reference to rates of wages and hours of labor that prevailed in the various organized occupations on July 1, 1895, as compared with July

1, 1894, show an improved condition as to both. The following is a tabulation, by industries, of the replies received:

WAGES AND HOURS OF LABOR IN VARIOUS ORGANIZED OCCUPATIONS ON JULY 1, 1895, COMPARED WITH JULY 1, 1894, BY INDUSTRIES.

Industry.	Total organizations.	Organizations reporting as to wages.			Organizations not reporting.	Organizations reporting as to hours of labor.			Organizations not reporting.
		An increase.	A decrease.	No change		An increase.	A decrease.	No change	
Building trades	249	27	18	202	2	2	12	235	.....
Cigars and cigarettes	54	4	2	46	2	.....	2	52	.....
Clothing	70	32	6	24	8	2	23	38	7
Coach drivers and livery-stable employees	4	1	.....	3	.....	.....	.....	4	.....
Food products	27	7	1	19	.....	2	11	14	.....
Furniture	8	1	2	5	.....	.....	4	4	.....
Glass workers	15	.....	4	7	4	2	2	10	1
Hats, caps, and furs	16	3	3	6	4	.....	.....	15	1
Hotel, restaurant, and park employees	16	.....	1	15	.....	.....	.....	16	.....
Iron and steel	98	10	13	66	4	5	2	84	2
Leather workers	17	1	6	6	4	.....	1	13	3
Malt liquors and mineral waters	26	4	.....	22	.....	.....	3	23	.....
Marine trades	15	2	2	11	.....	.....	.....	13	2
Metal workers	11	2	2	7	.....	.....	.....	11	.....
Musicians and musical-instrument makers	22	1	1	16	4	.....	.....	11	11
Printing, binding, photo-engraving, stereotyping, etc	58	9	1	46	2	.....	6	51	1
Railroad employees (steam)	116	2	1	112	1	.....	.....	97	19
Railroad employees (street surface)	1	.....	.....	1	.....	.....	.....	1	.....
Stone workers	28	1	2	25	.....	.....	1	27	.....
Street paving	10	.....	.....	10	.....	.....	.....	10	.....
Textile trades	13	4	1	6	2	1	.....	12	.....
Theatrical employees and actors	9	1	1	6	1	.....	.....	7	2
Wood workers	16	.....	2	14	.....	.....	.....	16	.....
Miscellaneous trades	33	1	1	28	3	4	2	24	3
Total	927	113	70	703	41	18	69	788	52

These figures show that out of a total of 927 labor organizations 113, or 12.19 per cent, reported an increase of wages; 70, or 7.55 per cent, a decrease, and 703, or 75.84 per cent, no change. On the other hand, out of the same number of labor organizations 69, or 7.44 per cent, reported a decrease in the hours of labor; 18, or 1.94 per cent, an increase, and 788, or 85.01 per cent, no change. Forty-one organizations failed to report in regard to wages and 52 in regard to hours of labor. The most favorable conditions, both as to increased wages and decreased hours of labor, were shown to exist in the building trades, cigar and cigarette making, clothing, food products, malt liquors and mineral waters, and printing, binding, photo-engraving, stereotyping, etc.

The reports of the labor organizations show that in quite a number of instances the restorations or advances in the rates of wages or reductions of working hours were made on the demands of the unions and without recourse to strikes. In several cases employers voluntarily increased wages. In some places workmen indulged in strikes to enforce their scales of wages and hours of labor, and these trade disputes were usually successful.

The working hours of labor, as reported by the labor organizations, range all the way from 4 per day, returned by a calcium-light operators' union, to from 15 to 18 per day, returned by an organization of clerks

and salesmen. An 8 hour working day is reported in 76 branches of trade, enjoyed by 54,250 members of 208 organizations, 1,851 of the members being women. The unions that have, for the most part, established the 8-hour day are associated with the constructive industry. The observance of the 8-hour day is also general in the organizations of cigar makers and cigar packers. The laws of the typographical unions now provide that typesetting-machine operators shall not labor more than 8 hours per day. A 9-hour working day is reported by 172 organizations, having 25,040 members, of whom 2,810 are women. A 10-hour day is reported by 261 organizations, having 44,700 members, of whom 3,743 are women. A 12-hour day is reported by 71 organizations, having 14,594 members, of whom 761 are women. A number of organizations, composed of bakers and confectioners, barbers, bartenders, clerks and salesmen, coach drivers, cooks, mattress makers, mineral-water bottlers and drivers, stage mechanics, and trainmen, report that their members work more than 12 hours per day.

The number of members of labor organizations who were employed and unemployed in July, 1894, and in July, 1895, is shown in the following table:

MEMBERS OF LABOR ORGANIZATIONS WHO WERE EMPLOYED AND UNEMPLOYED IN JULY, 1894, AND JULY, 1895, BY INDUSTRIES.

Industry.	July, 1894.					July, 1895.				
	Employed.		Unemployed.		Per cent employed.	Employed.		Unemployed.		Per cent employed.
	Organizations reporting.	Members.	Organizations reporting.	Members.		Organizations reporting.	Members.	Organizations reporting.	Members.	
Building trades	222	28,620	169	11,930	70.58	228	35,950	149	9,293	79.46
Cigars and cigarettes	53	7,639	29	1,092	87.49	53	7,830	33	1,250	86.23
Clothing	55	21,560	29	11,089	66.04	69	32,891	39	11,468	74.15
Coach drivers and livery-stable employees	4	679	1	100	87.16	4	810	3	210	79.41
Food products	22	1,772	20	355	83.31	25	2,244	20	344	86.71
Furniture	8	790	5	436	64.44	8	1,072	3	187	85.15
Glass workers	11	607	8	251	70.75	11	909	9	382	70.41
Hats, caps, and furs	14	2,792	5	173	94.17	15	2,540	8	1,142	68.98
Hotel, restaurant, and park employees	16	1,252	9	125	90.92	16	1,179	11	172	87.27
Iron and steel	82	5,188	61	2,026	71.92	88	7,025	51	1,067	86.81
Leather workers	12	1,265	6	491	72.04	15	1,337	8	793	62.77
Malt liquors and mineral waters	22	2,910	11	233	92.59	24	3,145	13	218	93.52
Marine trades	13	1,336	11	579	69.77	13	1,442	10	582	71.25
Metal workers	8	531	5	67	88.80	10	623	4	43	93.54
Musicians and musical-instrument makers	15	1,969	5	485	80.24	15	2,183	5	367	85.61
Printing, binding, photo-engraving, stereotyping, etc	51	9,224	30	1,626	85.01	57	10,552	37	1,174	89.99
Railroad employees (steam)	91	6,725	28	160	97.68	96	7,813	36	251	96.68
Railroad employees (street surface)	1	2,500	.....	.....	100.00	1	1,000	.....	.....	100.00
Stone workers	24	3,419	17	1,562	68.64	25	4,140	14	681	85.87
Street paving	10	726	5	71	91.09	10	698	5	114	85.96
Textile trades	10	1,328	6	350	79.14	13	1,788	6	198	90.03
Theatrical employees and actors	5	346	5	730	32.16	7	782	7	1,213	39.20
Wood workers	16	1,305	9	461	73.90	16	1,520	10	189	88.94
Miscellaneous trades	21	3,354	5	419	88.89	29	3,287	5	899	78.52
Total	786	107,837	479	34,811	75.60	848	132,260	486	32,237	80.40

A comparison of the two periods shows that there was a decrease in the percentage of the unemployed from 24.40 per cent in July, 1894, to 19.60 per cent in July, 1895. The greatest proportion of the unemployed was found among theatrical employees and actors, 60.80 per cent of whom were reported as being out of employment in July, 1895. In but 9 of the 24 industries was there an increase in the percentage of unemployed from July, 1894, to July, 1895. This increase was most marked among persons engaged in the hat, cap, and fur industry, leather workers, and coach drivers and livery-stable employees.

The following table shows the membership of the various labor organizations, reported to the bureau, on July 1, 1894, and July 1, 1895:

MEMBERSHIP OF LABOR ORGANIZATIONS ON JULY 1, 1894, AND JULY 1, 1895, BY INDUSTRIES.

Industry.	July 1, 1894.				July 1, 1895.			
	Organizations reporting.	Male members.	Female members.	Total.	Organizations reporting.	Male members.	Female members.	Total.
Building trades	244	44,151	.....	44,151	249	48,638	.....	48,638
Cigars and cigarettes	53	6,789	1,933	8,722	54	7,011	2,078	9,089
Clothing	55	27,862	4,798	32,660	70	37,351	6,650	44,001
Coach drivers and livery-stable employees	4	779	.....	779	4	1,020	.....	1,020
Food products	23	2,187	.....	2,187	27	2,799	.....	2,799
Furniture	8	1,163	13	1,176	8	1,239	20	1,259
Glass workers	15	881	1	882	15	1,300	1	1,301
Hats, caps, and furs	15	2,701	263	2,964	16	3,330	352	3,682
Hotel, restaurant, and park employees	16	1,377	.....	1,377	16	1,351	.....	1,351
Iron and steel	87	7,464	.....	7,464	93	8,522	.....	8,522
Leather workers	14	1,802	118	1,920	17	2,188	117	2,305
Malt liquors and mineral waters	24	3,153	.....	3,153	26	3,411	.....	3,411
Marine trades	15	7,115	.....	7,115	15	8,064	.....	8,064
Metal workers	8	548	50	598	11	846	.....	846
Musicians and musical-instrument makers	22	5,642	2	5,644	22	5,954	2	5,956
Printing, binding, photo-engraving, stereotyping, etc	52	10,912	147	11,059	58	11,744	254	11,998
Railroad employees (steam)	112	8,503	.....	8,503	116	8,958	.....	8,958
Railroad employees (street surface)	1	2,500	.....	2,500	1	1,000	.....	1,000
Stone workers	27	5,153	.....	5,153	28	4,993	.....	4,993
Street paving	10	797	.....	797	10	812	.....	812
Textile trades	10	1,638	40	1,678	13	1,834	149	1,983
Theatrical employees and actors	7	969	123	1,092	9	1,532	479	2,011
Wood workers	16	1,736	.....	1,736	16	1,709	.....	1,709
Miscellaneous trades	22	3,887	.....	3,887	33	4,523	.....	4,523
Total	860	149,709	7,488	157,197	927	170,129	10,102	180,231

Of the 24 industries shown there are only 4 in which the labor organizations, collectively, report a decrease in membership during the year ending July 1, 1895. These were the hotel, restaurant, and park employees, street-railway employees, stone workers, and wood workers. In all the other industries the returns for July 1, 1895, show an increase of membership over the preceding year. The total membership in 1895 was an increase of 14.65 per cent over the preceding year. The per cent of increase was much more marked among females than among males, being 34.91 per cent in the case of the former and 13.64 per cent in the case of the latter.

Part I of the report closes with a summary of suggestions made by labor organizations throughout the State with reference to proposed labor legislation, the immigration question, and other matters affecting the working people.

SPECIAL INVESTIGATIONS.—The bureau conducted special investigations on the practical operation of the mechanics' lien law, life and limb law, and eight-hour and prevailing rate of wages law by taking the testimony of individuals and labor organizations as to the actual operations of the laws, and also as to suggestions for the remedying of defects in them and for their better enforcement. The testimony is published verbatim.

Another investigation was that of tenement-house cigar making. Personal visits were made by the commissioner to the tenement houses in New York City where the manufacture of cigars is carried on. The cigar workers were interrogated as to their wages and hours of labor. According to their statements, they worked, when business was good, from 10 to 14 hours per day and received from $3 to $6 for making 1,000 cigars. According to the bureau's records, the wages of organized cigar makers, who do not work more than 8 hours per day, are from $7 to $42 per 1,000, the larger number receiving from $15 upward. The tenement-house cigar makers sometimes live in their employers' houses and pay exorbitant rents.

INVESTIGATION OF BAKE SHOPS.—The bureau entered into an extensive investigation of the condition of bake shops and bake-shop employees for the purpose of securing remedial legislation beneficial to the bakers and to the public generally. The investigation covered the following subjects of inquiry: Location, height, and sanitary condition of bake shops; diseases resulting from insanitary bake shops; number of years that bakers have worked at the trade; bakers' ages; length of time that bakers have been in the service of present employers; weekly wage rates of bakers; bakers' weekly working time; duration of employment and annual earnings of bakers; wage rates and hours of labor of union and nonunion bakers; married bakers, their weekly wage rates, and the number of members in their families; day and night workers; bakers who board and lodge with their employers; bakers' nationalities; number of employers who comply with and number who violate the bake-shop law.

A brief analysis of some of the facts brought out by the investigation will give an idea of their value. Of 1,603 bake shops investigated in the eight leading cities of the State the sanitary condition of 5 was reported as clean, 12 fair, 281 healthy, 33 bad, 9 very bad, 27 dirty, 18 very dirty, and 612 unhealthy. The sanitary condition of the remaining bakeries was not reported.

The returns in regard to working time show that the hours of labor vary from 30 to 132 per week. On an average first hands worked 71¼ hours per week, second hands 73⅓ hours, third hands 73¾ hours, an

average for all hands of 72⅔ hours. For this labor the following average weekly wages were paid: First hands, $13.51; second hands, $8.85; third hands, $6.01; average for all hands, $9.94. Out of a total of 3,253 bakers 2,433, or 74.79 per cent, did night work, and 820, or 25.21 per cent, were employed in the daytime. The advantages of organization are shown by the fact that the 896 bakers who belonged to unions earned on an average $11.86 for 68½ hours' work, while the 2,357 nonunion bakers received but $9.20 for 74¼ hours' work.

The returns from the 3,253 bakers show that 1,408 board and lodge with their employers, while 86 receive board only, making a total of 1,494, or 45.93 per cent.

LABOR LAWS, ETC.—The remainder of the report is devoted to a codification of the labor laws of the State, and to a reproduction of the proceedings of the eleventh annual convention of the National Association of Officials of Bureaus of Labor Statistics in the United States, held at Minneapolis, Minn., September 17–19, 1895.

OHIO.

Nineteenth Annual Report of the Bureau of Labor Statistics of the State of Ohio, for the year 1895. Transmitted to the Seventy-second General Assembly January 27, 1896. W. T. Lewis, Commissioner. 359 pp.

The following subjects are treated in this report: Clay-working industries, 83 pages; coal mining, 17 pages; manufacturing, 242 pages; employment offices, 8 pages.

CLAY-WORKING INDUSTRIES.—This part of the report is descriptive rather than statistical, and is largely a history of the development of the various branches of the clay-working industry in the State. The subject is treated under two general heads, namely, pottery and architectural ceramics. The pottery ware manufactured in Ohio is divided into the following general classes: (1) White ware, including white granite, semi-porcelain, china, and c. c. (cream colored), which industry was started in Ohio in 1872 and reached its highest development in 1892; (2) yellow and Rockingham-ware, which were first manufactured in the State in 1839 and reached their maximum output in 1873, when white ware began to replace them; (3) stone ware, which was first made in 1825 and continues as an important industry; (4) art ware, including art tiles, faïence, etc., which industry has reached a high state of development since its introduction, about twenty years ago.

During the period from 1892 to 1894 there has been a decrease in the output of all branches of pottery ware in Ohio, with the exception of art tiles and electrical supplies.

The following table shows the extent of the pottery industry in Ohio in 1894:

CAPITAL, PRODUCTION, AND WAGES PAID IN POTTERY ESTABLISHMENTS, 1894.

Kind of ware manufactured.	Establishments reported.	Capital.	Value of output.	Wages.
Art tiles	1	$25,000.00	$317,800.00	$101,500.00
Electrical supplies	5	202,000.00	168,449.72	78,270.17
Rockingham and yellow ware	5	145,000.00	93,576.78	51,371.05
Sanitary ware	3	193,600.00	196,134.35	99,868.59
Stone ware	31	483,050.00	370,026.31	150,054.17
White granite ware	19	2,433,500.00	1,376,721.76	629,593.71
Rockingham, yellow, and stone ware	1	150,000.00	43,325.00	21,800.00
White granite, Rockingham, and yellow ware	1	150,000.00	127,315.00	56,000.00
Sagger stilts and pins	1	.....	23,003.26	8,272.51
Total	67	3,782,150.00	2,716,352.18	1,196,730.20

The second division of clay work, namely, architectural ceramics, treated in this report, includes such products as enter into the construction of buildings, streets, sewers, etc. This branch of the clay-work industry, unlike the preceding, shows an increase in output from 1892 to 1894, except in the case of roofing tiles. The following table shows the condition of this industry in Ohio in 1894:

CAPITAL, PRODUCTION, AND WAGES PAID IN ESTABLISHMENTS MANUFACTURING ARCHITECTURAL CERAMICS, 1894.

Articles manufactured.	Establishments reported.	Capital.	Salaries for office help and management.	Wages to other employees.	Value of output.
Art tiles	1	$50,000	$1,480	$6,441	$15,053
Common brick	56	495,150	18,410	173,654	299,067
Drain tile	3	9,500	.....	5,200	5,000
Fire brick	10	335,500	13,011	78,661	221,512
Hollow block	10	152,500	6,800	44,732	97,172
Paving brick	25	1,804,875	66,354	445,564	766,368
Pressed brick	5	425,000	17,895	105,209	254,010
Roofing tile	2	23,800	4,700	30,118	69,124
Sewer pipe	16	1,829,500	58,700	417,785	2,640,954
Miscellaneous	9	826,000	24,780	115,557	617,540
Total	137	5,951,825	212,130	1,422,921	5,085,800

COAL MINING.—The information regarding this industry, as well as the following on manufacturing, is presented entirely in the form of statistical tables, there being no analysis or conclusions in the form of text.

The following table gives a short summary of statistics presented in the report on coal mining:

EMPLOYEES, WAGES, AND PRODUCTION OF COAL MINES, 1894.

Kind of mine.	Miners employed.	Amount paid for mining.	Amount paid for day labor.	Tons of coal reported.	Value of coal on board cars at the mine.	Average number of whole days worked.
Pick mines	12,286	$2,721,856.79	$986,039.84	5,674,743	$4,603,717.21	133
Pick mines (giving only incomplete returns)	1,978	230,870.49	97,639.14	665,482	258,125.91	169
Pick mines (run of mine coal only)	1,068	285,056.88	76,595.23	592,092	269,905.28	202
Machine mines	2,205	539,748.71	291,720.58	1,750,503	1,162,499.77	134
Pick and machine mines	1,463	250,086.78	128,711.56	678,942	438,764.37	112
Total	19,000	4,027,619.65	1,580,706.35	9,361,762	6,733,012.54	.....

MANUFACTURES.—Statistical tables of manufactures, by cities, towns, and for the State, are given for over 86 industries, representing 2,199 establishments. The tables show occupations of employees, their number and sex, the number of working days in 1893 and 1894, average daily wages and yearly earnings, salaries of clerks and officials, capital invested, value of goods made and of materials used, etc.

Following is a brief analysis of some of the tables presented: In 2,199 establishments $38,373,925.07 was paid in wages in 1894 as against $43,408,047.32 in 1893, or a falling off of $5,034,122.25 in one year. Figures for 1,036 establishments, where the same information for three years could be obtained, also show a steady decline in the amount of wages paid, namely, $23,139,989.51 in 1892, $20,741,458.47 in 1893, and $18,758,945.05 in 1894. Taking the value of manufactured articles on hand, we find a similar decrease. This value was $25,417,970.39 on January 1, 1894, and $23,987,237.28 on January 1, 1895, or a decrease of $1,430,733.11 in one year. Returns from 2,110 establishments show a total capital of $160,296,502 invested in manufacturing industries in 1894 and the manufacture of goods to the value of $180,765,238.12 for the same period.

EMPLOYMENT OFFICES.—During the year 1895 the employment offices at Cincinnati, Cleveland, Columbus, Toledo, and Dayton received applications from employers for 3,051 males and 12,172 females. Applications for situations were made by 14,165 males and 13,793 females. Positions were secured for 2,677 males and 9,048 females. The following table shows a comparison of the operations of the employment offices during the six years of their existence:

OPERATIONS OF EMPLOYMENT OFFICES, 1890 TO 1895.

Year.	Help wanted.		Situations wanted.		Positions secured.	
	Male.	Female.	Male.	Female.	Male.	Female.
1890	11,453	6,701	14,529	5,607	5,575	3,413
1891	9,695	13,513	21,457	12,914	6,967	8,628
1892	8,227	13,945	15,522	11,424	5,905	7,840
1893	5,826	11,403	14,169	12,685	4,566	8,635
1894	2,426	9,444	14,521	14,616	2,140	7,626
1895	3,051	12,172	14,165	13,793	2,677	9,048

NINTH ANNUAL REPORT OF THE BOARD OF MEDIATION AND ARBITRATION OF NEW YORK.

Ninth Annual Report of the Board of Mediation and Arbitration of the State of New York. Transmitted to the Legislature January 27, 1896. William Purcell, Gilbert Robertson, jr., and Edward Feeney, Commissioners. 642 pp.

The object of this board, which was created in 1886, is to investigate strikes and lockouts that may arise in the State, particularly with the view of mediating between the parties in dispute. This report contains accounts of individual strikes, arranged by industries, and verbatim reports of proceedings of the board where sessions were held for the purpose of taking testimony.

During the year ending October 31, 1895, there were 417 strikes reported to the board. Eighty-nine of these lasted less than twenty-four hours, 233 lasted from one day to one week, inclusive, and the remaining 95 lasted over one week, the longest one lasting nine months. The board frequently intervened, in some cases through the invitation of parties to the disputes, in others without such invitation. Twenty-six of the more important cases of strikes are mentioned in which the mediation of the board was brought into service. The 417 strikes and lockouts in the State were distributed among the following occupations:

STRIKES AND LOCKOUTS IN NEW YORK, BY OCCUPATIONS, 1895.

Occupations.	Strikes or lockouts.	Occupations.	Strikes or lockouts.	Occupations.	Strikes or lockouts.
Axle makers	1	Glove makers	3	Salt packers and lifters	1
Bakers	11	Gold-beaters	1	Sawyers	1
Boiler makers	2	Horseshoers	1	Shirt makers	14
Bottlers	4	Hotel employees	2	Shoemakers	8
Brass workers	1	Ice cutters	1	Silk workers	7
Brick makers	7	Iron workers	10	Slipper makers	1
Building trades	156	Jute workers	1	Stonecutters	2
Button makers	1	Laborers	9	Street-railroad employees	1
Buttonhole makers	2	Laundry workers	4	Tailors	41
Cap makers	7	Machinists	1	Tanners	1
Carpet workers	2	Match packers	1	Textile workers	22
Cement workers	1	Mattress makers	1	Theatrical workers	3
Cigar makers	12	Messengers	1	Tin workers	3
Cloak makers	18	Meter makers	1	Upholsterers	2
Clothing cutters	1	Paper cutters	1	Varnishers	4
Diamond workers	3	Passementerie workers	3	Waiters	2
Drivers	3	Picture-frame makers	1	Waist and wrapper makers	1
Elevator conductors	2	Plait makers	2	Wood workers	4
Embroiderers	1	Printing trades	11		
Fiber chamois workers	1	Purse makers	2	Total	417
File makers	1	Rag pickers	1		
Furniture workers	3	Salesmen	1		

Of the whole number 273, or 65 per cent, occurred in the city of New York. Brooklyn had 33, Rochester 14, Buffalo 12, New York and Brooklyn 7, Albany 7, Syracuse 6. The remaining 65 occurred in 44 different cities and towns throughout the State.

RECENT FOREIGN STATISTICAL PUBLICATIONS.

Report on the Strikes and Lockouts of 1895 in Great Britain and Ireland. 1896. 293 pp. (Published by the Labor Department of the British Board of Trade.)

This report is similar to those published in previous years and reviewed in preceding Bulletins. In addition to statistics of strikes and lockouts, it contains reports of trade unions on the state of the labor market and reports on the settlement of disputes by conciliation and arbitration.

STATE OF THE LABOR MARKET.—Returns received from trade unions in the United Kingdom showed a higher percentage of unemployed during the first four months of 1895 than during the same months of 1894. During the eight months following in 1895 there was an almost steady decline in the percentage of unemployed, showing for the whole year a better condition than was shown for 1894. The following table gives the percentages of the unemployed for nine successive years:

PERCENTAGE OF MEMBERS OF TRADE UNIONS REPORTED AS UNEMPLOYED AT THE END OF EACH MONTH, 1887 TO 1895.

Month.	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.
January	10.3	7.8	3.1	1.4	3.4	5.0	10.0	7.0	8.2
February	8.5	7.0	2.8	1.4	2.6	5.7	9.5	6.3	7.9
March	7.7	5.7	2.2	1.7	2.8	5.7	8.7	6.5	6.5
April	6.8	5.2	2.0	2.0	2.7	5.4	6.9	6.1	6.5
May	8.5	4.8	2.0	2.0	3.0	5.9	6.2	6.3	6.0
June	8.0	4.6	1.8	1.9	2.9	5.2	5.8	6.3	5.6
July	8.5	3.9	1.7	2.3	3.3	5.0	6.2	7.4	5.3
August	8.3	4.8	2.5	2.3	4.2	5.1	7.1	7.7	5.2
September	7.5	4.4	2.1	2.6	4.5	6.2	7.3	7.6	4.9
October	8.6	4.4	1.8	2.6	4.4	7.3	7.3	7.4	4.9
November	8.5	3.1	1.5	2.4	3.8	8.3	7.2	7.0	4.3
December	6.9	3.3	1.7	3.0	4.4	10.2	7.9	7.7	4.8

STRIKES AND LOCKOUTS.—The reports of labor disputes in 1895 show a material diminution in the number of strikes and lockouts, the number of persons affected, and the aggregate duration when compared with 1894. There were, in all, 876 strikes and lockouts in 1895, involving 263,758 working people, as against 1,061 disputes, involving 324,245 persons, in 1894. The disputes were confined to 2,753 establishments as compared with 3,713 in the preceding year. The total number of days lost through strikes and lockouts in 1895 was 5,542,652, which is the smallest recorded during the period of six years for which comparative figures exist.

The following table shows the total number of strikes and lockouts and the persons affected by them in the United Kingdom during 1895:

STRIKES AND LOCKOUTS AND PERSONS AFFECTED IN 1895.

[Persons affected means persons thrown out of work.]

Division.	Total strikes and lockouts.	Strikes and lockouts for which persons affected were reported.	
		Number.	Persons affected.
England and Wales	639	622	179,343
Scotland	188	180	62,770
Ireland	47	46	12,045
Extending to more than one division of the United Kingdom	2	2	9,600
Total	876	850	263,758

Following is a summarized statement of strikes and lockouts in groups of trades, with the number of persons affected, for five successive years:

STRIKES AND LOCKOUTS AND PERSONS AFFECTED, BY TRADES, 1891 TO 1895.

[Only those strikes and lockouts were considered for which persons affected were reported. Persons affected means persons thrown out of work.]

Trades.	Strikes and lockouts.					Persons affected.				
	1891.	1892.	1893.	1894.	1895.	1891.	1892.	1893.	1894.	1895.
Building trades	123	115	152	215	190	25,229	18,175	17,738	15,247	9,898
Cabinet and furniture trades	11	7	15	9	20	317	312	366	257	1,858
Chemical and gas workers	4	3	5	6	2	118	193	427	2,805	400
Clothing trades	55	49	71	81	52	40,992	36,431	10,821	6,853	57,078
Coach building and coopers	8	5	6	4	6	680	477	2,495	69	68
Domestic trades	7	6	5	3	4	627	425	56	184	108
Food, tobacco, and drink preparation	17	12	9	5	15	3,271	1,516	549	365	757
Glass and pottery trades	10	7	10	9	7	3,534	20,369	5,211	1,667	422
Labor (agricultural and general unskilled)	11	12	17	12	14	1,967	1,031	958	584	152
Leather and rubber trades	3	5	2	5	6	169	717	30	52	199
Metal trades (including shipbuilding)	123	108	124	167	169	60,502	39,759	30,309	27,899	46,314
Mining and quarrying	96	86	133	222	189	51,427	120,386	506,182	216,880	83,879
Paper, printing, and bookbinding trades	14	7	7	19	13	1,291	708	381	271	327
Textile trades	164	117	89	182	129	44,837	102,722	45,274	39,025	57,415
Transport	42	35	34	56	28	32,499	12,878	15,589	12,041	4,263
Miscellaneous trades	.....	2	.....	2	6	.....	700	.....	46	620
Total	688	576	679	997	850	267,460	356,799	636,386	324,245	263,758

The causes or objects of the strikes and lockouts and their results, whether employees were successful or otherwise, are shown in the following table:

RESULTS OF STRIKES AND LOCKOUTS TO EMPLOYEES, BY CAUSES, IN 1895.

Cause or object.	Succeeded.	Succeeded partly.	Failed.	Not reported.	Total.
Wages	143	131	169	10	453
Hours of labor	3	3	6	.....	12
Working arrangements	80	39	80	5	204
Class disputes	28	8	23	1	60
Unionism	27	6	40	3	76
Other causes or objects	22	19	25	3	69
Cause not known	.....	.....	.....	2	2
Total	303	206	343	24	876

In 26 of the strikes and lockouts above mentioned the number of persons affected was not reported. In the following table is given, by causes and results, the number of persons affected in the strikes and lockouts for which this information was reported:

PERSONS AFFECTED BY STRIKES AND LOCKOUTS, BY CAUSES AND RESULTS, IN 1895.

[Persons affected means persons thrown out of work.]

Cause or object.	Employees succeeded.		Employees succeeded partly.		Employees failed.		Result not reported.		Total.	
	Strikes and lockouts.	Persons affected.	Strikes and lockouts.	Persons affected.	Strikes and lockouts.	Persons affected.	Strikes and lockouts.	Persons affected.	Strikes and lockouts.	Persons affected.
Wages	138	35,306	129	56,761	164	49,819	9	1,312	440	143,198
Hours of labor	3	761	3	313	6	1,784	.....	.....	12	2,858
Working arrangements	79	15,052	38	55,545	79	13,497	4	299	200	84,393
Class disputes	25	1,431	8	1,598	23	1,363	1	75	57	4,467
Unionism	26	3,288	6	1,098	40	2,210	2	18	74	6,614
Other causes or objects	22	7,706	18	8,822	23	5,075	2	443	65	22,046
Cause not known	.....	.....	.....	.....	.....	.....	2	182	2	182
Total	293	63,544	202	124,137	335	73,748	20	2,329	850	263,758

The returns for 1895 as to results of strikes and lockouts show a greater degree of success on the part of working people than in 1894. Of the 876 disputes during 1895 the workmen were successful in 303, or 34.6 per cent, as against 35 per cent in 1894. In these 303 successful disputes 63,544 persons were involved, which is 24 per cent of those engaged in the total disputes of the year, as against 22.1 per cent in 1894. There were 206 partially successful strikes, or 23.5 per cent, in 1895, as compared with 23 per cent in 1894. These disputes affected 124,137 working people, or 47 per cent, in 1895, as against 34.2 per cent in 1894. In 343, or 39 per cent, of the strikes and lockouts the result was a failure to the working people, as against 36.7 per cent in 1894. In these 343 strikes and lockouts 73,748 persons were affected. This was 28 per cent of the whole, as against 42 per cent in the previous year.

The following table shows the magnitude of the strikes and lockouts, grouped according to the number of persons affected:

WORKING DAYS LOST AND PERSONS AFFECTED BY STRIKES AND LOCKOUTS IN 1895.

[Persons affected means persons thrown out of work.]

Groups.	Strikes and lockouts for which both persons affected and working days lost were reported.				Strikes and lockouts for which persons affected were reported.	
	Number.	Persons affected.	Working days lost.		Number.	Persons affected.
			Number.	Average per person affected.		
5,000 persons and upward	6	103,800	2,960,800	28.5	6	103,800
1,000 to 5,000 persons	30	56,682	771,237	13.6	30	56,682
500 to 1,000 persons	48	31,921	560,930	17.6	49	32,441
100 to 500 persons	230	50,680	967,613	19.1	253	55,656
Under 100 persons	401	12,917	282,072	21.8	512	15,179
Total	715	256,000	5,542,652	21.6	850	263,758

Of the 263,758 persons affected by the strikes and lockouts 215,922 were directly and 47,836 were indirectly concerned. The average number of persons per dispute in 1895 was 301, as against 306 in 1894. The average duration of the strikes and lockouts was 21.4 days in 1895 and 24.6 days in 1894.

The following table shows the method of settlement of strikes and lockouts reported in 1895:

METHOD OF SETTLEMENT OF STRIKES AND LOCKOUTS IN 1895.

[Disputes settled by a combination of two or more of the methods enumerated have been classed under the most important one. Disputes settled partly by arbitration and partly by other methods are classed under arbitration. Persons affected means persons thrown out of work.]

Method of settlement.	Total strikes and lockouts.	Strikes and lockouts for which persons affected were reported.	
		Number.	Persons affected.
Negotiation or conciliation between the parties	489	476	119,226
Mediation or conciliation by third parties	35	35	65,700
Arbitration	25	25	13,251
Submission of working people	124	123	56,644
Replacement of hands	160	154	4,352
Closing of works or establishments	16	14	2,397
Withdrawal or disappearance of cause without mutual arrangement	9	8	381
Indefinite, unsettled at date of compilation, or no information	18	15	1,807
Total	876	850	263,758

The results shown above indicate a decided improvement over the preceding year in the method of settlement of the strikes and lockouts. Taking the first three methods on the list, those which are conciliatory in their nature, the percentage of persons involved in disputes settled by one or the other of these methods was 75.1, while in 1894 it was but 50.4 per cent. In the case of only 23.1 per cent of the persons affected was there submission of the working people and replacement of hands, as against 47.3 per cent in 1894.

CONCILIATION AND ARBITRATION.—The following statement shows the number of strikes and lockouts which were settled by conciliation and arbitration through the intervention of third parties:

STRIKES AND LOCKOUTS SETTLED BY CONCILIATION AND ARBITRATION IN 1895.

[Persons affected means persons thrown out of work.]

Agency employed.	Conciliation.		Arbitration.		Total.	
	Strikes and lockouts.	Persons affected.	Strikes and lockouts.	Persons affected.	Strikes and lockouts.	Persons affected.
Trade boards	7	4,165	4	1,379	11	5,544
Individuals	10	46,788	24	6,566	34	53,354
Total (a)	17	50,953	28	7,945	45	58,898

a These figures differ from those in the preceding table, because the present table deals only with disputes settled in 1895, while the preceding table deals only with disputes begun in 1895; of the former a few were begun in 1894, while of the latter a considerable number were not settled until 1896.

During the year 1895 45 disputes, affecting 58,898 persons, were reported as settled by conciliation or arbitration through the mediation of some disinterested party, as compared with 42 disputes, affecting 18,325 persons, in 1894. Disputes beginning in 1894 and referred to arbitration or settled by conciliation in 1895 are included. The great difference in the numbers affected in the two years is explained by the fact that in 1895 the greatest dispute of the year—namely, that in the boot and shoe trade, affecting no less than 46,000 persons—was settled by conciliation. As was the case in 1893 and 1894, the greater proportion of these disputes was settled by independent individuals, 75.6 per cent of the disputes, affecting 90.6 per cent of the total number of working people, being settled by this means.

There were 68 trade boards of arbitration and conciliation known to exist in 1895. Of these 29 are believed to have dealt with no new cases during the year. The remaining 39 trade boards were reported as having dealt with 1,282 cases, of which 293 were withdrawn, referred back, or settled outside the boards. Of the remaining 989 cases submitted during the year 831 were settled by the boards themselves, and 158 were settled by arbitrators appointed by the boards or by independent chairmen of the boards.

Of district boards 25 were believed to be in existence in 1895, but only two of them were known to have settled cases during the year.

Reports as to losses and expenditures by employers and working people are very incomplete. The following summary was taken from returns received from employers and from trade unions, respectively:

COST OF STRIKES AND LOCKOUTS IN 1895, AS REPORTED BY EMPLOYERS AND TRADE UNIONS.

Items.	Amount.	Strikes and lockouts.	Persons affected.
LOSSES REPORTED BY EMPLOYERS.			
Estimated value of fixed capital laid idle	$33,119,545	127	47,100
Estimated annual ratable value of property laid idle	925,876	88	37,745
Estimated actual outlay by employers in stopping and reopening works, and in payments of fixed charges, salaries, etc	141,844	103	42,604
Amount paid in defense against strikes or in support of lockouts by organizations of employers (*a*)	*b* 6,628	11	2,551
EXPENDITURES OF WORKING PEOPLE REPORTED BY TRADE UNIONS.			
Amount expended in support of strike or defense against lockout from trade-union funds	125,434	217	24,555
Amount expended in support of strike or defense against lockout from other funds	15,850	33	8,368

a Employers reporting upon 65 other disputes, in which 44,839 people were engaged, state that nothing was paid under this head.
b In addition $2,433 was paid in one dispute, in which the number of persons affected is not stated.

The report estimates the loss to working men during 1895, on account of working days lost, at about £1,120,000 ($5,450,480), as against £2,000,000 ($9,733,000) in 1894.

Lois et règlements concernant le travail des femmes et des enfants, la police des établissements classés, le payement des salaires aux ouvriers, les règlements d'atelier et l'inspection du travail. Office du Travail, Ministère de l'Industrie et du Travail. 1896. 226 pp.

This is a compilation of all of the laws, orders, and regulations of Belgium relating to the employment of women and children, the regulation of factory work, especially that of a dangerous or unhealthy character, the payment of wages, and the inspection of factories. Commencing with the year 1895 this same bureau also issues an annual report concerning the inspection of factories, workshops, and mines under the title of Rapports annuels de l'inspection du travail. Tome I, Rapports de l'administration centrale; Tome II, Rapports des inspecteurs de province.

Congrès National des Habitations Ouvrières et des Institutions de Prévoyance. Antwerp, 1894.

This volume contains the official report of the National Congress in Relation to Workingmen's Houses and Provident Institutions, organized by the Belgian Government in connection with the International Congress held at Antwerp in 1894. The purpose of this congress was solely to discuss Belgian institutions with a view to their possible reform or development. To accomplish this, a special programme, including 21 specific propositions, was prepared, the task of reporting

upon which was assigned to individuals who were believed to be most competent to treat the subjects. These reports when presented were then discussed by the congress.

In the section relating to workingmen's houses the principal reports related to the results accomplished by the law of August 9, 1889, which provided for the creation of local committees of patronage to encourage the erection of workingmen's houses and the organization of building societies to operate under the financial assistance of the national savings bank, and the features in this law that should be modified; the laws in relation to expropriation; the part that the government, local and central, and public institutions should play in aiding in the better housing of the working classes; the best form of workingmen's building societies; the taxation of workingmen's houses, and the combination of insurance with contracts by workingmen to buy houses on the installment plan.

As regards provident institutions, the principal subjects considered were in relation to the State aid of workingmen's insurance; the encouragement of workingmen to make use of the national old age pension branch of the general savings bank; the extension of the activities of this institution to other fields of insurance, and the question of compulsory insurance, including a brief account of the system of compulsory insurance in Germany, Austria, and Denmark.

Erstellung billiger Wohnungen durch die Gemeinde Bern. Separatabdruck aus dem 2. Heft der "Zeitschrift für Schweizerische Statistik." 30. Jahrgang. 1894. 24 pp.

This extract from the "Zeitschrift für Schweizerische Statistik," contains an account of the municipal dwelling houses for working people, erected by the city of Bern, in Switzerland. The author gives an account of the circumstances leading up to the construction of dwelling houses by the city government, a description of the houses erected, with plans and elevations, and a statement of the benefits derived therefrom.

Owing to the rapid development of certain industries the housing accommodations of the city of Bern were inadequate for the influx of working people. An official investigation in 1889 showed that many people were either without any homes or were crowded into stables, attics, and houses which were unfit for habitation.

The absence of private enterprise compelled the city authorities to provide means for the better housing of these people. Fourteen houses, containing 28 tenements, were erected in February, 1890. Others were gradually added, until, at the time of this publication, 98 families had been accommodated.

The houses were all erected on one tract of land; most of them detached; some in rows. The dwellings each contain from two to four

rooms, an attic, and garden space. They rent from $3.47 to $5.02 per month. The demand was so great that there were on an average four applicants to each tenement. The average cost per house, including land, was $868.50.

The report concludes with statistics of the population, size of families, occupations, death rate, etc., of tenants of the municipal dwelling houses.

Publications of the Musée Social, Paris, France.

The Musée Social of Paris, France, is a privately endowed but public institution, the object of which is to advance the study of practical labor questions throughout the world. Though in no way a State institution, the character of its organization and work is so akin to that of an official labor bureau that as regards its services it may almost be ranked with these offices. In a way it may be said to be a labor bureau the maintenance of which is provided for by funds with which it has been privately endowed. Under these circumstances its organization and work merit a special interest.

The Musée was created in 1894 by the Comte de Chambrun, who gave for that purpose the sum of 1,700,000 francs ($328,100), but it was not definitely organized and inaugurated until March 25, 1895. Its objects, in the language of the constitution, are "to place gratuitously at the disposition of the public documents with collateral information, models, plans, constitutions, etc., of social institutions and organizations which have for their object and result the amelioration of the material and moral situation of the laboring classes."

Unlike the various economic associations and societies, it as far as possible avoids mere academic discussions, and confines its attention to matter relating to practical labor questions. In this it follows strictly the line of work of official labor bureaus.

In order to carry out these aims, the Musée has adopted a number of lines of action. At No. 5, rue Las Cases, Paris, in a building owned by it, it has accumulated a library of all the principal official reports, publications of private associations and industrial organizations, and private treatises printed in all languages bearing upon practical labor problems. It has fitted up rooms for lectures and meetings and for students who desire to make use of the library. It has a permanent exhibition of models, plans, etc., of workingmen's houses, devices for preventing accidents, constitutions of social institutions of all kinds, etc. It provides for lecture courses on labor problems.

As regards its own direct contributions to a knowledge of labor conditions, it from time to time organizes special commissions in France and in foreign countries to inquire into labor subjects of present practical importance. In the autumn of 1895 two such commissions were organized. The first was composed of four persons, who visited England for the purpose of making an investigation and report in regard to trade

unions. The second had for its object the study of the agrarian question in Germany, with special reference to agrarian socialism and the efforts of the Government to improve the condition of the agricultural classes. In the fall of 1896 it organized a third investigation, sending for this purpose a commission of four members to the United States to study labor organizations in this country. The results of these investigations will be embodied in reports which will be published by the Musée.

The publications of the Musée Social naturally constitute a very important part of its work. Of these there are several kinds. It issues from time to time volumes in a series entitled Bibliothèque du Musée Social, which give the results of its investigations and other material representing the results of original research. The second class of publications consists of more frequent bulletins, or "circulaires," as they are called, for the publication of shorter contributions. There are two series of these circulaires, the first of which is intended for a wide gratuitous circulation among the working classes and is devoted to giving information concerning current happenings relating to labor, such as the meetings of labor congresses or organizations, social legislation, etc. The second series embraces studies more in the nature of economic monographs. A most important feature of these circulaires is the valuable bibliography of reports and works relating to the question under treatment, which is always appended.

At the present time the Musée Social has issued 14 circulaires, 9 in the first and 5 in the second series. The titles of these publications are:

SERIES A.

1. Le Musée Social. [The Musée Social.]

2. Le trade-unionisme anglais et les causes de son succès. [English trade-unionism and the causes of its success.]

3. Discours prononcé par M. Pickard, membre du Parlement, président de la Fédération des Mineurs de la Grande-Bretagne à la réunion annuelle de cette association, le 14 janvier 1896. [Address delivered by Mr. Pickard, M. P., president of the Miners' Federation of Great Britain, at its annual meeting, January 14, 1896.]

4. Les syndicats du bâtiment en Angleterre. Conférence prononcée par M. Paul de Rousiers, le 17 mars 1896, au Musée Social. [Trade unions in the building trades in England. An address delivered by M. Paul de Rousiers, March 17, 1896, at the Musée Social.]

5. Fête du travail.—Dimanche 3 mai 1896. [Labor celebration, Sunday May 3, 1896.]

6. Septième Congrès International des Mineurs (Aix-la-Chapelle, 25–28 mai 1896). Suivi d'une notice sur M. Thomas Burt, ancien secrétaire d'état, membre du Parlement anglais, président du congrès. [Seventh International Miners' Congress, Aix-la-Chapelle, May 25–28, 1896, followed by a notice concerning Mr. Thomas Burt, former secre-

tary of state, member of the English Parliament, president of the congress.]

7. Les ouvriers de la construction navale en Angleterre, leur syndicat et leur secrétaire général, M. Robert Knight. Conférence prononcée par M. André Fleury, membre de la mission envoyée en Angleterre par le Musée Social. [Naval construction employees in England, their union and general secretary, Mr. Robert Knight. An address delivered by M. André Fleury, member of the commission sent to England by the Musée Social.]

8. Le 29e Congrès National des Syndicats Ouvriers Britanniques, tenu à Édimbourg du 7 au 12 septembre 1896. [The Twenty-ninth Trade-Unions Congress of Great Britain, held at Edinburgh September 7–12, 1896.]

9. Les ouvriers des docks et entrepôts en Angleterre: Le métier, les hommes et les syndicats. Conférence prononcée par M. Octave Festy, membre de la mission envoyée en Angleterre par le Musée Social. [Dock and warehouse laborers in England: The trade, the men, and the labor unions. An address delivered by M. Octave Festy, member of the commission sent to England by the Musée Social.]

SERIES B.

1. Questions législatives: Projet de loi concernant les responsabilités des accidents dont les ouvriers sont victimes dans leur travail, voté par le Sénat, en deuxième lecture, le 24 mars 1896. [Legislative questions: Bill concerning the responsibility for accidents received by workingmen during their labor, passed by the Senate, second reading, March 24, 1896.]

2. L'assurance contre le chômage involontaire en Suisse. [Insurance against involuntary idleness in Switzerland.]

3. Quatrième Congrès Socialiste International (Londres, 27 juillet–1er août 1896). [The Fourth International Socialist Congress, London, July 27–August 1, 1896.]

4. La démocratie socialiste en Allemagne et la question agraire au Congrès de Breslau. [Social democracy in Germany and the agrarian question at the Breslau Congress.]

5. L'assurance obligatoire contre le chômage à Saint-Gall, Suisse: suppression de la caisse de chômage. [Obligatory insurance against idleness at Saint Gall, Switzerland: Suppression of the insurance institution.]

One volume in the Bibliothèque du Musée Social, giving the report of the commission sent to England, has also been issued under the title of Trade unionisme en Angleterre, par Paul de Rousiers, avec la collaboration de MM. de Carbonnel, Festy, Fleury et Wilhelm. Paris, 1897.

Of the circulaires the two relating to the insurance of workingmen

against idleness in Switzerland are of such general interest that their contents are here summarized.

Switzerland is apparently the only country in which serious efforts have been made to lessen the evils of lack of employment through the creation of special State insurance institutions. These experiments relate to, first, the voluntary insurance institutions against lack of employment organized by the town of Bern, second, the obligatory insurance institution against lack of employment created by the town of Saint Gall, and, third, the various propositions to introduce similar institutions in Basel, Zurich, and Lucerne, and the official investigation of the question of idleness now being conducted by the federal authorities of Switzerland.

The first attempt to provide for insurance against idleness under government auspices was made by the town of Bern in April, 1893. It provided for the creation of an institution, membership in which was to be purely voluntary. Each member was required to pay monthly dues of 40 centimes ($0.077). To the fund thus accumulated the town agreed to add a subsidy the maximum amount of which was limited to 5,000 francs ($965) a year. The constitution also provided for the receipt of gifts from employers and other individuals. The value of the out of-work benefits was fixed at 1 franc ($0.193) for unmarried and 1.50 francs ($0.29) for married men per day. This relief would be granted only during the months of December, January, and February. Only members of six months' standing who had paid their dues regularly and had been unemployed at least fifteen days are entitled to benefits, and then not for the first week that they are without work. These members must also present themselves twice a day in a room set aside for that purpose, where they can spend the day if they desire, to respond to a roll call. This is in order to safeguard the institution against impositions. A workingman who refuses work of any kind loses all right to aid of any kind. The members thus do not have the right to refuse any work because it is not in their trade. There are also other cases in which the workingman loses his right to a benefit. Such, for instance, are the cases where he is unemployed as the result of his own fault, and especially when he has engaged in a strike.

The fund is administered by a commission of seven members, of which three are named by the municipal authorities, two by the employers contributing to the fund, and two by the workingmen.

This institution has now been in existence a sufficient length of time to furnish some indication of the character of the results. The number of members during the first year, 1893–94, was 404. Of these 166 were aided during the year. There was paid to them $1,319.16, or an average of $7.95 each. The highest sum paid to any one person was $20.27. The total expenditure of the year was $1,508.30. Receipts for the year consisted of $212.30, dues of members; $382.14, gifts from employers and others, and $913.86, municipal subsidy.

It will be seen that the members contributed but 14 per cent of the total receipts and that they received in actual benefits six times the amount paid in by them as dues. One would think that under such exceptionally favorable circumstances membership would increase rapidly. Such, however, has not been the case. During the second year, 1894–95, there were but 390 members, or 14 less than the preceding year. Two hundred and nineteen persons, or more than half the members, were aided. They received $1,869.06, or an average of $8.53 each. But $263.79 out of a total receipt of $2,249.86 were from members' dues. The ratio of this sum to the amount paid out in benefits is 14 per cent, the members thus receiving on an average seven times the amount contributed by them.

This institution had been founded for but two years as an experiment. In 1895, the two years having elapsed, the town council determined by an almost unanimous vote to continue it in operation. Some modifications, however, were introduced in its organization. Dues were raised from 40 to 50 centimes ($0.077 to $0.096½) per month, and the maximum amount of the municipal subsidy was raised from $965 to $1,351. Daily benefits were also increased from 1 to 1.50 francs ($0.193 to $0.29) for single and from 1.50 to 2 francs ($0.29 to $0.386) for married members. In addition, the municipal employment bureau, which had until then been an independent service, was attached to the work of the insurance fund.

The result of these changes was to increase the operations of the fund. On December 31, 1895, there were 605 members enrolled, of whom 169, or 49 more than during the preceding year at the same date, had been aided. The total receipts during the year 1895–96 were $2,213.99, of which $312.70 were derived from dues. Total expenditures were $2,121.30, of which $1,932.22 were for benefits. In this third year, therefore, slightly over six times the amount received as dues from the members was paid in benefits.

Saint Gall, a town of about 30,000 inhabitants, was the first to follow the example of Bern and provide for the insurance of workingmen against idleness. Its policy, however, differed radically from that of Bern in that it adopted the policy of compulsory insurance. Its institution was created June 23, 1895. After an existence of about a year and a half, its suppression, after June 30, 1897, was voted by a majority of the electors of the town November 8, 1896. The reasons for its abolishment were that the system of compulsion worked badly. It was difficult to compel the workingmen to become members; injustice was done by putting workingmen in industries in which the likelihood of lack of employment was slight on the same footing as those in industries, such as the building trades, where interruptions to work were of almost certain occurrence. Finally, it was claimed that the efforts of those out of work to obtain employment were lessened.

At Basel, though no scheme of insurance has as yet been put into

operation, a proposition for the compulsory insurance of workingmen against lack of employment through a municipal institution has been elaborated, in which the attempt has been made to meet the objections that were urged against the Saint Gall experiment. The question of insurance against lack of employment has also received attention in other Swiss cities, notably Zurich and Lucerne, but no actual steps in this direction have as yet been taken. The Federal Government is now prosecuting an investigation of the whole subject of lack of employment and the means of preventing or lessening the evils resulting from it. The complete report of this investigation has not yet been made.

DECISIONS OF COURTS AFFECTING LABOR.

[This subject, begun in Bulletin No. 2, will be continued in successive issues, dealing with the decisions as they occur. All material parts of the decisions are reproduced in the words of the courts, indicated when short by quotation marks and when long by being printed solid. In order to save space, immaterial matter, needed simply by way of explanation, is given in the words of the editorial reviser.]

DECISIONS UNDER STATUTORY LAW.

ALIEN CONTRACT LABOR LAW NOT APPLICABLE TO A CHEMIST—*United States v. Laws, 16 Supreme Court Reporter, page 998.*—Action was brought by the United States in the United States circuit court for the southern district of Ohio, western division, against Harry L. Laws to recover the statutory penalty for breach of the contract-labor law. Judgment was rendered for Laws, and the United States brought the case on a writ of error before the United States circuit court of appeals for the sixth circuit and said court certified the case to the United States Supreme Court for its opinion. The Supreme Court rendered its decision May 18, 1896.

The statement of facts shows that on or about July 22, 1889, A. Seeliger was a citizen of the German Empire, residing in Germany; that at that date the defendant (Laws) made a contract with him to come to the United States as a chemist on a sugar plantation in Louisiana; that Seeliger agreed to come to the United States for that purpose; that the defendant paid his expenses to the United States; that Seeliger came to the United States and went to Louisiana, and that he was there employed on a sugar plantation as a chemist, under the direction of the defendant. The question certified by the circuit court of appeals to the Supreme Court was as follows:

> Is a contract made with an alien in a foreign country to come to this country as a chemist on a sugar plantation in Louisiana, in pursuance of which contract such alien does come to this country, and is employed on a sugar plantation in Louisiana, and his expenses paid by the defendant, a contract to perform labor service, as prohibited in the act of Congress passed February 26, 1885?

The opinion of the Supreme Court was delivered by Mr. Justice Peckham, and in the course of the same he uses the following language:

> The fifth section [of chapter 164, acts of Congress of 1884–85, passed February 26, 1885], after providing for certain exceptions to the provisions of the first two sections, further enacts that the act shall not apply "to professional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants."

7535—No. 9——5

While this act was in force a suit was brought in the circuit court for the southern district of New York in favor of the United States against the rector, etc., of the Church of the Holy Trinity, in the city of New York. It was brought to recover a penalty of $1,000, as provided for in the act; and in the course of the trial it appeared that the defendant was a religious corporation and had engaged a Mr. Warren, an alien residing in England, to come to the city of New York and take charge of its church as pastor. It was claimed on the part of the United States that the church corporation, in making that contract with Mr. Warren, had violated the first section of the act in question. It was held by the circuit court that the contract was within the statute, and that the defendant was liable for the penalty provided for therein.

Congress, however, a short time after, and probably in consequence of the decision of the circuit court in the southern district of New York, amended the fifth section of the statute in question by adding to the proviso therein mentioned the words, "nor to ministers of any religious denominations, nor persons belonging to any recognized profession, nor professors for colleges and seminaries." 26 Stat., 1084, c. 551, act approved March 3, 1891.

If, by the terms of the original act, the provisions thereof applied only to unskilled laborers whose presence simply tended to degrade American labor, the meaning of the act, as amended by the act of 1891, becomes, if possible, still plainer. Now, by its very terms, it is not intended to apply to any person belonging to any recognized profession. We think a chemist would be included in that class. Although the study of chemistry is the study of a science, yet a chemist who occupies himself in the practical use of his knowledge of chemistry, as his services may be demanded, may certainly, at this time, be fairly regarded as in the practice of a profession.

The question presented to us assumes that the individual is a chemist, and that he has come to this country for the purpose of pursuing his vocation as a chemist on a sugar plantation in Louisiana. It may be assumed that the branch of chemistry which he will practice will be that which relates to, and is connected with, the proper manufacture of sugar from the sugar cane, or possibly from sorghum or beets. He is none the less a chemist, and none the less occupied in the practice of his profession, because he thus limits himself to that particular branch which is to be applied in the course of the scientic manufacture of sugar, any more than a lawyer would cease to practice his profession by limiting himself to any particular branch thereof, or a doctor by confining his practice to some specialty which he particularly favored and was eminent in.

The fact that the individual in question, by this contract, had agreed to sell his time, labor, and skill to one employer and in one prescribed branch of the science, does not in the least militate against his being a professional chemist, nor does it operate as a bar to the claim that while so employed he is nevertheless practicing a recognized profession. It is not necessary that he should offer his services to the public at large, nor that he should hold himself ready to apply his scientific knowledge and skill to the business of all persons who applied for them, before he would be entitled to claim that he belonged to, and was actually practicing, a recognized profession. The chemist may confine his services to one employer so long as the services which he performs are of a professional nature. It is not the fact that the chemist keeps his services open for employment by the public generally which is the criterion by

which to determine whether or not he still belongs to, or is practicing, a recognized profession. So long as he is engaged in the practical application of his knowledge of the science as a vocation, it is not important whether he holds himself out as ready to make that application in behalf of all persons who desire it, or that he contracts to do it for some particular employer, and at some named place.

We have no doubt that the individual named comes within one of the exceptions named in the statute.

The question certified to this court by the circuit court of appeals for the sixth circuit should be answered in the negative.

CHINESE EXCLUSION ACT—IMPRISONMENT AT HARD LABOR—CONSTITUTIONALITY OF PROVISION — *Wong Wing et al. v. United States, 16 Supreme Court Reporter, page 977.*—Wong Wing and other Chinese persons were brought before a commissioner of the circuit court of the United States for the eastern district of Michigan upon the charge of being Chinese persons unlawfully within the United States and not entitled to remain within the same. The commissioner found that the charge was true and adjudged that they be imprisoned at hard labor in the Detroit house of correction for a period of 60 days, and that, at the expiration of said time, they be removed from the United States to China. This action was based on the provisions of section 4 of chapter 60 of the acts of Congress of 1891–92, approved May 5, 1892, which reads as follows:

Any such Chinese person or person of Chinese descent convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period of not exceeding one year and thereafter removed from the United States, as hereinbefore provided.

The case was brought before the circuit court on a writ of habeas corpus, and after argument the writ was discharged and the prisoners were remanded to serve out their original sentence. From this decision an appeal was taken to the United States Supreme Court, which rendered its decision May 18, 1896, reversing the decision of the circuit court on the ground that said section 4 of the act of May 5, 1892, conflicts with the fifth and sixth amendments to the Constitution of the United States.

The opinion of the court was delivered by Mr. Justice Shiras, and the following is quoted therefrom:

The present appeal presents a different question from those heretofore determined. It is claimed that even if it be competent for Congress to prevent aliens from coming into the country, or to provide for the deportation of those unlawfully within its borders, and to submit the enforcement of the provisions of such laws to executive officers, yet the fourth section of the act of 1892 inflicts an infamous punishment, and hence conflicts with the fifth and sixth amendments of the Constitution, which declare that no person shall be held to answer for

a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, and that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

It is argued that as this court has held that no person can be held to answer, without presentment or indictment by a grand jury, for any crime for which an infamous punishment may be imposed by the court, and that imprisonment at hard labor for a term of years is an infamous punishment, the detention of the present appellants in the house of correction at Detroit, at hard labor, for a period of 60 days, without having been sentenced thereto upon an indictment by a grand jury, and a trial by a jury, is illegal and without jurisdiction.

We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid. Detention is a usual feature in every case of arrest on a criminal charge, even when an innocent person is wrongfully accused; but it is not imprisonment in a legal sense. So, too, we think it would be plainly competent for Congress to declare the act of an alien in remaining unlawfully within the United States to be an offense punishable by fine or imprisonment, if such offense were to be established by a judicial trial. But the evident meaning of the section in question—and no other is claimed for it by the counsel for the Government—is that the detention provided for is an imprisonment at hard labor, which is to be undergone before the sentence of deportation is to be carried into effect, and that such imprisonment is to be adjudged against the accused by a justice, judge, or commissioner, upon a summary hearing. Thus construed, the fourth section comes before this court for the first time for consideration as to its validity.

Our views upon the question thus specifically pressed upon our attention may be briefly expressed thus: We regard it as settled by our previous decisions that the United States can, as a matter of public policy, by Congressional enactment, forbid aliens or classes of aliens from coming within their borders, and expel aliens or classes of aliens from their territory, and can, in order to make effectual such decree of exclusion or expulsion, devolve the duty and power of identifying and arresting the persons included in such decree, and causing their deportation, upon executive or subordinate officials. But when Congress sees fit to further promote such a policy by subjecting the persons of such aliens to infamous punishment at hard labor or by confiscating their property, we think such legislation, to be valid, must provide for a judicial trial to establish the guilt of the accused.

No limits can be put by the courts upon the power of Congress to protect, by summary methods, the country from the advent of aliens whose race or habits render them undesirable as citizens, or to expel such if they have already found their way into our land and unlawfully remain therein. But to declare unlawful residence within the country to be an infamous crime, punishable by deprivation of liberty and property, would be to pass out of the sphere of constitutional legislation, unless provision were made that the fact of guilt should first be established by a judicial trial. It is not consistent with the theory of our Government that the legislature should, after having defined an offense as an infamous crime, find the fact of guilt, and adjudge the punishment by one of its own agents.

In the case of Yick Wo *v.* Hopkins (118 U. S., 369, 6 Sup. Ct., 1064) it was said: "The fourteenth amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive

any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or nationality; and the equal protection of the laws is a pledge of the protection of equal laws." Applying this reasoning to the fifth and sixth amendments, it must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by those amendments, and that even aliens shall not be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty, or property without due process of law.

Our conclusion is that the commissioner, in sentencing the appellants to imprisonment at hard labor at and in the Detroit house of correction, acted without jurisdiction, and that the circuit court erred in not discharging the prisoners from such imprisonment, without prejudice to their detention according to law for their deportation.

CLAIM FOR WAGES—PREFERENCE OF SAME OVER PRIOR MORTGAGE—*Bell et al. v. Hiner, 44 Northeastern Reporter, page 576.*—This case was brought before the appellate court of Indiana on appeal from the circuit court of Allen County from a judgment rendered in favor of Hiner in the original action brought by him to enforce a laborer's lien against Bell and others. The appellate court rendered its decision June 18, 1896, and affirmed the judgment of the circuit court.

The following, containing a statement of the facts in the case, is quoted from the opinion of the appellate court, which was delivered by Judge Gavin:

On October 25, 1894, one Jasper was engaged in keeping a livery stable at Fort Wayne. At this time, and prior thereto, one Bell held a mortgage on the property used by Jasper in said business, viz, certain horses, carriages, etc., "and all other chattels belonging to the said Jasper in the said barn," to secure $1,000, this being more than the value of the property. Jasper, being upon that day insolvent, threatened with suit, and pressed for payment by Bell, and unable to meet his liabilities, at his request conveyed to Bell all of said property in payment of said debt; and his business was on said day and thenceforth continuously suspended by the actions of said Bell, who afterwards sold the property to one Martin, who had knowledge of appellee's [Hiner's] claim. Appellee was a laborer employed in the stable, to whom seven weeks' wages were due for work performed within that period last preceding the sale and subsequent to the execution of the mortgage and the due recording thereof.

Section 7051, Rev. St., 1894 (section 5206, Rev. St., 1881), provides that when the property of any person engaged in business "shall be seized upon any mesne or final process of any court of this State, or where their business shall be suspended by the action of creditors or put into the hands of any assignee, receiver, or trustee, then, in all such cases, the debts owing to laborers or employees, which have accrued by reason of their labor or employment, to an amount not exceeding fifty dollars to each employee, for work and labor performed within six months next

preceding the seizure of such property, shall be considered and treated as preferred debts, and such laborers and employees shall be preferred creditors, and shall be first paid in full, and if there be not sufficient to pay them in full, then the same shall be paid to them pro rata, after paying costs."

Under this section appellee sought to enforce a lien for $50 against the property in Martin's hands.

Appellants [Bell and others] assert (1) that by the statute no lien is created nor any charge made against the property unless it shall come into the hands of some officer, assignee, or other trustee under the court, to be administered upon according to law; (2) that, even if a lien is created, it is junior to the lien of the mortgage. Under our authorities, neither position is tenable. The statute, it is true, does not in terms create any express lien eo nomine; but the supreme court, in Bass *v.* Doerman (112 Ind., 390, 14 N. E., 377) decided that by this statute a lien was given to the laborer superior to the rights of and enforceable against one to whom the property of the insolvent debtor was sold in payment of debts due the purchaser, where the business of the debtor was by such action of the creditor thereby suspended.

It is true, as urged by appellant's counsel, that the Bass case does not decide that the labor lien is superior to a prior mortgage, that question not being involved, but it does decide the debt is a charge against the property in the hands of a purchaser for value. The word "lien" includes every case in which personal or real property is charged with the payment of a debt. Here the statute directs that the labor claim shall be preferred and shall be "first paid in full." It being established by the Bass case that the statute gives a lien for the labor claim, then it seems to us the intent that it shall be a paramount lien is clearly expressed. If it is to be "first" paid in full, we do not well see how the mortgage can come in before it. When the mortgagee accepted his mortgage, he must be deemed to have done so with knowledge that if the business was continued, and the contingency contemplated by the statute should occur, then the labor debts would be preferred, and must be first paid. The law entered into the mortgage contract as a silent, but potent, factor, and the mortgagee accepted it subject to such rights as might accrue to others under the law.

It is argued that upon the principle declared in Eversole *v.* Chase (127 Ind., 297, 26 N. E., 835) section 7051, Rev. St., 1894, is not in force, because it was an amendment of a statute (section 5206, Rev. St., 1881) passed in 1879, which had been repealed by implication by the passage of the act of March 3, 1885 (Elliott's Supp., § 1598, being section 7058, Rev. St., 1894).

"Repeals by implication are not favored in the construction of statutes," yet "it is ordinarily true that the enactment of a new statute covering the whole subject-matter of an older statute, and containing provisions that can not be reconciled with it, operates as an implied repeal of the older one." (Robinson *v* Rippey, 111 Ind., 112, 12 N. E., 141.) This is the rule declared by this court, through Davis, J., in Allen *v.* Town of Salem (10 Ind. App., 650, 38 N. E., 425). It was further said in the same case: "In order to effect such repeal by implication, it must appear that the subsequent statute revised the whole subject-matter of the former one, and was intended as a substitute for it, or that it was repugnant to the old law." The act of March 3, 1885, makes no provision for and does not cover the subject of labor liens where the property has not passed into the hands of an assignee or receiver. It falls far short of covering the whole subject-matter of the act of 1879,

nor is there any good reason why both should not stand together. Upon the principles of law announced in the Town of Salem case, supra, and the authorities therein cited, we are of opinion that the act of March 3, 1885, did not repeal the law of 1879. Judgment affirmed.

CONSTITUTIONALITY OF STATUTE—BOILER INSPECTORS ACT—EXEMPTIONS—*State ex rel. Graham v. McMahon, 68 Northwestern Reporter, page 77.*—This case was heard in the district court of Ramsey County, Minn., on application for writ of habeas corpus. The relator, Harry Graham, was discharged, and from an order refusing a new trial the defendant, Thomas McMahon, bailiff, appealed the case to the supreme court of the State, which rendered its decision July 8, 1896, reversed the order of the lower court, and remanded the relator to the defendant's custody.

The opinion of the supreme court was delivered by Judge Collins and contains a sufficient statement of the facts in the case. The following is quoted therefrom:

In this case, which is an appeal by the respondent [McMahon] under the provisions of Laws, 1895, c. 327, from an order discharging the relator in a habeas corpus proceeding, we are required to pass upon the constitutionality of an act of the legislature (Gen. Laws, 1889, c. 253) generally known as the "Boiler inspectors' act." (Gen. St., 1894, §§ 480–494, inclusive.) The claim is made on behalf of the relator (who was arrested upon a warrant issued upon a complaint charging him with having wrongfully and unlawfully operated a steam boiler, and a stationary engine attached thereto, without first having obtained a license) that, because of the exemptions provided for in section 493, the act is unequal, partial, and is class legislation, forbidden by the constitution. Omitting a proviso which is of no consequence, the section reads as follows: "Sec. 493. This act shall not apply to railroad locomotives, nor shall engineers employed by railroad companies be required to procure licenses from the state board of inspectors. Nor shall it apply to boilers inspected by insurance companies and certified by their authorized inspectors to be safe." Briefly stated, the position of counsel is that this section must be construed as exempting, in terms, from the operation of the requirement to obtain licenses, all engineers who may be employed by railroad companies, whether as locomotive engineers, or in operating stationary engines used in office buildings, station houses, grain elevators, pumping stations, and even wood-sawing machines, and that it must also be construed as exempting from inspection all boilers which may be inspected by insurance companies, and certified to be safe by their inspectors, without regard to the character of insurance business these companies may be engaged in or authorized to do. It is further claimed that the provision respecting boilers inspected by insurance companies is obnoxious to the constitution, because it is an unwarranted and unreasonable delegation of the police power of the State to such companies.

The object of the act of 1889 was to provide for the inspection of steam boilers, and the examination as to qualifications of persons intrusted with their management, or with the management of any machinery operated by steam within this State, that its citizens might

be protected from the greatly increasing hazards arising out of defective construction, or want of care and repair, of boilers, as well as unskillfulness and incompetency on the part of the hundreds of persons engaged in handling them and their appliances. It was intended as a police regulation, designed to secure public safety.

Having in mind the object in view, and the methods to be adopted to accomplish this object, there can be no valid reason why the legislature could not exempt from the operation of the act certain classes of subjects and persons, provided some solid and substantial ground or basis for the exemption actually existed.

Was it the manifest intention of the legislature, when using the words "nor shall engineers employed by railroad companies be required to procure licenses," to exempt locomotive engineers only? If so, the objection to this feature of the section is removed. We are of the opinion that none but locomotive engineers were intended to be exempted. Reference to railroad locomotives, exempting them from inspection, had just been made, and the above-quoted language—following, as it does, immediately—must be construed as applying solely to locomotive engineers.

The act is not to apply to boilers inspected by insurance companies, and certified by their inspectors to be safe. There is nothing in the point that there was an unwarranted delegation of the police power of the State when the legislature declared that the certificate of the inspector of one of these companies that a boiler was safe should exempt it from the operations of the law.

CONSTITUTIONALITY OF STATUTE—SUNDAY LABOR—BARBERS—*Eden v. People, 43 Northeastern Reporter, page 1109.*—William S. Eden was convicted in the criminal court of Cook County, Ill., for violating an act passed June 26, 1895, prohibiting barber shops from being open on Sunday. He appealed the case to the supreme court of the State, which court rendered its decision May 12, 1896, and reversed the judgment of the lower court on the ground that the act referred to was unconstitutional.

The opinion of the supreme court, delivered by Chief Justice Craig, reads in part as follows:

It is contended in the argument that by the act in question that part of the fourteenth amendment to the United States Constitution (section 1) has been violated, which reads as follows: "Nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." It is also contended that the act violates the following sections of the Illinois constitution of 1870, to wit: Article 2, § 2: "No person shall be deprived of life, liberty, or property without due process of law." Also article 4, § 22, the general clause of which reads: "In all other cases where a general law can be made applicable no special law shall be enacted." It is conceded in argument that if the legislature had enacted a law prohibiting all business on Sunday its validity could not be questioned; that such a law would violate none of the constitutional provisions relied on.

Under the law of this State, as it existed prior to the passage of the act in question, each and every citizen of the State was left perfectly

free to labor and transact business on Sunday, or refrain from labor and business, as he might choose, so long as he did not disturb the peace and good order of society. By the act in question an attempt has been made by the legislature to inaugurate a radical change in the law as to a class of the laboring element of the State—the barbers. This statute, as has been seen, declares: "That it shall be unlawful for any person or persons to keep open any barber shop or carry on the business of shaving, hair cutting, or tonsorial work on Sunday." That act is plain and its meaning is obvious. The owner of a place who carries on the business of a barber is prohibited from doing any business whatever during one day in the week. He may have in his employ a dozen men, and yet during one day in seven he is deprived of their labor, and also deprived of his own labor. The income derived from his place and his own labor and the labor of his employees is his property, but the legislature has by the act taken that property from him. The journeyman barber who works by the day or week, or for a share of the amount he may receive from customers for his services is by the law denied the right of laboring one day in the week. He may rely solely upon his labor for the support of himself and family; his labor may be the only property that he possesses, and yet this law takes that property away from him. His labor is his capital, and that capital is all the property he owns. Can a law which takes that from the laborer be sustained?

The Constitution of the United States says the State shall not deprive any person of property without due process of law, and our State constitution declares the same thing. What is understood by the term "due process of law" is not an open question. "Due process of law" is synonymous with "law of the land," and "the law of the land" is "general public law, binding upon all the members of the community, under all circumstances; and not partial or private laws affecting the rights of private individuals, or classes of individuals." Is the act in question alone binding upon all the members of the community? A glance at its provisions affords a negative answer. The act affects one class of laborers, and one class alone. The merchant and his clerks, the restaurant with its employees, the clothing house, the blacksmith, the livery stable, the street-car lines, and the people engaged in every other branch of business, are each and all allowed to open their respective places of business on Sunday, and transact their ordinary business if they desire, but the barber, and he alone, is required to close his place of business. The barber is thus deprived of property without due process of law, in direct violation of the Constitution of the United States and of this State.

But it is said the law may be sustained under the police power of the State. In Tied. Lim. the author (section 85) says: "The State, in its exercise of police power, is, as a general proposition, authorized to subject all occupations to a reasonable regulation, where such regulation is required for the protection of the public interest or for the public welfare." It is also conceded that there is a limit to the exercise of this power, and that it is not an unlimited arbitrary power, which would enable the legislature to prohibit a business the prosecution of which inflicts no damage upon others. The author also lays down the rule that it is within the discretion of the legislature to institute such regulations when a proper case arises; but it is a judicial question whether the mode or calling is of such a nature as to justify police regulation.

In Millett *v.* People, in speaking of the police power of the State as applicable to the case then before the court, it is said: "Their requirements have no tendency to insure the personal safety of the miner, or

to protect his property or the property of others. They do not meet Dwarris's definition of 'police regulations.' They do not have reference to the comfort, the safety, or the welfare of society."

It will not and can not be claimed that the law in question was passed as a sanitary measure, or that it has any relation whatever to the health of society. As has been heretofore seen, as a general rule a police regulation has reference to the health, comfort, safety, and welfare of society. How, it may be asked, is the health, the comfort, safety, or welfare of society to be injuriously affected by the keeping open of a barber shop on Sunday? It is a matter of common observation that the barber business, as carried on in this State, is both quiet and orderly. Indeed, it is shown by the evidence incorporated in the record, that the barber business, as conducted, is quiet and orderly, much more so than many other departments of business. In view of the nature of the business and the manner in which it is carried on, it is difficult to perceive how the rights of any person can be affected, or how the comfort or welfare of society can be disturbed. If the act was one calculated to promote the health, comfort, safety, and welfare of society, then it might be regarded as an exercise of the police power of the State.

We do not think the law was authorized by the police power of the State. If the public welfare of the State demand that all business and all labor of every description, except work of necessity and charity, should cease on Sunday, the first day of the week, and that day shall be kept as a day of rest, the legislature has the power to enact a law requiring all persons to refrain from their ordinary callings on that day, and in order that Sunday may be kept as a day of rest, then all will be placed on a perfect equality, and no one can complain of an unjust discrimination. But when the legislature undertakes to single out one class of labor, harmless in itself, and condemns that, and that alone, it transcends its legitimate powers and its action can not be sustained. Judgment will be reversed.

CONSTITUTIONALITY OF STATUTE—SUNDAY LABOR—RUNNING OF FREIGHT TRAINS—*Norfolk and Western R. R. Co. v. Commonwealth, 24 Southeastern Reporter, page 837.*—The railroad company was indicted in the county court of Appomattox County, Va., for violating section 3801 of the Code of 1887, which is as follows:

No railroad company, receiver, or trustee controlling or operating a railroad, shall, by any agent or employee, load, unload, run, or transport upon such road on a Sunday any car, train of cars, or locomotive, nor permit the same to be done by any such agent or employee, except where such cars, trains, or locomotives are used exclusively for the relief of wrecked trains or trains so disabled as to obstruct the main track of the railroad; or for the transportation of United States mail; or for the transportation of passengers and their baggage; or for the transportation of live stock; or for the transportation of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage: *Provided, however*, That if it should be necessary to transport live stock or perishable articles on a Sunday to an extent not sufficient to make a whole train load, such train load may be made up with cars loaded with ordinary freight.

The case was tried upon the following-agreed state of facts: "That the train composed of empty coal cars, which are used exclusively

in the coal business, as described below, passed through Appomattox County, and by Appomattox station, between 9 o'clock a. m. and 3 o'clock p. m. of Sunday, April 2, 1893, going from Crewe to Roanoke; said points being divisional terminal points on the Norfolk and Western Railroad. That when the train arrived at Roanoke it would be broken up in the company's yard, and, as soon as practicable, would be put into another train, with another engine and crew, and sent by way of Bluefield, in West Virginia, to the coal mines at Pocahontas, in Virginia, and to others in West Virginia. At these mines the cars would be loaded and sent by way of Bluefield, in West Virginia, to Lambert's Point, in Virginia. The coal so shipped would be coal sold to parties out of the State of Virginia before it leaves Bluefield, and to be conveyed to the purchasers outside of Virginia by way of Bluefield, W. Va., and Lambert's Point, Va. That said train was not one of those included in the exemptions in section 3801, Code Va., 1887."

The railroad company was found guilty and fined, and the judgment of the county court was affirmed by the circuit court of Appomattox County, from which court the case was brought on writ of error to the supreme court of appeals of Virginia, which court, on June 11, 1896, rendered its decision affirming the judgment of the court below.

The following language was used by Judge Buchanan in delivering the opinion of the court of appeals:

In the case of Norfolk & W. R. Co. *v.* Com., reported in 88 Va., 95, 13 S. E., 340, this court held that the statute under which the indictment in this case was made was inconsistent with the commerce clause of the Constitution of the United States in so far as it applied to trains running between different States or engaged in transporting interstate commerce, and therefore void.

The counsel for the plaintiff company insists that the principle decided in that case is the same that is involved in this, and conclusive of it. On the other hand, the attorney-general for the Commonwealth contends that the questions involved in the two cases are different, and if they were the same that the decision relied on as controlling this is erroneous and ought not to be followed.

The train which the plaintiff company was indicted for running in violation of section 3801 of the Code was made up entirely of empty cars, which, it is agreed, were used exclusively in carrying articles of interstate commerce.

The fact that they had been so used in the past, and were intended to be so used in the future, does not show that they were, at the time when the act was done for which the plaintiff company was indicted, engaged in interstate commerce.

It was held by the Supreme Court of the United States in Coe *v.* Errol (116 U. S., 517, 525, 6 Sup. Ct., 475) that "when the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepôt for that particular region, whether on a river or line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but as

a part of the general mass of property of that State, subject to its jurisdiction, and liable to taxation there, if not taxed by reason of their being intended for exportation, but taxed without discrimination, in the usual way and manner in which such property is taxed in the State."

If this be the true rule by which to determine when the products of the mine become articles of interstate commerce, and cease to be controlled entirely by the laws of the State, why is it not the correct rule to determine when the carrier of such products becomes engaged in transporting interstate commerce and is protected and governed by the laws of the United States? In the one case the miner may intend to ship a particular product to another State, and may be preparing the article for shipment, yet it is not an article of interstate commerce until it starts upon its final destination to that State, and until that time is subject to the laws of the State alone and has none of the rights of an article of interstate commerce. In the other case the carrier may be preparing certain cars upon which to transport the products of the miner to the foreign State, and they may be on their journey to the place from which they are to be shipped, yet why should those cars be considered as engaged in interstate commerce until they are loaded with articles committed to the carrier to be transported to another State?

The reason given for the rule that goods do not become an article of interstate commerce until actually put in motion for some place out of the State, or committed to the carrier for such transportation, is that until that time the article, though intended for exportation, may never be exported, as the owner has the perfect right to change his mind at any time.

The common carrier has the same right to change his mind and ship on other cars than those which he may have provided for that purpose, and the cars which were intended for that purpose may never be used.

The rule fixed by the Supreme Court in the one case seems equally applicable to the other. Applying that rule to the facts of this case, it would seem that the train for which the plaintiff company was indicted for running was not when so running engaged in transporting articles of interstate commerce, and was therefore controlled exclusively by the laws of the State.

But if this be not the correct view, and it be held that the plaintiff, in running the train, was engaged in the business of interstate commerce, was the legislation in question within the powers reserved to the State, and not in conflict with the Constitution of the United States?

Here the court quotes at some length from various decisions, principally those of the United States Supreme Court, and then continues its opinion in part as follows:

I think from the decisions of the Supreme Court of the United States in the cases referred to above, and others not cited, this conclusion may be drawn: That the State may, in order to secure and protect the lives or health of its citizens, or preserve good order and the public morals, legislate for such purposes, in good faith, and without discrimination against interstate or foreign commerce, without violating the commerce clause of the Constitution of the United States, although such legislation may sometimes touch, in its exercise, the line separating the respective domains of national and State authority, and to some extent affect foreign and interstate commerce.

Was the statute which we are considering passed, in good faith, for the purpose of protecting the health and of preserving the morals of the people of the State?

The experience of mankind has shown the wisdom and necessity of having, at stated intervals, a day of rest for man and beast from their customary labors. It is necessary both for the physical and moral nature of man. The Government of the United States, as well as the government of the States of the Union, recognize this requirement for rest in man's nature, and provide for it in their respective jurisdictions.

Here the court quotes from certain decisions upholding Sunday laws, and then goes on to say as follows:

It can not be doubted that such laws are police regulations of the greatest utility for the physical and moral well-being of society. Neither is there any question that the statute under discussion was enacted in good faith for the preservation and protection of the health and morals of the people of this State, and without any discrimination whatever against interstate or foreign commerce, and that its only effect upon such commerce would be to delay it a few hours in its journey from the point of shipment to its destination. The statute provides for the uninterrupted shipment of articles of commerce of such a perishable character that one day's delay in their shipment would impair their value. There is nothing in the character of coal and other articles of commerce which are not injured by short delays, or, in fact, of any article of commerce, that requires that the laws of the State enacted and necessary for the preservation and promotion of the health and morals of its people should be struck down in order that they may have a more rapid shipment.

I am of the opinion that the statute which the plaintiff company was indicted for violating is not in conflict with the commerce clause of the Constitution of the United States, and that the judgment of the circuit court was right, and should be affirmed.

CONSTITUTIONAL PROVISION — WHEN SELF-EXECUTING — ENFORCEMENT OF FOREIGN LAW—*Illinois Central R. R. Co. v. Ihlenberg, 75 Federal Reporter, page 873.*—Action was brought in the United States circuit court for the western district of Tennessee by Rudolph Ihlenberg against the railroad company above named to recover damages for personal injuries incurred while in the employ of said company. The evidence showed that the cause of the plaintiff's injury was a defective engine on which he was employed as fireman; that he had knowledge of the defects prior to and at the time of the accident, and that the accident occurred in the State of Mississippi. The court charged the jury that under the law of Tennessee, or under the common law, the plaintiff could not recover, but that the law of Mississippi, where the accident occurred, controlled the case, and that section 193 of the Mississippi constitution of 1890 applied. The jury returned a verdict for the plaintiff, and judgment thereon was rendered in his favor. The defendant carried the case on writ of error before the United States circuit court of appeals for the sixth circuit, which rendered its decision July 8, 1896, and affirmed the judgment of the lower court. The section above mentioned was adopted with the rest of the

constitution in 1890, and contained the following language: "Knowledge by any employee injured of the defective or unsafe character or condition of any machinery, ways, or appliances shall be no defense to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars or engines voluntarily operated by them." The accident occurred in July, 1891, subsequent to the adoption of said section. The main point raised by the defense was that said section was not self-executing; that is, that it would not be binding on the courts in considering a case until an act had been passed by the legislature to give it effect.

The circuit court of appeals decided adversely to the defense on this point, and from the opinion, which was delivered by Circuit Judge Taft, the following is quoted:

It follows, therefore, that the only question we have before us in this case on the record is whether section 193 of the constitution of Mississippi was self-executing, and whether, if self-executing, it should be enforced in a Federal court sitting in Tennessee in an action for an injury happening in Mississippi after the constitutional provision went into effect.

Here the court cited the case of Groves *v.* Slaughter (15 Peters, page 449), which decided that a certain constitutional provision was not self-executing, and then continued as follows:

There is nothing in Groves *v.* Slaughter to justify the claim that a constitution may not contain self-executing provisions. It may be conceded that it is usually a declaration of fundamental law, and that many of its provisions are only commands to the legislature to enact laws to carry out the purposes of the framers of the constitution, and that many are mere restrictions upon the power of the legislature to pass laws; but that it is entirely within the power of those who confirm and adopt the constitution to make any of its provisions self-executing is too clear for argument. Hence it is a question always of intention to be determined by the language used and the surrounding circumstances. Considering the constitutional clause in this light, we have no doubt that it was self-executing. In the first place, the language of the particular clause in question is prohibitory, and is in the exact form which the legislature, were it enacting such a provision into the law, would use in a command to the courts. More than this, there is language in the section which is inconsistent with the view that it is not self-executing. The final clause of the section excludes any other construction than that we have given. It is: "The legislature may extend the remedies herein provided for to any other class of employees." This certainly implies that so much of the section as precedes the clause actually provides remedies for those mentioned in it, and leaves to the legislature power to enlarge the benefits of the section by applying it to others than those named in the section.

The only remaining question for discussion is whether a Federal court in Tennessee will enforce the Mississippi constitution with respect to the tort committed in that State. It is well settled by the decisions of the Federal courts that, "while it is true that the statutes of a State have in themselves no extraterritorial force, yet rights acquired under them are always enforced by comity in the State and national courts in

other States, unless they are opposed to the public policy or laws of the forum." There is nothing in section 193 of the Mississippi constitution, here under consideration, which is repugnant to the policy of the Tennessee law on the subject. The judgment of the circuit court is affirmed.

CONTRACT OF SERVICE TO WORK OUT FINE AND COSTS—MODIFICATION OF SUCH CONTRACT ILLEGAL—*Shepherd v. State, 20 Southern Reporter, page 330.*—The appellant, one Shepherd, was prosecuted in the county court of Macon County, Ala., on a complaint charging him with a "failure, without good and sufficient cause, to perform a contract with surety confessing judgment with fine and costs," and was convicted of the offense charged. He appealed to the supreme court of the State, which court rendered its decision May 26, 1896, and reversed the judgment of the lower court and ordered the discharge of the prisoner. The charge was brought under section 3832 of the Code of Alabama, and so much of the same as is pertinent to the case is here given:

Any defendant, on whom a fine is imposed on conviction for a misdemeanor, who in open court signs a written contract, approved in writing by the judge of the court in which the conviction is had, whereby, in consideration of another becoming his surety on a confession of judgment for the fine and costs, agrees to do any act, or perform any service for such person, and who, after being released on such confession of judgment, fails or refuses, without a good and sufficient excuse, to be determined by the jury, to do the act, or perform the service, which in such contract he promised or agreed to do or perform, must, on conviction, be fined not less than the amount of the damages which the party contracting with him has suffered by such failure or refusal, and not more than five hundred dollars; and the jury shall assess the amount of such damages. * * *

From the opinion of the supreme court, delivered by Judge Haralson, and containing a recital of the facts in the case, the following is quoted:

There is no dispute but that the contract of the defendant with Mrs. Cunningham was good and sufficient for the purposes intended, and was, according to section 3832 of the Code, for the alleged violation of which defendant was proceeded against. That contract recites that defendant had pleaded guilty in the county court in a specified criminal proceeding for a misdemeanor, and was fined $50 and costs—the fine and costs amounting to $84.10—for which latter sum, Mrs. Cunningham, for and with the defendant, confessed a judgment, and she paid the amount thereof for the defendant. It then proceeds: "I agree to labor for the said Mrs. Cunningham as a farm hand, and do good and faithful service at and for the sum of $5 per month until the said fine and costs are fully paid. The said Mrs. Cunningham agrees to furnish me good and sufficient food and clothing, medicine, and medical attention when needed." This contract, as appears from the transcript, was taken and approved by the judge of the county court in which said conviction was had, and on the day of said conviction, and was filed for record in the office of the judge of probate of the county on the same date. The agent of Mrs. Cunningham, one Hall, her present husband, testified that defendant worked on the plantation of his wife as a farm hand for

about five months, and that he, as her agent, with the consent of the defendant, hired him to the section boss on the railroad, and while so employed defendant quit his work and went away and has never returned, and had failed to carry out his contract with his surety; that he instructed the section boss to lock or fasten the defendant up at night, if he did not quit running about, but he did not know whether he told him to chain defendant or not, and that defendant had never complained of any cruel treatment at the hands of the section boss. Defendant, examined in his own behalf, denied that it was with his consent that he was put to work on the railroad, and stated that while engaged at such work he was compelled to sleep in box cars, without any comforts, but remained at work until the section boss threatened to chain him in the car at night, and he left that service only because he was wrongly treated.

The service to which the defendant was bound under the contract with his employer, as authorized by statute, was penal. He was in contemplation of law performing labor or service as a punishment, as if sentenced to hard labor for the county. The confessed judgment and the contract approved by the court in such cases do not pay the penalty imposed, but are the conditions, as we have held, on which the offender, by the humane provisions of the law, is permitted to elect how and whom he will serve in satisfying its broken demands. The hirer becomes the transferee of the State to compel the satisfaction of the fine and costs in the manner provided for in the contract, and for nothing more. The failure to perform service under any contract not made in the manner prescribed by statute, for the purposes therein specified, is not denounced as criminal. When a contract of the kind has been once entered into, approved by the court, and filed, all as authorized by statute, it becomes binding and can not afterwards be modified by the consent, even, of the parties, so as to allow any other service to be legally exacted of or performed thereunder by defendant. The defendant's penal servitude was that of a farm hand for Mrs. Cunningham, and when she changed his service and hired him to a railroad company to do railroad work, she violated her contract with the defendant and her obligation to the State, and defendant was not amenable to penalties for refusing to perform it. As it is apparent the defendant is guilty of no crime in what is alleged against him, and can never be convicted of the charge preferred, it is ordered that he be discharged.

DEFINITION OF "WAGES" UNDER LAW EXEMPTING SAME FROM GARNISHMENT—*Swift Manufacturing Co. v Henderson, 25 Southeastern Reporter, page 27.*—This action was brought in justice's court by M. L. Henderson against one Pittman, and the Swift Manufacturing Company was summoned as garnishee. There was a judgment against the garnishee, who petitioned the superior court of Muscogee County, Ga., for a writ of certiorari, which was refused, and the garnishee then brought the case before the supreme court of the State, which rendered its decision June 8, 1896, and reversed the judgment of the superior court.

The facts in the case were substantially as follows: Henderson sued Pittman for a debt, and the manufacturing company was summoned as

garnishee. Said company answered that all they owed Pittman was due him as daily wages, which was exempt by law from the process of garnishment. The evidence at the trial showed that Pittman was employed by the garnishee, not at a stipulated sum per day, but at a rate of 11 cents per hank, and that the wages he received for a day's work depended upon the number of hanks he turned out. The justice of the peace charged the jury that, if the garnishee had Pittman employed at a stipulated sum per day, his wages would not be subject to garnishment, but if he was doing contract work at so much a piece or hank, as the evidence seemed to show, then his wages would be subject.

The supreme court decided that this charge was erroneous, and in the syllabus of the case which was prepared by said court it laid down the law as follows:

The word "wages" means the compensation paid to a hired person for his services. This compensation to the laborer may be a specified sum for a given time of service, or a fixed sum for a specified work; that is, payment may be made by the job. The word "wages" does not imply that the compensation is to be determined solely upon the basis of time spent in service. It may be determined by the work done. Accordingly, where the compensation of an ordinary laborer in a factory is so many cents per "hank" for every hank he makes, payable biweekly, this compensation is "wages," and as such exempt from the process of garnishment.

The judge erred in refusing to sanction the petition for certiorari.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FELLOW-SERVANTS—*Texas Central Ry. Co. v. Frazier, 36 Southwestern Reporter, page 432.*—This action was brought in the district court of Hamilton County, Tex., by Etta Frazier, for herself and minor child, against the railroad company above named to recover damages for the death of her husband, J. W. Frazier, resulting from the wrecking of a train on which he was employed as brakeman and caused by the negligence of the engineer of said train. Judgment was given for the plaintiff, and the railroad company appealed the case to the court of civil appeals of Texas, which sustained the judgment of the district court and held that under the act of March 10, 1891 (fellow-servant act), the engineer of the train was a vice-principal of the railroad company and not a fellow-servant of the deceased brakeman, Frazier. (See case of Texas Central Ry. Co. *v.* Frazier, published on page 774 of the Bulletin of the Department of Labor, No. 7.)

Sections 1 and 2 of the act in question read as follows:

SECTION 1. Be it enacted by the legislature of the State of Texas, That all persons engaged in the service of any railway corporations, foreign or domestic, doing business in this State, who are entrusted by such corporation with the authority of superintendence, control, or command of other persons in the employ or service of such corporation,

or with the authority to direct any other employee in the performance of any duty of such employee, are vice-principals of such corporation and are not fellow-servants with such employee.

SEC. 2. That all persons who are engaged in the common service of such railway corporations, and who while so engaged are working together at the same time and place to a common purpose, of same grade, neither of such persons being entrusted by such corporations, with any superintendence or control over their fellow-employees, are fellow-servants with each other: *Provided*, That nothing herein contained shall be so construed as to make employees of such corporation, in the service of such corporation, fellow-servants with other employees of such corporation, engaged in any other department of service of such corporation. Employees who do not come within the provisions of this section shall not be considered fellow-servants.

From the decision of the court of civil appeals, above noted, the railroad company appealed the case to the supreme court of the State, which rendered its decision June 22, 1896, and reversed the judgment of the lower court. In the opinion of the supreme court, which was delivered by Judge Denman, the following language was used:

Though it is earnestly disputed by plaintiff in error, let it be conceded, for the purposes of this opinion, that the evidence warranted the jury in believing that the engineer was guilty of negligence resulting in Frazier's death.

The railroad company, as plaintiff in error, has brought the case to this court, assigning as error that the court of civil appeals erred in not sustaining its assignment in that court, to the effect that the court below erred in rendering judgment for plaintiff, because the verdict is without evidence in the record to support it; there being no evidence that the engineer was a vice-principal of the defendant company, as claimed by plaintiff. The question, stated in a different form, is, Were the engineer and Brakeman Frazier fellow-servants under the act of March 10, 1891, which was in force at the time of the accident? If they were, the judgment must be reversed.

In Railway Co. *v.* Warner (35 S. W., 364), this court held that under the act of 1893 (which seems to be the same as the act of 1891, as far as this case is concerned), in order to constitute two persons fellow-servants the following distinguishing characteristics must be found concurring and common to them: (1) They must be engaged in the common service; (2) they must be in the same grade of employment; (3) they must be working at the same time and place, and (4) they must be working to a common purpose. We do not understand that any question is made as to the correctness of the construction placed upon the statute in that case, nor do we understand it to be denied that the first, third, and fourth of said characteristics are shown by the evidence to be concurring and common to the engineer and Frazier in the case before us; but defendant in error denies that they "were in the same grade of employment," for the reason that, under the Warner case, the test as to whether they were in the same grade of employment was decided to be whether one had authority over the other while engaged in the common service, and the evidence here shows that the engineer had authority over Frazier, in that he had the power, by signal, to direct him to apply the brakes. The purpose of the statute was to impute to the master the negligence of an employee upon whom he

has conferred authority or power to influence the action or volition of another employee in the performance of his duties. Under the common-law rule, as settled in this State before the statute, the negligence of an employee would not have been imputed to the master unless he had the power to employ and discharge, it being assumed that such power was necessary to subject the will of the latter to that of the former. The statute, however, is based upon the theory that the authority or power in one employee to superintend, control, or command, or direct another employee in the performance of his duties, as effectually influences and subjects to the former the will of the latter as does the power to employ and discharge. But it was not the purpose of the statute to impute to the master the negligence of an employee upon whom he had conferred no such power, but had merely imposed the duty, in certain contingencies arising in the course of his employment, of giving a signal whereby another employee would know that the occasion had arisen for him to perform some duty imposed upon him by the rules governing his employment, leaving such employee free to perform such duty in his own way under such rules. In such a case there is no subjection of the will of one to that of the other.

We are of the opinion that the signal given by the engineer for brakes was a mere notice to the brakeman, Frazier, that the occasion had arisen for him to perform a duty imposed upon him by the rules; that the fact that the engineer was intrusted by the company with the discretion of determining when the brakes should be applied, and to signal therefor, did not give him any "authority of superintendence, control, or command," or "authority to direct" Frazier in the performance of his duties; that Frazier, in attempting to set brakes in the performance of his duties, was governed and controlled by the direction and command of the rule, and not of the engineer, and that, therefore, under the statute, they were "in the same grade of employment" and fellow-servants. It follows that the assignment of error was well taken, and that the judgments of the trial court and court of civil appeals must be reversed and the cause remanded.

LABORERS' LIENS—WHO ENTITLED TO—*Oliver v. Macon Hardware Co. et al., 25 Southeastern Reporter, page 403.*—In the matter of a judgment against the Macon Hardware Company, rendered in the superior court of Bibb County, Ga., Henry E. Oliver intervened, alleging that he was a clerk in the service of said company; that the amount he claimed was due him for labor and services as a clerk; that as such clerk he performed manual labor and was entitled to lien under the provisions of section 1974 of the Code of 1882. A judgment was rendered against the intervenor, and he brought the case on writ of error before the supreme court of the State. Said court rendered its decision March 23, 1896, and affirmed the decision of the superior court.

The opinion of the court was delivered by Judge Lumpkin, and from the syllabus of the same, which was prepared by the court, the following is quoted:

Primarily, a clerk in a mercantile establishment is not a "laborer," in the sense in which that word is used in section 1974 of the Code, even

though the proper discharge of his duties may include the performance of some amount of manual labor. If the contract of employment contemplated that the clerk's services were to consist mainly of work requiring mental skill or business capacity, and involving the exercise of his intellectual faculties, rather than work the doing of which properly would depend upon mere physical power to perform ordinary manual labor, he would not be a laborer.

If, on the other hand, the work which the contract required the clerk to do was, in the main, to be the performance of such labor as that last above indicated, he would be a laborer. In any given case the question whether or not a clerk is entitled, as a laborer, to enforce a summary lien against the property of his employer must be determined with reference to its own particular facts and circumstances.

In the course of his opinion, which was but an amplification of the syllabus of the same above quoted, Judge Lumpkin said as follows:

In determining whether a particular clerk or other employee is really a laborer the character of the work he does must be taken into consideration. In other words, he must be classified, not according to the arbitrary designation of his calling, but with reference to the character of the services required of him by his employer.

LABORERS' LIENS—WHO ENTITLED TO—*Cole et al. v. McNeill, 25 Southeastern Reporter, page 402.*—Suit was brought by E. H. McNeill in the superior court of Charlton County, Ga., to foreclose a general lien as a laborer upon the property of Cole and Covington, under the provisions of section 1974 of the Code of 1882. Said section is as follows:

Laborers shall have a general lien upon the property of their employers, liable to levy and sale, for their labor, which is hereby declared to be superior to all other liens, except liens for taxes, the special liens of landlords on yearly crops, and such other liens as are declared by law to be superior to them.

A judgment was rendered for McNeill, and the defendants carried the case on writ of error to the supreme court of the State, which gave its decision July 13, 1896, and reversed the decision of the lower court. The opinion of the supreme court is not published, but the syllabus of the same, which was prepared by the court, and which sufficiently shows the facts in the case, reads as follows:

One who was employed as a "woodsman," and whose duties as such included overlooking and superintending a large number of ordinary hands engaged in turpentine operations, who had authority to employ and discharge these hands, who also worked in a commissary in the capacity of a clerk, and who was employed for his skill in rendering services which obviously required mental and business capacity, rather than the mere power to do manual toil, these services consisting much more largely of "head work" than of "hand work," was not a laborer, entitled, under section 1974 of the Code, to foreclose a lien as such, although, in point of fact and of necessity, he did, in the performance of his duties, a considerable amount of manual labor, and often became physically fatigued.

Under the evidence contained in the record the verdict was contrary to law, for the reason that the jury could not properly find that the plaintiff was a "laborer."

MECHANICS' LIENS—APPLICABILITY OF ACT TO STREET RAILWAYS—CONSTITUTIONALITY OF ACT—*New England Engineering Co. v. Oakwood Street Railway Co., 75 Federal Reporter, page 162.*—A bill was filed by the New England Engineering Company in the United States circuit court for the southern district of Ohio, western division, to enforce a mechanic's lien against the street-railway company above named under the provisions of the Ohio statute of March 20, 1889 (86 Ohio Laws, page 120), and the railway company filed a demurrer thereto. The court rendered its decision July 13, 1896, and overruled the demurrer.

The opinion of the court, delivered by Circuit Judge Taft, shows the important facts of the case, and the following is quoted therefrom:

The demurrer was intended to present these points: First. That the statute upon which complainant relies does not apply to a street-railway company. Second. If it does apply, that the statute itself is unconstitutional and void. Of these in their order.

1. The statute relied on is an act entitled "An act to fix responsibility and to protect labor and the rights of contractors and subcontractors on all public works or work done for companies, corporations, contracting companies, or individuals." The first section of the act provides as follows:

"Section 1. Be it enacted by the general assembly of the State of Ohio, that any person who shall have performed common or mechanical labor upon, or furnished supplies to, any railroad, turnpike, plank road, canal, or on any public structure being erected, or on any abutment, pier, culvert, or foundation for same, or for any side track, embankment, excavation, or any public work, protection, ballasting, delivering or placing ties, or track laying, whether the labor is performed for, or the supplies or material is furnished to, any company, corporation, contractor, or subcontractor, construction company, or individual, shall have a first, immediate, and absolute lien on the whole of the property on which said work is done and to which said supplies have been contributed, and shall hold the railroad, canal, turnpike, plank road or structure, to the creation or construction of which the said labor or supplies has been contributed, or so much thereof as may have been in whole or in part created by said labor or supplies, to the exclusion of any railroad, canal, turnpike, plank road, public work or structure, as to operation, occupation, or use, until the claim for such labor or supplies is properly adjusted and paid in full."

The contention is that the term "railroad," as used in this section, refers to commercial or traffic railroads, as distinguished from "street railways."

We are to determine from the association in which the term occurs whether street railroads would naturally be included within it. I am very clear that the doctrine, "Noscitur a sociis," establishes that the word "railroad," in this connection, includes "street railroads." It was intended to secure the rights of laboring men, contractors, and subcontractors on all public works; and, in the sense of the statute, a railroad, a turnpike, a plank road, or a canal is a public work, though it may be built by a private corporation. Certainly, the public policy

which would furnish a lien to one working upon a turnpike or a plank road or a canal or a traffic railway would be likely to provide a lien for one working upon a street railway. While mechanic's lien laws should not be strained to mean more than their language will justify, they are not to receive a narrow construction, and every purpose that is within the letter and policy of the law should be given effect. Even if a street railroad were not included within the term "railroad," I think it would come within the expression "any public structure." The street railway is a public structure in the sense that it is constructed on the public street for public purposes, though operated by a private corporation for gain. In the case at bar a street railroad is certainly a structure like those mentioned in the act under consideration, and therefore comes within the general words used, if not included as a railroad. It is very clear to me that the narrowest construction of the statute in question would not exclude street-railway companies from its operation.

2. It is claimed that the act is unconstitutional, and reliance is had for this contention on the third section of the act. I do not find it necessary to decide the question mooted with respect to section 3, however, because, assuming it to be invalid, I think the rest of the law may very well stand. The main object of the law was to give a lien for work done on the structures mentioned in the act. Section 3 is a mere special mode of enforcing the payment of the lien. If section 3 had not been in the act, there would be no difficulty in carrying out the provisions of the other sections, though no particular proceeding was mentioned by which the lien could be enforced. Unless we are to suppose that the legislature's sole purpose in this act was to enable a lien claimant to take owner by the throat, so to speak, and compel payment by force of an injunction, the contention that the act becomes inoperative by the reason of the invalidity of the third section must fail. We can not impute to the legislature any such intention. Its main purpose was to create a lien in cases where its existence was previously doubtful. The lien being created, the remedy is manifest. It is not necessary to refer to authorities to show that part of the act may be valid and part invalid by reason of its constitutional restriction. In such cases the court must be able to say from an examination of the whole act that the legislature would have passed that which is valid even if it had been advised that the invalid section would be declared so.

The demurrer will be overruled.

MORTGAGES ON CROPS—LABORERS' LIENS ON SAME—PRIORITY—*Watson v. May, 35 Southwestern Reporter, page 1108.*—Action was brought in the circuit court of Ashley County, Ark., and a judgment was rendered in favor of the defendant, May. The plaintiff, Watson, appealed the case to the supreme court of the State, which rendered its decision May 23, 1896, and affirmed the judgment of the lower court.

The opinion of the supreme court, delivered by Judge Battle, and containing a statement of the facts in the case, is quoted below:

One bale of cotton, of the value of $34, is the property in controversy in this action. Appellant, D. E. Watson, claims possession of it under a mortgage executed to him by R. P. Brown, and appellee, J. W. May, says that was the product of labor performed by him in the service of Brown, and was received by him in payment of the amount due him for such labor.

No bill of exceptions was filed, and the facts and the declarations of law upon which a reversal is asked are set out in the judgment of the court. The facts, as found by the court, are as follows:

"1. That the bale of cotton in controversy was the product of the labor of defendant, May, and delivered to him in payment for services as such laborer under a verbal contract with one R. P. Brown in 1891.

"2. That the plaintiff, Watson, had a valid mortgage on the crop of said R. P. Brown for said year 1891.

"3. That plaintiff's mortgage, duly acknowledged, was filed for record January 15, 1891, and Defendant May's contract with Brown was made in April, 1891."

Appellant contends that his mortgage having been filed for record on the 15th of January, 1891, and the contract of appellee to perform labor having been entered into in April, 1891, his lien upon the cotton was prior and paramount to that acquired by appellee, and that he is entitled to the possession of the cotton. The accuracy of this contention depends upon the proper interpretation of the statute regulating laborers' liens.

Section 4766, Sand. & H. Dig., provides: "Laborers who perform work and labor for any person under a written or verbal contract, if unpaid for the same, shall have an absolute lien on the production of their labor for such work and labor." Other statutes were subsequently enacted, which are as follows:

"Sec. 4783. Contracts for services or labor for a longer period than one year shall not entitle the parties to the benefit of this act unless in writing, signed by the parties, witnessed by two disinterested witnesses, or acknowledged before an officer authorized by law to take acknowledgments."

"Sec. 4786. Specific liens are reserved upon so much of the produce raised and articles constructed or manufactured by laborers during their contract as will secure all moneys and the value of all supplies furnished them by the employers and all wages or shares due the laborers, and if either party shall before settlement dispose of or appropriate the same without the consent of the other so as to defraud him of the amount due, such party shall be deemed guilty of a misdemeanor," etc.

"Sec. 4787. A copy of such contract or the original shall be filed in the recorder's office of the proper county, and such filing shall be sufficient notice of the existence of such lien, and no third party shall be prejudiced by the existence of such lien, nor in any manner liable under the provisions of this act unless a copy of the contract is filed in the recorder's office, as above provided."

As verbal contracts can not be filed, the last section has no reference to them, or contracts for a less period than one year, as they are not required to be in writing.

It not appearing that appellee was hired to labor except in the production of the crop of 1891, it is apparent that he was not employed for a longer period than one year. The court did not so find, and we can not presume that he was, and it was not necessary that his contract should have been in writing.

The mortgage of appellant and the contract of appellee being valid, who had the superior lien? Upon this question the statute is silent, and no decision has been rendered by this court. But the decisions of similar questions as to liens of landlords furnish us with a guide in this case.

The statutes give landlords liens upon the crops of their tenants for

rent, but say nothing about the superiority of such incumbrances over prior mortgages; yet this court has held that such liens take hold of the crops as soon as they come into existence, and are superior to a mortgage on the same property executed and filed for record before that time, notwithstanding the statutes make a mortgage on a crop to be planted valid. No lien can attach at an earlier moment. Being the creatures of the statute, liens created by contract must yield to them in superiority. This preference is due to the fact that the crop is the fruit of the lands of the landlord.

The lien for rent is on the production of the land of the landlord, while the lien of the laborer is on the production of his labor. As the lien of the former seizes the product of the land as soon as it comes into existence, so does the latter seize the product of the laborer. As a prior mortgage of a crop must yield to the lien of the former on the same property, so a like mortgage, for the same reason, must yield, under the same circumstances, to the latter. The evidence of the intention of the statute to protect the latter against older mortgages is stronger than it is in the case of the former. It inhibits the employer from disposing of or appropriating the production of labor, before settlement, so as to defraud the laborer of the amount due him, and makes it a misdemeanor for him to do so, thereby evincing an intention that the lien of the laborer on the product of his labor shall be paramount to any created by his employer.

As the bale of cotton in controversy was the product of the labor of the appellee, and was received in payment of the amount due him for his services, he is entitled to hold it. Judgment affirmed.

MORTGAGE ON CROPS—LABORERS' LIENS ON SAME—PRIORITY—*Sitton v. Dubois et al., 45 Pacific Reporter, page 303.*—Action was brought in the superior court of King County, Wash., by A. Sitton against C. C. Dubois and others and a judgment was rendered for the plaintiff. One of the defendants, E. R. Lilienthal, appealed the case to the supreme court of the State, which rendered its decision June 3, 1896, and affirmed the decision of the lower court.

The opinion of said court was delivered by Judge Scott, and the following, containing a statement of the facts in the case, is quoted therefrom:

The plaintiff brought this action to forclose a laborer's lein under vol. 1, Code, §1695, on certain crops grown upon land owned by the defendants Dubois in the year 1894. Said defendants had executed to appellant, in November, 1893, a chattel mortgage to cover such crop, it not then being in existence. The appellant was made a defendant in said action, and appeared, setting up his mortgage lien, and asked for a foreclosure, which was granted; but the court, in foreclosing the lien of the plantiff, found that it was entitled to priority over appellant's mortgage, whereupon this appeal was taken. Said statute contains the following provision: "And the lien created by the provisions of this section shall be a preferred lien, and shall be prior to all other liens." Appellant contends that this provision does not include a mortgage incumbrance, especially as several prior statutes upon this subject, enacted at various times by the legislature, expressly made such liens prior to any other "lien or incumbrance."

Appellant contends that the word "lien" does not generally include an incumbrance by mortgage, and in view of this fact, and of the fact that the legislature dropped the term "incumbrance" in the statute now in force, it must be presumed that it was not intended to make such lien prior to a mortgage lien or incumbrance.

Had it been the intention of the legislature to except mortgage liens from the operation of this act, it is probable that it would have done so by express provision, and not merely by dropping the word "incumbrance" from the section, which very likely was understood and intended as included in the word "liens," previously therein used.

Appellant further contends that, unless the act can be construed to accept mortgage liens, it is unconstitutional, on the ground that it would impair the obligation of contracts, as it would be possible, after a mortgagee, in consequence of the security afforded by a mortgage, had advanced money to the mortgagor, for such mortgagor to wholly divest him of all benefit of the security by contracting for labor without his consent or knowledge. But this act was in force at the time appellant's mortgage was executed, and therefore, in effect, entered into and formed a part of it. Affirmed.

DECISIONS UNDER COMMON LAW.

CONSPIRACY—STRIKE—INJUNCTION—ILLEGALITY OF A "PATROL"—*Vegelahn v. Guntner et al., 44 Northeastern Reporter, page 1077.*—A bill was filed in the supreme judicial court in Suffolk County, Mass., by Frederick O. Vegelahn, asking for an injunction against George M. Guntner and others to restrain them from interfering with his business, etc. The hearing was before Judge O. W. Holmes. It appears that he issued a preliminary injunction, which not only enjoined the defendants from committing acts of violence or intimidation, but also, in effect, from maintaining a patrol of men in front of the plaintiff's factory for the purpose of influencing those in his employ to leave it, or those seeking employment to refrain from so doing. As a result of the hearing the injunction was made permanent, but was so modified as to restrain the defendants only from committing acts of violence or intimidation. On a report of the case to the full bench of the supreme judicial court, the injunction was, by a divided court, so modified as to conform to the preliminary injunction issued by Judge Holmes. The decision of said court was rendered October 27, 1896, and its opinion, containing a sufficient statement of the facts in the case, was delivered by Judge Allen. The following language is used therein:

The principal question in this case is whether the defendants should be enjoined against maintaining the patrol. The report shows that, following upon a strike of the plaintiff's workmen, the defendants conspired to prevent him from getting workmen, and thereby to prevent him from carrying on his business, unless and until he should adopt a certain schedule of prices. The means adopted were persuasion and social pressure, threats of personal injury or unlawful harm conveyed to persons employed or seeking employment, and a patrol of two men in front of the plaintiff's factory, maintained from half-past 6 in the morning till half-past 5 in the afternoon, on one of the busiest streets

of Boston. The number of men was greater at times, and at times showed some little disposition to stop the plaintiff's door. The patrol proper at times went further than simple advice, not obtruded beyond the point where the other person was willing to listen, and it was found that the patrol would probably be continued if not enjoined. There was also some evidence of persuasion to break existing contracts. The patrol was maintained as one of the means of carrying out the defendants' plan, and it was used in combination with social pressure, threats of personal injury or unlawful harm, and persuasion to break existing contracts. It was thus one means of intimidation, indirectly to the plaintiff and directly to persons actually employed or seeking to be employed by the plaintiff, and of rendering such employment unpleasant or intolerable to such persons. Such an act is an unlawful interference with the rights both of employer and of employed.

An employer has a right to engage all persons who are willing to work for him at such prices as may be mutually agreed upon, and persons employed or seeking employment have a corresponding right to enter into or remain in the employment of any person or corporation willing to employ them. These rights are secured by the constitution itself. No one can lawfully interfere by force or intimidation to prevent employers or persons employed or wishing to be employed from the exercise of these rights. It is in Massachusetts, as in some other States, even made a criminal offense for one, by intimidation or force, to prevent or seek to prevent a person from entering into or continuing in the employment of a person or corporation. (Pub. St., c. 74, § 2.) Intimidation is not limited to threats of violence or of physical injury to person or property. It has a broader signification, and there also may be a moral intimidation which is illegal. Patrolling or picketing under the circumstances stated in the report has elements of intimidation like those which were found to exist in Sherry *v.* Perkins (147 Mass., 212, 17 N. E., 307). The patrol was an unlawful interference, both with the plaintiff and with the workmen, within the principle of many cases; and, when instituted for the purpose of interfering with his business, it becomes a private nuisance.

The defendants contend that these acts were justifiable, because they were only seeking to secure better wages for themselves by compelling the plaintiff to accept their schedule of wages. This motive or purpose does not justify maintaining a patrol in front of plaintiff's premises as a means of carrying out their conspiracy. A combination among persons merely to regulate their own conduct is within allowable competition, and is lawful, although others may be indirectly affected thereby. But a combination to do injurious acts, expressly directed to another, by way of intimidation or constraint, either of himself or of persons employed or seeking to be employed by him, is outside of allowable competition, and is unlawful. The present case falls within the latter class.

Nor does the fact that the defendants' acts might subject them to an indictment prevent a court of equity from issuing an injunction. It is true that, ordinarily, a court of equity will decline to issue an injunction to restrain the commission of a crime; but a continuing injury to property or business may be enjoined, although it may also be punishable as a nuisance or other crime.

A question is also presented whether the court should enjoin such interference with persons in the employment of the plaintiff who are not bound by contract to remain with him, or with persons who are not

under any existing contract, but who are seeking or intending to enter into his employment. A conspiracy to interfere with the plaintiff's business by means of threats and intimidation, and by maintaining a patrol in front of his premises, in order to prevent persons from entering into his employment, or in order to prevent persons who are in his employment from continuing therein, is unlawful, even though such persons are not bound by contract to enter into or to continue in his employment; and the injunction should not be so limited as to relate only to persons who are bound by existing contracts.

We therefore think that the injunction should be in the form as originally issued. So ordered.

Strong dissenting opinions were delivered by Chief Justice Field and Judge Holmes, and, being of great interest, the following is quoted therefrom. Chief Justice Field said in part:

In the absence of any power given by statute the jurisdiction of a court of equity, having only the powers of the English high court of chancery, does not, I think, extend to enjoining acts like those complained of in the case at bar, unless they amount to a destruction or threatened destruction of property, or an irreparable injury to it.

As a means of prevention, the remedy given by Pub. St., c. 74, § 2, would seem to be adequate where the section is applicable, unless the destruction of, or an irreparable injury to, property is threatened; and there is the additional remedy of an indictment for a criminal conspiracy at common law, if the acts of the defendant amount to that. If the acts complained of do not amount to intimidation or force, it is not in all respects clear what are lawful and what are not lawful at common law. It seems to be established in this Commonwealth that, intentionally and without justifiable cause, to entice, by persuasion, a workman to break an existing contract with his employer, and to leave his employment, is actionable, whether done with actual malice or not. (Walker *v.* Cronin, 107 Mass., 555.) What constitutes justifiable cause remains in some respects undetermined. Whether to pursuade a person who is free to choose his employment not to enter into the employment of another person gives a cause of action to such other person by some courts has been said to depend upon the question of actual malice. For myself, I have been unable to see how malice is necessarily decisive. To persuade one man not to enter into the employment of another, by telling the truth to him about such other person and his business, I am not convinced is actionable at common law, whatever the motive may be. Such persuasion, when accompanied by falsehood about such other person and his business, may be actionable, unless the occasion of making the statements is privileged; and then the question of actual malice may be important.

In the present case, if the establishment of a patrol is using intimidation or force, within the meaning of our statute, it is illegal and criminal. If it does not amount to intimidation or force, but is carried to such a degree as to interfere with the use by the plaintiff of his property, it may be illegal and actionable. But something more is necessary to justify issuing an injunction. If it is in violation of any ordinance of the city regulating the use of streets, there may be a prosecution for that, and the police can enforce the ordinance; but if it is merely a peaceful mode of finding out the persons who intend to enter the plaintiff's premises to apply for work, and of informing them of the actual facts in the case, in order to induce them not to

enter the plaintiff's employment, in the absence of any statute relating to the subject, I doubt if it is illegal, and I see no ground for issuing an injunction against it.

The following is quoted from the dissenting opinion of Judge Holmes:

In the first place, a word or two should be said as to the meaning of the report. I assume that my brethren construe it as I meant it to be construed. There was no proof of any threat or danger of a patrol exceeding two men, and as, of course, an injunction is not granted except with reference to what there is reason to expect in its absence, the question on that point is whether a patrol of two men should be enjoined. Again, the defendants are enjoined by the final decree from intimidating by threats, express or implied, of physical harm to body or property, any person who may be desirous of entering into the employment of the plaintiff, so far as to prevent him from entering the same. In order to test the correctness of the refusal to go further, it must be assumed that the defendants obey the express prohibition of the decree. If they do not, they fall within the injunction as it now stands, and are liable to summary punishment. The important difference between the preliminary and the final injunction is that the former goes further, and forbids the defendants to interfere with the plaintiff's business "by any scheme * * * organized for the purpose of * * * preventing any person or persons who now are or may hereafter be * * * desirous of entering the [plaintiff's employment] from entering it."

I quote only a part, and the part which seems to me most objectionable. This includes refusal of social intercourse, and even organized persuasion or argument, although free from any threat of violence, either express or implied. And this is with reference to persons who have a legal right to contract or not to contract with the plaintiff, as they may see fit. Interference with existing contracts is forbidden by the final decree. I wish to insist a little that the only point of difference which involves a difference of principle between the final decree and the preliminary injunction, which it is proposed to restore, is what I have mentioned, in order that it may be seen exactly what we are to discuss. It appears to me that the opinion of the majority turns in part on the assumption that the patrol necessarily carries with it a threat of bodily harm. That assumption I think unwarranted, for the reasons which I have given. Furthermore, it can not be said, I think, that two men walking together up and down a sidewalk and speaking to those who enter a certain shop, do necessarily and always thereby convey a threat of force. I do not think it possible to discriminate and to say that two workmen, or even two representatives of an organization of workmen, do, especially when they are and are known to be under the injunction of this court not to do so. I may add that I think the more intelligent workingmen believe as fully as I do that they no more can be permitted to usurp the State's prerogative of force than can their opponents in their controversies. But if I am wrong, then the decree as it stands reaches the patrol, since it applies to all threats of force.

There is a notion, which latterly has been insisted on a good deal, that a combination of persons to do what any one of them lawfully might do by himself will make the otherwise lawful conduct unlawful. It would be rash to say that some as yet unformulated truth may not be hidden under this proposition. But in the general form in which it has been presented and accepted by many courts, I think it plainly untrue, both on authority and principle.

It is plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combination, and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination.

It seems to me futile to set our faces against this tendency. Whether beneficial on the whole, as I think it, or detrimental, it is inevitable, unless the fundamental axioms of society and even the fundamental conditions of life are to be changed. One of the eternal conflicts out of which life is made up is that between the efforts of every man to get the most that he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way.

If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has, to support their interests by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control. I can remember when many people thought that, apart from violence or breach of contract, strikes were wicked, as organized refusals to work. I suppose that intelligent economists and legislators have given up that notion to-day. I feel pretty confident that they equally will abandon the idea that an organized refusal by workmen of social intercourse with a man who shall enter their antagonist's employ is unlawful, if it is dissociated from any threat of violence and is made for the sole object of prevailing, if possible, in a contest with their employer about the rate of wages. I repeat at the end, as I said at the beginning, that this is the point of difference in principle, and the only one, between the interlocutory and final decree [injunction].

EMPLOYERS' LIABILITY—DUTIES OF MASTER—ASSUMPTION OF RISK BY EMPLOYEE—*Cherokee and Pittsburg Coal and Mining Co. v. Britton, 45 Pacific Reporter, page 100.*—This action was brought in the district court of Crawford County, Kans., by Simon Britton, administrator of William James, deceased, against the coal and mining company above named to recover damages on account of the death of said James, an employee of said company, caused by a rock falling upon him from the roof of the mine in which he was at work. A judgment was rendered for Britton, and the defendant company carried the case on writ of error to the court of appeals of the State, which rendered its decision June 2, 1896, and reversed the judgment of the lower court.

The opinion of said court was delivered by Judge Johnson, and in the syllabus of the same, which was prepared by the court, the following principles of law were stated:

A duty enjoined, either at common law or by statute, which is omitted, and by reason thereof injury occurs to some of the employees in

the service of the delinquent party, it is direct negligence of the person owing the duty, and not of his employees.

No duty devolving upon the owner or operator of a coal mine, or other work of a dangerous character, can be delegated to an agent or employee so as to relieve the owner or proprietor from his personal responsibility. No duty required of him for the safety and protection of his employees can be transferred so as to exempt him from his liabilities. He may, and often must, delegate the performance of such duties to his subordinates; but he assumes the responsibility of all of his servants for the acts of those subordinates in that particular capacity, to the same extent as if those acts were literally his own.

Where a person enters into the employment of another, as a general rule, he is presumed to be competent to perform the kind of service required of him by such employment, and he is held to assume the ordinary risks and hazards incident to the business upon which he enters, so far as the risks at the time of entering upon the business are known to him, or should be readily discernible by a person of his age and capacity in the exercise of ordinary care. The risks must be inherent in the business and not arise from defects in the master's discharge of his personal duties.

While it is the duty of the owner or operator of a coal mine to provide his employees with a reasonably safe place to perform their labor, he is only bound to exercise ordinary care in providing for the safety of the men engaged in the mine, so far as it could reasonably be expected. He is not an insurer against unforeseen accidents, which are liable to happen from the action of the weather, or the unanticipated slipping of earth, slate, coal, or stone from the walls or roof of the mine.

Before the owner or operator of a coal mine can be held liable for the death of one of the employees engaged in mining coal, caused by the falling of loose rock or earth from the roof of the mine, it must be shown that the owner or operator had previous knowledge of the defective or dangerous condition of the roof, or by the exercise of ordinary care and caution, he could have discovered the defective condition thereof.

The owner or operator of a coal mine is only held to the exercise of ordinary care in the employment of competent and skillful operators and superintendents, and in the construction and repair of the mine, so as to make it reasonably safe for the protection of those employed therein.

EMPLOYERS' LIABILITY—DUTIES OF SERVANT—DUTIES OF MASTER—*Missouri, Kansas and Texas Ry. Co. v. Young, 45 Pacific Reporter, page 963.*—Action was brought in the district court of Labette County, Kans., by James S. Young to recover damages for personal injuries alleged to have been sustained while in the employ of the railroad company above named. Judgment was rendered in his favor, and the railroad company brought the case on writ of error to the court of appeals of the State, which rendered its decision July 13, 1896, and affirmed the judgment of the lower court.

The opinion of the court was delivered by Judge Johnson, and in it the court laid down certain general principles on the relative duties of employers and employees. The syllabus of said opinion was prepared

by the court, and the following, showing the principles above referred to, is quoted:

Where a person seeks employment in any line of business where there is danger, he assumes the risk and hazard ordinarily incident to such employment. By accepting the employment, he represents himself as competent to perform that kind of work, and that he will not be guilty of negligence in and about the performance of the same. He owes to his employer vigilance and care in the execution of the undertaking; and where he has been guilty of negligence, contributing to his injury personally, he can not recover for such injury.

It is the duty of the master to furnish his servant with a safe place to perform the work he undertakes to do, and to provide him with such tools and instrumentalities with which to do the work as are reasonably safe. If the master performs all that is required of him under the law, and the servant is injured by accident or through lack of proper care on his part, the master is not liable for such injury; but if the master fails to furnish the servant with a safe place to perform his work, or fails to furnish him with suitable and reasonably safe instrumentalities with which to perform his work, and the servant is injured by reason of the master's failure, then the master is liable, unless the servant, knowing the defective condition of the tools, uses them without complaint; then he waives his right to damages.

It is the duty of the railroad company to furnish its employees with reasonably safe tools and implements with which to perform their work, and also to exercise reasonable care and diligence to see that the tools and instrumentalities furnished by it to the employees are kept in such state of repair and safe condition for which the employees are required to use them. Where the railroad company has furnished, in the first instance, such reasonably safe tools and implements to the employee, to be used in the performance of the work he undertakes to do, and the tools become worn, or some latent defect exists, of which the company has no knowledge, or which, by the exercise of ordinary care and diligence, it could not have discovered, and the employee using the same has the same means of knowing the condition of the tools that the company has, and the tools are by each considered reasonably safe, and the employee is injured by the use of the tools, it is a mere accident or misfortune for which the company is not liable.

EMPLOYERS' LIABILITY—ELECTRIC RAILWAY COMPANY—*McAdam v. Central Railway and Electric Co., 35 Atlantic Reporter, page 341.*—An electric street railway and light company constructed its railway in such a manner that the support and span wires, which passed over the trolley wire, might become dangerous by contact with the trolley wire, unless properly insulated. The plaintiff, a lineman of the company, in pursuance of his directions, ascended a pole, and, while on the pole, received an electric shock from taking hold of a support wire, due to the fact that a span wire, which was not insulated, had come in contact with the trolley wire. Said shock caused him to fall to the ground, and by said fall he was severely injured. He brought suit against the company, in the superior court of Hartford County, Conn., to recover damages for his injuries and judgment was given in his favor. The company

appealed the case to the supreme court of errors of the State, which court rendered its decision March 26, 1896, and affirmed the judgment of the lower court.

The opinion of said court was rendered by Judge Hammersley, and in the course of the same he used the following language:

The reasons of the appeal seem to be a summary of the defendant's argument upon the trial, and apparently the errors mainly relied on are the alleged erroneous conclusions reached by the court upon questions of fact. In its brief, however, the defendant claims that, in finding gross negligence in the construction of the defendant's wires, the court erred in measuring the legal duty of the defendant by an erroneous standard. The trolly wire, as used by the defendant, is charged with an agency of exceeding danger to life, and is capable of communicating such deadly quality to any wire or conductor of electricity that may come in contact with it. When the legislature authorizes a corporation to use such an agency in the public streets, the law implies a duty of using a very high degree of care in the construction and operation of the appliances for the use of that agency, requiring the corporation to employ every reasonable precaution known to those possessed of the knowledge and skill requisite for the safe treatment of such an agency for providing against all dangers incident to its use, and holds it accountable for the injury of any person due to the neglect of that duty, whether the person injured is or is not one of its own employees. This standard of duty was correctly applied to the facts as found by the court below. The method of construction in connection with the failure to insulate the span wire was a violation of the duty imposed on the defendant by law.

EMPLOYERS' LIABILITY—FELLOW-SERVANTS—*Buckalew v. Tennessee Coal, Iron and Railroad Co., 20 Southern Reporter, page 606.*—Louella Buckalew, administratrix of the estate of Wm. H. Buckalew, deceased, brought suit in the city court of Birmingham, Ala., against the Tennessee Coal, Iron and Railroad Company to recover damages for the death of her intestate. The evidence showed that said Wm. H. Buckalew was a convict sentenced by the criminal court of Jefferson County, Ala., for two years; that he had been leased or let to the defendant company by the proper authorities of said county; that he was put to work in the coal mines of said company at Pratt City, as such leased convict, and that while so at work he was instantly killed by a fall of slate or stone from the roof of said mine. The plaintiff claimed that the fall of slate or stone was caused by the negligence of the company's superintendent, and that the company was therefore liable in damages. A judgment was rendered for the defendant in the city court, and the plaintiff appealed the case to the supreme court of the State, which rendered its decision June 16, 1896, and reversed the judgment of the city court. Judge Wilkinson, of the city court, instructed the jury that the deceased, although a convict, was a fellow-servant of the superintendent of the mine, through whose negligence it was claimed that the

accident was caused. The principal objection of the plaintiff to the judgment of the city court was directed at this instruction, and, in regard to the same, the supreme court, in its opinion, which was delivered by Judge Head, held as follows:

It seems to have been supposed that some of these counts [in the plaintiff's declaration] were under the employer's liability act, or were governed by the rules regulating the liability of a master for the acts or omissions of fellow-servants. This we think a misconception of the law.

A master's exemption from liability to a servant for negligence of a fellow-servant in a common employment has for its fundamental principle that by voluntarily entering the service the servant engages to take upon himself the natural and ordinary risks and perils incident to the performance of such service, which includes the risks of injuries arising from the wrongs and omissions of fellow-servants in the same employment. When he enters the service it is presumed that he has observed and understands its character, and the character of the servants employed therein, and contracts with reference thereto. If incompetent or unfit servants are introduced or retained in the service of the master, he has the right, growing out of his contract, to demand of the master correction of the wrong, and, if not done, to quit the service. Thus he has the means of protecting himself against the dangers of unfit fellow-servants.

There was under neither count a relation of master and servant between the defendant and the intestate. That relation always grows out of a contract between the parties, express or implied. Here, under the last three counts, the intestate was a prisoner in the custody of the defendant, as his keeper. By law, and the defendant's contract with the proper law officers, it was authorized to put him to labor in the mine, and owed him the duty of doing him no willful harm and of exercising reasonable care for his personal safety. The intestate had made no contract with any one. His servitude was involuntary. It was enforced. He had no right or power to refuse to enter upon the service, or to quit it, at any time, until his sentence expired. Whatever may have been the dangers of the service, howsoever incompetent, careless, or vicious may have been the defendant's agents or servants put to work with or over him, the convict had no voice, volition, or freedom of action in the matter whatever. He had entered into no contract, express or implied, to take the risks of the wrongful acts and omissions of the defendant's servants. He was fellow-servant with no one.

EMPLOYERS' LIABILITY—FELLOW-SERVANTS—*Klochinski v. Shores Lumber Co., 67 Northwestern Reporter, page 934.*—Action was brought in the circuit court of Ashland County, Wis., by John Klochinski against the lumber company to recover damages for injuries received while in the employ of said company. The plaintiff was injured while engaged in helping place logs on a log deck in the steam sawing mill of the lumber company, and alleged, among other things, that his injury was caused by the negligence of one Murray, the superintendent and general manager of the lumber company, who was at the time taking an

active part in operating the log deck. The plaintiff had judgment against the defendant company, and the case was appealed by said company to the supreme court of the State, which rendered its decision May 22, 1896, and reversed the judgment of the lower court. One of the points decided was that although where a person acting as superintendent negligently directs an employee to work on a log deck with him in handling logs, without giving him necessary instructions as to the danger, such negligence will be regarded as that of the master; yet, having himself voluntarily taken part in the work, which was no part of his duty as superintendent, a negligent direction of his to the employee while they are working together will be regarded as that of a fellow-servant.

The opinion of the supreme court was delivered by Judge Pinney and the following, treating of the point above stated, is quoted therefrom:

The plaintiff in his testimony imputes negligence to the sawyer as being an efficient cause of his injury; but, if this was established, it would have been the negligence of a coemployee or fellow-servant in a common employment of the same master, and would furnish no ground of action against the latter. The same holds good, we think, as to the alleged negligence of Murray, the superintendent and manager of the defendant company. Whether he is to be considered as a vice-principal of the defendant or a coemployee and fellow-servant of the plaintiff, depends, not upon Murray's grade or rank, but upon the work being performed by him and the plaintiff at the time. The evidence is quite clear that Murray took hold at the time as a volunteer to do the work on the log deck in place of one just disabled, and he called the plaintiff to assist him in doing it. This was no part of Murray's duty as superintendent or manager, and it would seem that he and the plaintiff, in any view that can fairly be taken of the case, must be regarded as coemployees and fellow-servants of the defendant, engaged in a common employment. Whatever order or direction Murray gave to the plaintiff after he commenced the work on the log deck, and while working there with Murray, must be regarded as the order or direction of a coemployee or fellow-servant, and not of a vice-principal of the defendant. But if Murray, as superintendent and vice-principal, negligently and improperly directed the plaintiff to work on the log deck with him, without giving him necessary or proper warning or instruction as to the danger and hazard of working there, for the lack of which he got injured, this must be regarded as the negligent act of the defendant, for which it would be liable.

EMPLOYERS' LIABILITY—MEASURE OF DAMAGES—*Baltimore and Ohio R. R. Co. v Henthorne, 73 Federal Reporter, page 634.*—One Charles Henthorne, a brakeman in the employ of the Baltimore and Ohio Railroad Company, was injured in a collision. He brought suit against the railroad company in the United States circuit court for the northern district of Ohio, and judgment was rendered in his favor for $15,000. The railroad company brought the case on writ of error before the United States

circuit court of appeals for the sixth circuit, which court rendered its decision April 14, 1896, and sustained the judgment of the lower court.

In the opinion of said court, delivered by Circuit Judge Taft, of the numerous points decided one seems to be of special interest, and the language of the judge thereon is given as follows:

There remains to consider only the objection to the charge with respect to the measure of damages. The charge of the [lower] court, as we interpret it, directed the jury to consider as one element of damage the loss of the plaintiff in his earning capacity by reason of his bodily injuries, and to reach the loss of his earning capacity by estimating as near as they could his probable yearly earnings during his entire life, and to give him a sum that would purchase him a life annuity equal to the difference between the amount which he would have earned each year if he had not been injured and that which he could earn each year in his injured condition. We see no objection to this measure; indeed, we think it technically accurate.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—*Wright v. Southern Pacific Co., 46 Pacific Reporter, page 374.*—Action was brought in the district court of Weber County, Utah, by James A. Wright against the railroad company above named to recover damages for personal injuries received while in the employ of said company. Judgment was rendered for the plaintiff, and the defendant appealed the case to the supreme court of the State, which rendered its decision September 23, 1896, and reversed the judgment of the lower court solely upon the ground that the jury in said court disregarded the instructions of the judge thereof in fixing the amount of damages. With this exception all the important points raised by the defendant were decided in the plaintiff's favor.

The opinion of the supreme court was delivered by Judge Bartch, and the syllabus of the same, which was prepared by the court, contains a clear statement of the facts in the case and the points decided. The following is quoted therefrom:

The plaintiff received the injury complained of while in the employ of the defendant, and while acting in the capacity of switchman in defendant's yards. The engine used in moving the cars was operated without a fireman, the engineer performing the duties of fireman himself. This fact was known to the plaintiff, who continued to work without making any complaint to defendant or to any of its agents. The engine was defective, and required more attention because thereof. Defendant had rules which required switchmen to give signals to the the engineer, and to see that the signals were observed and obeyed before going between the cars, and to abstain from going between them while in motion, for the purpose of coupling or uncoupling them. But these rules were constantly violated, not only by the plaintiff, but also by the yardmaster, as well as the other switchmen. On the occasion of the accident the plaintiff gave the engineer the signal to stop, which was obeyed, and then went between the cars to pull the pin, but being unable to do so he stepped out and gave the "slow back up" signal,

and, without waiting to see if the signal was obeyed, went between the cars to uncouple them while in motion. The engineer, by a quick movement, bumped the forward cars against the back one. The plaintiff's foot was caught under the brake beam. He then gave the signal to stop, which not being observed, he was dragged a distance of two or three car lengths until he fell, when several trucks passed over and crushed his leg below the knee, causing the injury complained of. When the last signal was given, the engineer was in the act of replenishing the fire, and therefore failed to observe and obey it. Plaintiff's leg was amputated above the knee and he has been unable to wear an artificial leg. Evidence was introduced tending to show that the accident would not have occurred had there been a fireman on the engine at the time of the accident. *Held*, that the nonsuit was properly denied; that plaintiff's knowledge of the fact that defendant operated its engine without a fireman was not of itself sufficient to preclude a recovery; that such a result would not follow unless the want of a fireman caused the operation of the engine to be so obviously dangerous that a man of ordinary care and reasonable prudence would refuse to act as switchman. The plaintiff had the right to rely, at least to some extent, upon the judgment of the defendant's agents, who deemed it safe for the engineer to perform the work of a fireman.

An employee, as switchman, assumes the perils and risks ordinarily incident to such employment, including the hazards which observation would bring to his knowledge; but he does not assume the perils occasioned through the negligence of his employer, nor is he bound to anticipate and comprehend all the perils to which he might possibly be exposed because of a want of a sufficient number of employees to perform the service in safety.

The employer has the right to adopt rules for the conduct of business and safety of the employees; but, in order that such rules may avail the employer in a suit for damages for injuries resulting from a breach thereof, they must not only have been known to the employee, but also their observance must not have been waived by the employer.

Where a certain rule of the employer, though established for the safety of the employee, has been habitually disobeyed since its inception, or for a long period of time, in the presence or to the knowledge of the employer, without an attempt to enforce it, or has been disregarded in such manner and for such length of time as to raise the presumption that it was done with his knowledge and approval, the rule will be regarded as abrogated or waived.

Evidence of a customary disregard of the rule of a railroad company by its employees, with the knowledge and approval of the agents of the company, is competent as tending to show that the rule was abrogated or waived.

Where the negligence of the employer and that of a fellow-servant combine to produce an injury to a servant, the employer will be liable in damages to the injured servant.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—ASSUMPTION OF RISK—CONTRIBUTORY NEGLIGENCE—*Chicago, Rock Island and Pacific R. R. Co. v. McCarty, 68 Northwestern Reporter, page 633.*—Action was brought by Patrick McCarty in the district court of Douglas County, Nebr., against the above-named railroad company to recover damages

for personal injuries sustained while in the employ of said company. The evidence showed that McCarty was a member of a construction crew; that they had loaded a train of flat cars with earth on the day of the accident; that Butler, the foreman of the crew, concluded to send the men with the train to unload it when it arrived at its destination; that just as the train started he ordered McCarty to get aboard, and that McCarty, in endeavoring to board the train, slipped and fell and was injured by the train passing over one of his feet, causing amputation. Upon these facts a judgment was rendered for McCarty, in the district court, and the railroad company carried the case on writ of error to the supreme court of the State, which rendered its decision October 26, 1896, and reversed the judgment of the lower court.

The opinion of the supreme court was delivered by Judge Irvine, and in the course of the same he used the following language:

The argument of the railroad company, stated in a condensed form, is that there is no obligation resting upon a master to exercise greater care for a servant's safety than the servant is himself required to exercise; and that, if it was negligence for Butler to command McCarty to board the train while it was in motion, it was contributory negligence for McCarty to obey the order, it being neither alleged nor proved that the danger was not as apparent and as well known to McCarty as to Butler.

Our conclusion after a consideration of the subject is that it is a harsh and unreasonable rule which charges a servant, when commanded to perform an act by his master, with the duty of at once determining whether or not the act can be safely performed, and then performing it at his peril or refusing to perform it at the expense of losing his employment. The risk incurred by obeying a negligent command of the master is not one ordinarily incident to the servant's employment, and is not an assumed risk, because negligence on the part of the master is not presumed to be a feature of the employment. It is true that, where ample time exists for examination and reflection, a servant may not, beyond a certain limit, continue in the service, performing dangerous acts, except at his own risk; and it is this consideration which governs the cases holding that the continued use of defective appliances without protest, and a promise by the master to remedy them, discharges the master from liability. With the case, however, of a command given suddenly, which must be obeyed immediately or not at all, a different question is presented. The servant is confronted with a new danger, one not contemplated when he entered the employment, and one not made a part of it by continued use. The servant has certainly, in the first place, a right to presume that the master gave the command advisedly and in the exercise of due care. If the servant disobeys, he forfeits his employment; and, even though he be aware of the danger, whether or not it is negligence for him to obey depends upon circumstances. The act may be so foolhardy, so clearly entailing disaster, that the only reasonable course is to disobey. The test of negligence is in such cases as in others, whether or not a man of ordinary prudence so situated would obey or refuse. In many cases a man of ordinary prudence, compelled to decide instantly, even though aware of the existence of danger, would prefer obedience, and would take the risk. It is not true, however, because the servant in such case may not be guilty of negligence in obeying, that it follows necessarily that the

master was not negligent in giving the order. In the first place, reflection and the exercise of discretion is the business of the master, and not of the servant. It is the duty of the master to determine what shall be done, and how. In general the duty of the servant is merely to obey; and even when the command is given suddenly and without previous reflection, as in this case, the master, charged with the power of discretion, has imposed upon him the duty of rightly directing and safely directing. Of course, a sudden exigency may arise which would relieve the master of any imputation of negligence in requiring, under such circumstances of exigency, a dangerous act to be suddenly performed. But here the failure to command McCarty to board the train before it started was not due to any sudden exigency, but apparently to mere inattention on the part of the foreman, and a failure by him to conceive the idea of sending men with the train until the last moment. It was not McCarty's duty to go with the train in the absence of a specific order for that purpose; and, under the circumstances, we think there was evidence to support a finding that Butler was negligent in giving the command and McCarty not negligent in obeying it.

The district court gave the following instruction: "It is in general the duty of an employee to obey the orders of his superior, and, in the absence of knowledge or means of knowledge to the contrary, he may presume it safe for him to do so. However, he may not obey blindly and without regard to his personal safety; for it is incumbent on him to protect himself by the exercise of such care and diligence as the circumstances require. But when he receives an order which must be obeyed immediately or not at all, and when he has no time or opportunity for considering the situation, or the danger, if any, of a compliance with the order, he may rely on the skill and judgment of his superior, unless to obey the order would be reckless, rash, or foolhardy on his part. If to obey would be so dangerous as to indicate that the employee had abandoned all care and consideration for his own safety, then obedience would be negligence in itself, which, if it contributed to the injury, would prevent a recovery."

We think there was error in this instruction. The performance of an act by an employee not within the usual line of his duties, and in obedience to a command given instantly and under circumstances permitting no deliberation, is not the assumption of a risk ordinarily incident to the employment, and is therefore not one of the assumed risks of servants. The right to recover for injuries sustained in the course of performing such acts depends upon ordinary considerations of negligence and contributory negligence. The test of negligence is whether a man of ordinary prudence would so conduct himself under the circumstances, and therefore the master is in such case only liable for the consequences of a command which a person of ordinary prudence would not have given under the circumstances, and which a man of ordinary prudence would have obeyed under the circumstances. In stating the law to the jury the court should have borne in mind this test. But the instruction we have quoted departs from the rule in several respects.

In the first place, the first sentence was erroneous in implying that, as a matter of law, McCarty had a right to presume that it was safe for him to obey this command. Where the danger is not known or obvious, as the instruction states, the servant might presume the act safe because it was commanded. But here the danger was as apparent to him as to the master, and there was no basis in the evidence for submitting the case on the theory that the danger was not known or susceptible of knowledge.

In the second place, according to the instruction, the servant would be excused in obeying the order unless obedience would be "reckless, rash, or foolhardy." This can only mean that, in order to charge a plaintiff with contributory negligence in such cases, his act must not only be one which an ordinarily prudent man would not perform, but must be one which no man except a reckless, rash, and foolhardy man would perform. In other words, instead of holding up to the jury as a test of conduct that of a man of ordinary prudence, it raises before them as a type the conduct of a man reckless and foolhardy, and excuses contributory negligence if not within the line of conduct that such a man would pursue.

Finally, this erroneous idea is emphasized by the last sentence of the instruction, by which it is plainly implied that obedience to the command would not constitute negligence unless the circumstances were such as to indicate that the servant had abandoned all consideration for his own safety. This last sentence, to a certain extent, explains the previous one; and the combined effect of the two is to state to the jury that the servant might recover if the circumstances were such that any man, however imprudent, however careless, might have performed it, provided he kept in view the slightest consideration for his safety. In the respects indicated the instruction fails essentially to propose to the jury the true test of negligence, to wit, the conduct of a man of ordinary prudence under the circumstances. Reversed and remanded.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—ASSUMPTION OF RISK—NEGLIGENCE—*Brewer v. Tennessee Coal, Iron and Ry. Co., 37 Southwestern Reporter, page 549.*—Action was brought in the circuit court of Marion County, Tenn., by Lewis Brewer against the company above named to recover damages for injuries sustained while in its employ. In the declaration filed by the plaintiff he alleged that it was his duty to stop all cars loaded with ore at a certain place in the company's stock house on a trestle about 25 or 30 feet above the floor; that a piece of timber about 18 inches wide and 6 inches thick had been placed parallel with and between the tracks on said trestle for servants and employees of the company to walk on while handling the cars; that said timber had been worn off by unloading ore on it until it was not more than two or three inches wide on top and defective, unsafe, and unfit for anyone to walk on; that he and others had notified the company shortly before the accident of the condition of the timber; that the company, by its agent, promised to replace it and ordered plaintiff to continue the work, which he did, rather than lose his job and relying upon the promise to repair; that one afternoon, in attempting to step from a car on to the timber his foot slipped off and he fell through the trestle into the iron ore below, and that from this fall he was severely injured. The defendant company demurred to this declaration, and the circuit court, in its decision, sustained the demurrer and dismissed the suit. The plaintiff appealed the case to the supreme court of the State, which gave its decision November 13, 1896, and affirmed the decision of the lower court.

The opinion of the supreme court was delivered by Chief Justice Snodgrass, and the following is quoted therefrom:

It will be noticed that the declaration does not aver a defect in the walkway used any more apparent to the master than to the servant himself, or one which required special or expert skill to detect. It was a plain and obvious defect, equally within the observation and knowledge of both. It is also to be observed that there is no averment that the plaintiff was led to continue his services with the company on account of promise to repair, but only that he did not decline to work because of fear of losing his job, and that he did continue it, relying upon the express promise of defendant to repair the walkway. It is further to be noticed that there was no promise to repair in any given time, nor is it averred how long before the accident had the promise been made. The true rule on that subject is thus stated by Mr. Bailey in his work on "The Master's Liability for Injuries to Servant" (page 208): "It must appear that the servant was led to continue his employment by the master's promise that the defect complained of should be removed. Where the servant does not complain upon his own account, and continues in the employment, with full knowledge of the risk, he can not recover of the master, because the latter, when the defective condition is called to his attention by the servant, gives assurances, which do not induce the servant to remain, that the defect should be remedied. * * * When there has been a promise to repair or obviate defects, and the servant has received an injury, after such promise, caused by the defect, the question then becomes one of ordinary care on the part of the employee—whether, relying upon such inducement held out by the employer, a prudent workman would take the risk, as well as whether there were reasonable grounds at the time of the injury for expecting the employer would remove the defect." * * *

Our cases, so far as they have gone, are in accord, Railroad Co. *v.* Smith (9 Lea, 685) and Telephone Co. *v.* Loomis (87 Tenn., 504) holding that the exercise of ordinary care is essential on the part of the servant, and that the master can not be charged with his imprudence and rashness. Neither, however, involved the doctrine of protest against the use of defective tools or machinery, and neither are they intended, nor is this, to hold that in doubtful conditions, or in a case where the servant has a right to rely upon the superior judgment of the master, the master might not be held liable, but only in plain cases, as averred in the declaration, of a defect perfectly known to both servant and master, and where it is rashness to use the walkway, and the servant can not put upon the master a liability for its use upon an indefinite promise of repair. If the plank was 18 inches wide, and had been worn until it was but 2 or 3 inches, as averred, it is clear that whatever danger might have existed in its use was perfectly apparent, and therefore one who used it must take the risk. Judgment of the circuit court is affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—DUTY OF MASTER—*Atchison, Topeka and Santa Fé R. R. Co. v. Penfold, 45 Pacific Reporter, page 574.*—Action was brought in the district court of Atchison County, Kans., by Wm. H. Penfold against the railroad company above named to recover damages for injuries received while in the

employ of said company and through its negligence. A judgment was rendered for Penfold, and the company carried the case on writ of error to the supreme court of the State, which rendered its decision July 11, 1896, and affirmed the decision of the district court.

The facts of the case are, in brief, as follows: The plaintiff, in the performance of his duties, undertook to go down the ladder of a car, and the end of one of the rounds of the ladder upon which he stepped, being unfastened and displaced, gave way and he fell to the platform below and was injured. The defective car belonged to the Missouri Pacific Railway Company, but was for the time being in the possession of the defendant company, the Atchison, Topeka and Santa Fé. The negligence alleged was that of the company in whose possession the car was in not inspecting it, and said company alleged in defense that as it did not own the defective car, and consequently had no right to repair it, it could not be required to inspect it.

The supreme court in its opinion, delivered by Judge Johnson, held the contention of the defendant company to be unsound, and the syllabus of said opinion, which was prepared by said court, is given below:

It is the duty of a railroad company to inspect cars owned by or received from another company which the employees of the former are required to handle or use, where there is time and opportunity to do so; and it will be liable to its employees for injuries resulting from defects in such cars which an ordinary inspection would have discovered.

It will not be excused for failure to perform that duty because such cars are only used for a brief time or carried a short distance; nor will the mere fact that the company is not required to repair such defects relieve it from the obligation to inspect.

EMPLOYERS' LIABILITY — RAILROAD COMPANIES — EMPLOYEES' CONTRACTS OF SERVICE — FELLOW-SERVANTS — *Spencer et al. v. Brooks, 25 Southeastern Reporter, page 480.*—Action was brought in the city court of Atlanta, Ga., by J. F. Brooks against Samuel Spencer and others, receivers of the Richmond and Danville Railroad Company, to recover damages for injuries received while in the employ of said receivers as a brakeman on said railroad. A judgment was given for the plaintiff, and the defendants brought the case before the supreme court of the State on writ of error. Said court rendered its decision January 27, 1896, and affirmed the judgment of the lower court.

The facts of the case are sufficiently shown in the opinion of the supreme court, which was delivered by Chief Justice Simmons, and the following is quoted therefrom:

Brooks, a minor, was employed by the receivers of the Richmond and Danville Railroad Company as brakeman on a freight train, and while so employed sustained serious personal injuries by reason of his being run into by the train when engaged in opening the "knuckle" of the bumper of a car, under the direction of the conductor of the train,

preparatory to coupling that car to others belonging to the train. By his next friend he sued the receivers for damages, alleging negligence on the part of the defendants and the conductor, and recovered a verdict for $1,500. The defendants made a motion for a new trial, the grounds of which are set out in the reporter's statement, and to the overruling of the motion they excepted.

1. It is complained that the court erred in excluding, when offered in evidence by the defendants, a contract in writing between the plaintiff and the Richmond and Danville Railroad Company, whereby the plaintiff agreed to be bound by a rule of the company prohibiting brakemen from going between cars for the purpose of coupling or uncoupling, etc., and agreed to waive liability of the company to him for any results of infraction of the rule. There was no error in excluding this contract. It was not a contract with the receivers, but one entered into with the company prior to the receivership. When the company ceased to operate the road and the receivers took charge of it the latter were not bound to retain the employees of the former, and the contracts of the company with its employees were not binding on the receivers unless adopted by them; nor in the absence of such an obligation on the part of the receivers were such employees bound to abide by the terms of any contract entered into with the company. The contract in question, therefore, was not necessarily binding between the plaintiff and the receivers, and there was no evidence showing any adoption of it as between them, either directly or by implication.

2, 3. It was complained that the trial judge, in his charge to the jury, erred in assuming that the conductor was the alter ego of the defendants on the occasion in question, thereby excluding the theory of the defendants that they were fellow-servants, and that the company was, therefore, not liable for any injury resulting from the negligence of the conductor. Ordinarily, the conductor of a train has control of its movements, and brakemen connected with the train are, while engaged in coupling cars to the train at stations, subject to his orders and under his control; and he is not, when directing the movements of the train and giving orders to the brakemen and engineer in connection therewith, a fellow-servant of such employees, within the meaning of the rule as to fellow-servants, but is a vice-principal of the master. The evidence in this case discloses nothing which would take it out of the general rule above stated. It shows that the conductor was in fact directing and controlling the movements of the train, and that the plaintiff and the engineer were acting under his orders at the time of the injury. The instructions complained of were, therefore, not improperly based upon the assumption that the plaintiff and the conductor were not fellow-servants.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FELLOW-SERVANTS—*Illinois Central R. R. Co. v. Hilliard, 37 Southwestern Reporter, page 75.*—This was an action to recover damages for personal injuries. From a judgment for the plaintiff in the circuit court of Hickman County, Ky., the defendant appealed the case to the court of appeals of the State, and said court rendered its decision September 30, 1896, and affirmed the judgment of the lower court.

The opinion of the court of appeals, which was delivered by Judge

Lewis, contains a full statement of the facts in the case, and reads as follows:

E. V. Hilliard was employed as conductor of a freight train of appellant, Illinois Central Railroad Company, which left Mound Station, of that State, October 5, 1893, going southward. But just before reaching Clinton, Ky., the train, moving at about the rate of five miles per hour, broke apart, and Hilliard, being on top of the cars, thereupon started to descend to the ground on a ladder fixed at the end of one of the cars, when a round thereof, as he grasped it, gave way, in consequence of which he fell, and one of his hands was so crushed by a wheel as to necessitate amputation. It is not contended that he was, under the circumstances, out of his proper place, or negligent, or outside his line of duty, in attempting to descend in the manner and time he did so. Nor is there dispute about his fall and injury resulting from insecure fastening of the round which he had to take hold of in order to descend. The questions, therefore, are whether the railroad company was guilty of actionable negligence; and if, or although, it was, whether Hilliard, as conductor, was guilty of such contributory negligence as that but for it the fall and injury would not have occurred. And those questions involve an inquiry as to the respective and relative duties of the two parties. As the lower court instructed the jury, it was the duty of the company to provide and keep in good and safe condition the ladders attached to the several cars; and, as it further instructed, if at the time plaintiff was hurt the ladder in question was in an unsafe condition, and defendant knew it, or by the use of ordinary care could have known it, in time to have put same in a safe condition, and the injury resulted from such condition of the ladder, then plaintiff was entitled to recover, unless plaintiff knew, or by exercising ordinary care could have known, that the ladder was in such condition.

Defendant asked but the court refused to give the following instruction: "That the car inspector of the defendant and the plaintiff, as conductor of the freight train upon which the accident happened, were fellow-servants engaged in the same line of service as to the inspection of the cars in said train, and though the jury may believe from the evidence that said inspector was guilty of negligence in the inspection of said cars, yet they can not find for plaintiff, unless they believe said negligence was gross negligence." That instruction was properly refused, because abstract and misleading. In the first place, the person employed at Mound Station to inspect each car of a train and ascertain if it is in a safe condition was not a fellow-servant of plaintiff in the sense of being upon a common footing and agents of each other. They acted in different spheres, and neither could or was required to know whether the other was properly doing his duty. In the second place, it would have been improper to require the jury to believe that the inspector was guilty of gross negligence. The simple inquiry was, as they had been instructed, whether the company, through its inspector, used ordinary care in examining the cars, so as to ascertain whether the ladders attached to each were in a safe condition, for it was the legal duty of the company to guard against every source of danger that it could, by the exercise of that kind and degree of care, foresee and prevent. And, while a railroad company can not be required to insure the safety of a train, it is bound to make a reasonable, proper, and careful examination of each car. The evidence in this case shows that the bolt which held the defective round of the ladder was so rusted and worn that the top slipped off when plaintiff

grasped the round. And the jury might have reasonably concluded that the inspector could and would, by using proper and reasonable care, have discovered the fact; and, having failed to do so, the legal liability of the company was fixed. On the other hand, the conductor, while required to examine the condition of a train before taking charge of it, could not be reasonably required or expected to make such close and minute examination as to discover a latent defect. If the ladder had been detached or out of place, it would have been the plaintiff's duty to have discovered it. There is plainly a difference in the degree and character of examination of cars required of the inspector, who is employed for that special purpose, and that required of a conductor. If there was not, there would be no use for an inspector. Perceiving no error of law on the trial of this action, the judgment is affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FELLOW-SERVANTS—*Oregon Short Line and Utah Northern Ry. Co. v. Frost, 74 Federal Reporter, page 965.*—Action was brought in the United States circuit court for the district of Montana by Hattie Frost, as administratrix of James Frost, deceased, against the above-named railroad company to recover damages for the death of the intestate. The plaintiff recovered a judgment, and the defendant company brought the case on writ of error before the United States circuit court of appeals for the ninth circuit. Said court rendered its decision June 15, 1896, and reversed the judgment of the lower court. The evidence showed that Frost was an engineer in the employ of the railroad company on train No. 5; that on the day he was injured the train dispatcher at the superintendent's office at Pocatello telegraphed an order to the operator at Dillon that train No. 5 should wait there until 2.45 p. m. for train No. 32; that said operator received said order thirty-two minutes before train No. 5 was due there, but neglected to warn it on its arrival; that said train therefore went on and had gone but a short distance beyond Dillon when it came into collision with train No. 32, and that in said collision Frost was injured and died eight days thereafter from the effects of the same. The case hinged on the question as to whether the telegraph operator, through whose negligence Frost was injured, was the vice-principal of the railroad company, so that his negligence would be that of the company for which it would be responsible, or whether he was a fellow-servant of the injured man, for whose negligence the railroad company would not be responsible.

The opinion of the circuit court of appeals was delivered by Judge Gilbert, and in giving the reasons of the court for its decision he used the following language:

The case presents the important question whether or not the local telegraph operator at the station, who receives and delivers the orders of the train dispatcher, is the fellow-servant of the employees of the railroad company in charge of the train. It is conceded that the train dispatcher, in giving notice of a change in the running of trains, acts for

and in behalf of the railroad company. He is in that respect a vice-principal, not because of his attitude to other employees as their superior, nor because he has charge of a department, but because of the nature of the duty which he discharges. He is, for the time being, clothed with the responsibility which rests upon the company to furnish its employees a safe place of operation. The ordinary running of the train is established by a fixed schedule, of which all operatives have notice, and by which their acts must be governed. When occasion arises to disturb the regular schedule, the duty rests upon the company to give timely notice to those that are to be affected thereby. This it is the office of the train dispatcher to do. But when he has given that information to a local operator, is that duty discharged, or does there rest upon the company the further obligation to see that all of its servants through whose hands that message goes on its way to the train employees shall deliver it as given, and that in case of any failure in the line of communication the company shall be liable for the resulting injury? After a careful consideration of the question and of the strong reasons that may be urged in support of either view of this proposition, it is our conclusion that the better doctrine is that the local telegraph operator is the fellow-servant of those who are in the control and management of the train. It is evident, and the court will take judicial notice of the fact, that a disturbance in the regular time schedule of trains is frequent and necessary in the operation of all railroads. It then becomes necessary to issue special orders for their direction. Conductors, engineers, and brakemen have knowledge of that fact, and they know when they enter into the employment of the railroad company that their notice of such orders must come through the local telegraph operator at the station, and that they incur the risk of accident through his negligence or mistake. The special orders issue, in the first instance, from the train dispatcher. It is obviously impossible for him to give personal notice to all who are to be governed thereby. The orders must, of necessity, be conveyed to some one in behalf of the others. The local telegraph operator, the conductor, the engineer, and the brakemen are all engaged in a common employment—that of moving the train. The operator, it is true, is subject to no personal risk from any change in the time card; but that fact is not a controlling one in deciding who are his fellow-servants. There must be some point where the responsibility of the company ceases. If it does not cease at the time when information is given to the operator, where shall it cease? Could it be said that a conductor who received from the operator a message from the train dispatcher, yet who failed to guide his action thereby, stands in the relation of vice-principal to the conductor, engineer, or brakeman of another train, who may be injured by his negligence, or that, if the operator should receive instructions from the train dispatcher to send out a flagman to signal an approaching train, the company is responsible for the negligence of such flagman in failing to carry out such instructions? It seems just in principle to hold that the company has discharged its duty when it has given information to one of its servants who is engaged in the common employment of the others that are to be affected thereby, and has instructed him to notify his coemployees, and that when the company has exercised due care in selecting such local operator, in the first instance, and has not been negligent in employing or retaining him in his office, it has discharged its duty, and that such operator stands in the attitude of a fellow-servant to the train men. It follows from these views that the judgment must be reversed, at the cost of the defendant in error, and the cause remanded for a new trial.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—MASTERS' NEGLIGENCE, ETC.—*Terre Haute and Indianapolis Railroad Company v. Becker, 45 Northeastern Reporter, page 96.*—Action was brought in the circuit court of Cass County, Ind., by Mary A. Becker, administratrix, against the above-named railroad company, to recover damages for the death of her husband, Martin Becker, who was killed in a collision. Judgment was rendered for her, and the railroad company appealed the case to the supreme court of the State, which rendered its decision November 10, 1896, and reversed the judgment of the circuit court. The opinion of the supreme court was delivered by Judge Jordan, and the following, which contains a clear statement of the facts in the case, is quoted therefrom:

It will be seen that, among others, the following facts are disclosed by the special verdict: That on and before December 10, 1889 (being the day on which the fatal collision occurred), the company was operating and running daily, south bound, over its road, four regular trains—two passenger and two freight—and also a like number running north. The time of the arrival and departure of each of these trains at the respective stations along the road was fixed by the appellant, and printed in time-schedules or time-tables, and these were issued and delivered to all of its servants then engaged in operating said trains. On the reverse side of these time-tables were printed rules adopted by appellant for the direction and government of all of its servants engaged in operating trains. That under these rules conductors and enginemen of all work and wild trains were required to keep the same out of the way and off of the time of all regular passenger and freight trains, and in no case to occupy the main track of the road within ten minutes of the time of any regular train. That by these rules the enginemen and conductors were equally responsible for keeping off of the time of other trains.

The court here says in effect that the conductor and engineman of a wild train did, on December 10, 1889, violate these rules and got on the main track in the time of a regular train, No. 60, on which Martin Becker was fireman, and thereby caused a collision in which Becker was killed, and then goes on to say as follows:

That previous to this collision the appellant gave no notice to the deceased, nor to its servants in charge of said local No. 60, of the whereabouts of this work train on that morning, and that neither he nor they had any knowledge that said train on that day was working wild between Crawfordsville Junction and Rockville. The principal insistence of counsel for appellee in answer of the contention of counsel for appellant is that, under all the circumstances, negligence resulting in the death of the deceased servant must be imputed to the appellant, for the following reasons: First, in ordering the work train to work wild between Crawfordsville Junction and Rockville, over a part of its road which they insist, under the facts, is shown to be dangerous; second, failure to notify Becker and the servants in charge of the train upon which he was at work of the whereabouts of the wild train on the morning in question, previous to the accident; third, failure to adopt a rule requiring notice to be given to its regular trains of the whereabouts of wild trains. These facts, in connection with the negligence of the

employees in charge of the work train, they contend, constitute the proximate cause of the fatal collision.

It may be conceded, under certain circumstances, that a railroad company would be guilty of actionable negligence in ordering a train to work wild, in the absence of notice to its servants along its line of the fact, in the event the injury or death of the latter was due to the failure, in whole or in part, to give such notice. But in the case at bar, under the facts and circumstances as they are shown, we are of the opinion that it can not be affirmed, as a legal proposition, that the death of appellee's decedent was due to, or resulted from, any negligence of the appellant. The reasons for this conclusion, we think, are obvious. The time at which all the regular passenger or freight trains on appellant's road were due to arrive at and depart from each station had been fixed and published in printed schedules or time-tables, and these had been delivered to all of its servants engaged in operating its trains. It had also adopted, and caused to be printed and delivered to such servants, a series of rules and regulations for their guidance and control in conducting and running trains under their charge. One of these rules expressly required of and enjoined upon conductors or others of its employees in the charge of work and wild trains the duty to keep such trains out of the way of all regular passenger and freight trains, and under no event were they to occupy the main track within ten minutes of the time of any regular train, etc. On the morning of the accident in question the jury find, in effect, that the conductor and engineman in charge of the work train which had been ordered to work wild disregarded, or rather neglected to discharge, their required duty in failing to sidetrack their train at Waveland, and there remain until the arrival and departure from station of the local freight, upon which Becker at the time was serving as fireman; that, notwithstanding their duty in that respect, they "recklessly," "carelessly," and negligently left said station with their train before the arrival of local No. 60, and on the time of the latter, without taking any precaution to prevent the collision whereby Becker was killed.

The conclusion that the death of appellee's decedent was wholly due to the negligence of the conductor and engineman in control of the work train, in leaving with their train the station as they did, before the arrival of No. 60, and in running on its time, can not be successfully controverted, and is the only reasonable and legitimate conclusion that can be deduced from the facts in the case. Appellee admits that the employees in charge of this work train were the fellow-servants of the deceased. Hence, under a well-settled rule, there can be no recovery, as against appellant, on account of his death, resulting, as it did, under the facts, from their negligence. It clearly appears, we think, from the finding of the jury, that the death of the servant in question must be attributed solely to the negligence of his fellow-servants, and under the facts this precludes a recovery.

It can not be said that ordering the train in question to work wild, under the circumstances, was an act of negligence; and when, in this connection, we consider the rules of appellant relative to the duty required of those in control of wild trains, the law will not authorize us in holding that, in addition to these, it was also incumbent upon the company to notify Becker and the other servants in control of his train of the fact that the train in controversy was working wild, and at what point on the road it was, previous to the collision. This duty, under the facts, was not required of the appellant, and its omission to give the notice can not be said to render it guilty of negligence. It had the

right to presume that its servants in charge of the work train would discharge their duty as provided by the rules, and would keep out of the way of all regular trains, and not run upon the time of any of the latter.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—NEGLIGENCE OF COMPANY'S SURGEON—*York v. Chicago, Minneapolis and St. Paul Ry. Co., 67 Northwestern Reporter, page 574.*—This was an action brought in the district court of Jones County, Iowa, for damages for the death of John Graham, an engineer, who was fatally injured in a collision of two freight trains. A verdict was rendered for the defendant, and the plaintiff appealed the case to the supreme court of the State, which rendered its decision May 26, 1896, and affirmed the judgment of the lower court. Damages were sought upon the ground, among others, that the surgeon of the railroad company, who was employed and paid by said company to treat its injured employees, as an act of charity or humanity, wrongfully and negligently moved Graham, against his protest, from the place to which he had been taken when injured to a hotel, which act, it was claimed, contributed to produce his death. Upon this point, in its opinion, delivered by Judge Kinne, the supreme court used the following language:

It is not claimed that Dr. Adair was not a skillful physician, or that defendant did not exercise due care in employing him, but the claim is made that he acted wrongfully and negligently in doing as he did. We understand the rule to be well settled by a large number of cases that, under such circumstances, the defendant is not liable for acts of negligence of the physician who is employed to treat gratuitously its injured employees.

EMPLOYERS' LIABILITY—RELEASE OF CLAIM FOR DAMAGES—*Chesapeake and Ohio Ry. Co. v. Mosby, 24 Southeastern Reporter, page 916.*—Edgar W. Mosby, who was a conductor of a freight train on the Chesapeake and Ohio railroad, and while thus engaged was seriously injured in a collision, brought an action for damages against the railroad company. Pending said action he instituted a suit in the chancery court of Richmond, Va., to set aside a release of all claim for damages, given by him to the railroad company, on the ground that at the time he executed the release he was mentally incompetent. The chancellor, after hearing the case, granted the relief asked and set the release aside. From this action the railroad company appealed to the supreme court of appeals of the State, which rendered its decision April 16, 1896, and reversed the decree of the chancellor.

The opinion of said court was delivered by Judge Harrison, and, in the course of the same, he used the following language:

"The law presumes that there is in everyone capacity to contract, and accordingly, where exemption from liability to fulfill an engage-

ment is claimed by reason of the want of such capacity, this fact must be strictly established on the part of him who claims the exemption. Moreover, it is only in certain prescribed cases that this protection can be claimed; and therefore weakness of mind short of insanity or immaturity of reason in one who has attained full age, or the mere absence of experience or skill upon the subject of the particular contract, affords per se no ground for relief at law or in equity." (1 Chit. Cont., 186.) The same author from whom this general rule has been quoted states its qualification thus: "Although weakness of intellect, short of insanity, in one of the contracting parties is no ground per se for invalidating a contract, it may have that effect if additional facts, betraying an intention to overreach, can be proved." (2 Chit. Cont., p. 1050.)

This rule, with its qualification, is substantially adopted by this court in Greer *v.* Greers, 9 Grat., 330. It was there said that, although the person may labor under no legal incapacity to do a valid act or make a contract, yet, if the whole transaction, taken together with all the facts, mental weakness being one of them, showed that consent, the very essence of the act, was wanting, it would be void. Where a legal capacity is shown to exist that the party had sufficient understanding to clearly comprehend, that he consented freely to the special matter about which he was engaged, and no fraud or undue influence is shown to have been used to bring about the result, the validity of the act can not be impeached, however unreasonable or imprudent it may seem to others. It is not the propriety or impropriety of the act, but the capacity to do the act freely, that must control the judgment of the court.

These general principles are entirely applicable, and are all that need be invoked in considering the case before us.

The plaintiff was very seriously injured in a collision between two trains on the road of the defendant, he being conductor on one of said trains. It satisfactorily appears from the evidence that about two months after the accident the plaintiff went to the office of the superintendent of the defendant company, and agreed upon a settlement of his claim for damages against the company. About two months after this agreement was made the plaintiff went to the office of the superintendent and collected $300 on account of this settlement and gave a receipt therefor, which fully describes the accident and admits that his injuries were received under circumstances exonerating the company from responsibility. On the 22d of September, 1891, the plaintiff again went to the office of the superintendent, and collected the remaining $150 due under the agreement, and gave a final voucher therefor, which is a more elaborate paper than the first, reciting that the injuries were received under circumstances completely exonerating the company from liability, and that the amount was received in full compromise, satisfaction, and discharge of all his claims or causes of action, and particularly of all claims or causes of action arising out of personal injuries received by him in the accident as to which the settlement had been made.

The plaintiff admits the genuineness of his signature to both these papers, but says that he has no recollection of signing any but the last one for $150, and further insists that both papers should be declared null and void, because at the time of their execution he was mentally incompetent, and that the defendant took advantage of his incapacity to procure them.

The evidence wholly fails to sustain this contention; on the contrary, it shows that the plaintiff had an intelligent comprehension of his

rights in the premises. The first receipt was given four months and the other six months after the accident, when the plaintiff had been going about for months.

The plaintiff insists that the consideration for the settlement made by him was totally inadequate, and that this circumstance is sufficient to justify the court in releasing him from the contract he has made.

If the plaintiff was at the time he signed the release competent to appreciate and understand its nature and effect—and we have seen that he was—and no unfair methods were used to induce him to sign it, then it makes no difference whether the settlement was, on his part, wise or unwise. So far as this transaction is disclosed by the record, it is absolutely free from the suspicion of fraud, advantage, or undue influence on the part of the defendant. There is nothing in the record upon which to base the contention that the consideration was inadequate. For aught that appears to the contrary it may have been a wise contract for the plaintiff to make. There is no evidence showing that the company was under any liability to the plaintiff, and none can be inferred, for in a suit by an employee against a railroad company the mere proof of the accident raises no presumption of negligence against the company.

The law favors the compromise and settlement of disputed claims. It is to the interest of all that there should be an end of litigation; and a settlement deliberately sought, as this was by the plaintiff, ought not to be set aside except upon the most satisfactory evidence.

For the foregoing reasons the decree complained of must be reversed and set aside, and this court will enter such decree as the court below ought to have entered.

EMPLOYERS' LIABILITY—RELIEF ASSOCIATIONS—*Chicago, Burlington and Quincy Railroad Company v. Miller, 76 Federal Reporter, page 439.*—J. E. Miller brought suit in the United States circuit court for the district of Colorado against the above-named railroad company to recover damages for personal injuries sustained while in the employ of said company. One of the defenses pleaded by the railroad company was to the effect that Miller was a member of a relief association, organized by the railroad company and its employees, for the protection and relief of employees injured in the service of said company; that when he joined said association, as a condition of his membership, he promised and agreed in his application that, in consideration of certain amounts which had been, and were to be, paid by said railroad company for the maintenance of the relief association, the acceptance of benefits from said association for injuries should operate as a release and satisfaction of all claims for damages against the company arising from or out of such injuries; and that he had accepted and received the benefits due him, by reason of his membership, on account of the injury complained of by him in the suit. The plaintiff, Miller, demurred to this plea, and the demurrer was sustained by the circuit court. Judgment was rendered for him after trial on the remaining issues, and the defendant company carried the case on writ of error to the United States circuit court of appeals for the eighth circuit, which

rendered its decision October 19, 1896, and affirmed the judgment of the lower court. The opinion of said court was delivered by Circuit Judge Thayer, and the following is quoted therefrom:

The chief error complained of consists in the action of the trial court in sustaining the demurrer to the third defense which was pleaded by the defendant company. With reference to the alleged error, it is to be observed that it has been held in several well-considered cases that if a railroad company organizes a relief association for the special benefit of its injured, sick, and disabled employees, pays the incidental expenses of such association, acts as treasurer or custodian of its funds, and enters into a binding obligation to support and maintain the association by paying out of its own funds such sums to discharge the obligations of the association as the assessments levied upon the members of the association are inadequate to pay, such an association, on admitting an employee of the railroad company to membership, may lawfully stipulate that, in the event of an injury being sustained by him, the acceptance of benefits from the association shall operate as a relinquishment of any right of action which the employee may have against the railroad company in consequence of the injury, and that the stipulation so made inures to the benefit of the railroad company, and constitutes a legal defense to a suit brought against it by the injured employee if the latter accepts benefits from the association. The various courts which have had this question under consideration appear to agree that the stipulation in question is not opposed to sound public policy, but, on the whole, is conducive to the well-being of those whom it immediately affects, inasmuch as many railroad employees, owing to the dangerous character of their employment, are hurt without any culpable negligence on the part of their employer, and inasmuch as the employee retains, until after he sustains an injury, the right to elect whether he will sue his employer for negligence or accept benefits from the association. It also appears to be agreed that the obligation assumed by the employer to maintain and support such association by contributing the funds necessary for that purpose creates a privity of contract between the employer and all the members of the association, and at the same time furnishes a sufficient consideration to support such contract.

Conceding the foregoing propositions to be supported by adequate authority, we nevertheless think that the plea filed by the defendant below, to which the demurrer was addressed, failed to show with the requisite certainty that the defendant had become legally obligated to the members of the relief association to maintain that organization, and to supply such funds as might at any time be needed by it to meet its obligations. There is no direct allegation found in the plea that the defendant had assumed such an obligation, the nearest approach to such an averment being, in substance, a recital that the plaintiff had agreed, in consideration of certain amounts which had been and were to be paid by said company for the maintenance of the relief department, that the acceptance of benefits from the relief department should operate as a release of all claims for damages against the defendant company. The plea failed to show, we think, that if the relief association was at any time short of funds to meet its obligations to a member of the association, such member could maintain an action against the defendant company for the amount that was due to him. The plea further failed to show what sum of money, if any, the defendant company had theretofore contributed out of its own funds to the support of the relief association. It also failed to show what other beneficial acts,

if any, the defendant company had done and performed toward the maintenance of the association. In short, it would seem to be fairly consistent with the averments of the plea that the moneys theretofore expended by the relief association in the case of its injured and disabled members had not been paid out of the funds of the defendant company, but had been paid from sums deducted from the wages of those who were members of the association.

In a case of this character, where the contract invoked as a defense lies close to the line dividing agreements that are lawful from those which are unlawful, it is proper to require the defendant to set out the arrangement which existed between itself and its employees in the form of a relief department with such fullness and certainty that the court may be able to say from an examination of the same that the arrangement is fair and reasonable, and that it is neither objectionable on grounds of public policy nor voidable for want of a valuable consideration. The demurrer to the third defense was properly sustained. As the record discloses no material error, the judgment is affirmed.

Circuit Judge Caldwell, while in agreement with the other members of the circuit court of appeals in affirming the judgment of the lower court, yet disagreed with them in part, as his opinion, quoted below, will show:

Assuming that contracts of this character are valid, this case is rightly decided on the ground stated in the opinion. But such contracts, in so far as they attempt to release a railroad company from liability for injuries inflicted on its employees through its negligence, are without sufficient consideration, against public policy, and void, and must ultimately be so declared by all courts.

EMPLOYERS' LIABILITY—STREET-RAILWAY COMPANIES—FELLOW-SERVANTS—*Lundquist v. Duluth Street Railway Co., 67 Northwestern Reporter, page 1006.*—This action was brought in the district court of St. Louis County, Minn., by Gust Lundquist to recover damages for injuries received while in the employ of the street-railway company. The case was dismissed by the court, and from an order denying a motion for a new trial the plaintiff appealed to the supreme court of the State, which rendered its decision July 3, 1896, and affirmed the order of the district court. The evidence showed that the plaintiff, with others, was engaged in repairing the tracks on the street; that the company had adopted a rule that the motorman of each car as it approached should give warning to the men so employed; that the plaintiff was struck and injured by one of the company's cars, and that the motorman of the same had given no warning of its approach.

The opinion of the supreme court was delivered by Chief Justice Start, and in the course of the same he used the following language:

Counsel for the plaintiff claims that it was the defendant's duty to furnish to plaintiff a reasonably safe place in which to work, and, as a means of making the place in question safe, it was necessary to give him due warning of the approach of its cars, and, having made a rule

requiring the motorman to give such warning, his failure to do so was the negligence of the defendant and not of a fellow-servant.

It is true, as claimed, that it was the duty of the defendant to use reasonable care to provide a safe place in which the plaintiff was required to work, and that this duty, like the duty to furnish safe machinery and proper appliances for doing the work, was an absolute one, which the defendant could not delegate so as to be relieved from liability in case the duty was neglected. But if the safe place or safe machinery which the master has furnished and keeps in repair is made unsafe by the negligence of his servants, whom he has selected with due care, in using or operating the place or machinery, and one of his servants is injured thereby, such negligence is that of a fellow-servant. The plaintiff and the motorman in the case at bar were fellow-servants. The plaintiff was injured by the negligence of the motorman in failing to give any signal of the approach of the car, or to slacken its speed, as it was his duty to do. But such duties did not appertain to the work of furnishing, constructing, or equipping a safe place for work, or safe machinery for the execution of the work, but to the operation of the street railway; hence his negligence in the premises was that of a fellow-servant, and the plaintiff can not recover.

EMPLOYERS' LIABILITY—SUBSTITUTION BY EMPLOYER—*Missouri, Kansas and Texas Ry. Co. v. Ferch, 36 Southwestern Reporter, page 487.*—Action was brought in the district court of Grayson County, Tex., by F. F. Ferch to recover damages for personal injuries incurred while he was in the employ of the above-named railroad company. A judgment was rendered for Ferch, and the railroad company appealed the case to the court of civil appeals of the State, which rendered its decision May 20, 1896, and reversed the judgment of the district court.

The material facts in the case are as follows: Ferch was injured by a pile driver crushing his hands while he was placing a ring around the head of a pile to keep it from splitting, which was one of his duties. The accident was not due to negligence on his part or on the part of his coemployees, but to defects in the pile-driving machine, which could have been discovered and remedied by the exercise of ordinary care. The pile-driving gang to which he belonged had been for a long time in the employ of the railroad company; but about two months before the accident occurred it had been ordered to report to the chief engineer of a construction company, which was an independent contractor for the railroad company, and it was still in the service of the construction company when the injury was received. The names of the members of the gang were carried on the rolls of the railroad company, and they were paid with its checks, and some of the evidence seemed to show that Ferch had no knowledge that a change had been made in original employment and that he was in the employ of a master other than the railroad company. There was other testimony, however, to the effect that the members had all been notified of the change of employment by the foreman, and the railroad company claimed that as Ferch was

not in its employ when the accident happened, but in that of its independent contractor, it could not be held liable in damages. Upon this point the supreme court, in its opinion, which was delivered by Chief Justice James, used the following language:

While it can not be doubted that if the machine and crew went into the independent service of the contractor, and subject to its sole direction and control, with knowledge on the part of the crew of the change, appellant would be absolved from the duties that apply to the relation of master, still we think it equally clear that the employer can not relegate his employee to the service of another, under circumstances that do not charge the employee with notice of any change, and thereby escape the obligations of master. The servant can not be held to have ceased being such where he is continued in his ordinary work, and no knowledge is imparted to him of any change in the relations between him and his employer. According to the rule just mentioned, the original employer continues to sustain the relation of master, and (without any reference to the question of his liability to third persons, and without reference to the contractor's liability), in our opinion, it follows that the servant may look to him for the performance of those duties that result from the relation of master, among which was reasonable care in keeping safe the machinery at which he worked.

EMPLOYERS' LIABILITY—TEMPORARY DANGER—*McCann v. Kennedy, 44 Northeastern Reporter, page 1055.*—Action was brought in the superior court of Worcester County, Mass., by William E. McCann against John A. Kennedy, his employer, to recover damages for personal injuries. A verdict was rendered for the defendant by the direction of the court, and the plaintiff brought the case before the supreme judicial court of the State on exceptions. Said court rendered its decision October 22, 1896, and overruled the exceptions.

The opinion of the court was delivered by Judge Holmes and contains a sufficient statement of the facts in the case. It reads as follows:

This is an action for personal injuries, on the ground of negligent superintendence. The plaintiff was at work upon a house in which the defendant was making some changes. He went up a ladder, stepped through a window, and then, in order to avoid a man who was working behind it, stepped to the left upon a joist which had been sawed nearly through for a wellhole, and fell. The plaintiff knew that the customary way to make wellholes was to lay the joists and then cut them out, and, so far as appears, knew where this wellhole would be. It would seem from the plaintiff's testimony that the joist had been cut very recently. Another witness stated, without contradiction, that he had cut it a moment before the accident, and had gone to get an ax to knock the joist out. The only ground on which the plaintiff could recover is that, while the joist remained, it was a trap, and that he ought to have been warned. But the danger was momentary, and it would be impracticable to require employers to warn their men of every such transitory risk when the only thing the men do not know is the precise time when the danger will exist. Exceptions overruled.

MARITIME LIENS—EMPLOYEES ON STEAM DREDGE—*Saylor et al. v. Taylor et al., 77 Federal Reporter, page 476.*—This was a suit originating in the United States district court for the eastern district of Virginia with the filing of a libel against the steam dredge *Morgan* by A. J. Taylor & Bro., the owners of the tug *D. M. Key*, to recover charges for towage. Intervening libels were afterwards filed by S. S. Saylor and others to recover for services rendered on board the dredge. The district court rendered a decree in favor of the Taylors, but held that the intervening libelants, Saylor and others, were not seamen and consequently not entitled to a lien for their wages. Saylor and others, the intervening libelants, appealed from this decision to the United States circuit court of appeals for the fourth circuit, which court rendered its decision November 25, 1896, and reversed the part of the decision of the district court applying to the claim of Saylor and others for wages. The opinion of the court was delivered by District Judge Brawley, and the following is quoted therefrom:

In sustaining the libel, and decreeing priority of lien on the proceeds of the sale of the dredge and its accompanying scows in favor of the tug for towage, the court below has in effect decided that the dredge was a "vessel," and therefore subject to a maritime lien; otherwise it would have had no jurisdiction. If it was a vessel, then the intervening libelants, the engineer and hands employed upon it in doing the work which it was engaged to do, must be considered as seamen, and entitled to priority of payment; for the ship has from the earliest times been recognized as the primary security for the seamen's wages, which take precedence over all other liens or claims upon the same corpus.

The learned judge has decided that the dredge and scows are liable in admiralty for the services rendered [by the tug], but that the laborers employed on the dredge are not entitled to a lien for wages as seamen, their work not being necessary to navigation. The record contains no precise description of the dredge; but, inasmuch as the testimony shows that she was engaged in cleaning out and deepening the channels in Aquia Creek and Nomini Creek, that she had no natural powers of propulsion by oars, sails, or steam, and was moved from Washington by water to the place where she was engaged, it may be assumed that such form and characteristics were given her as enabled her to navigate the water and to transport from place to place the steam shovel placed upon her, and that her occupation was to transport from place to place such steam shovel and the engine and hands employed on her, and to maintain them afloat in her work of deepening channels in navigable waters, an occupation incident to navigation. If so, then she falls within the definition of a "vessel," as given in section 3, c. 1, title 1, of the Revised Statutes of the United States, which is as follows:

"The word 'vessel' includes every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water."

If this craft, this movable thing capable of being transported on the water and engaged in a work incidental to navigation in shoveling mud and removing it by water, is a vessel, then she comes within the maritime jurisdiction, and the persons employed on her in that work are seamen, and the lien on the vessel for wages is correlative. Such persons

fall within the definition of "seamen" in section 4612 of the Revised Statutes, which is as follows:

"In the construction of this title every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof, and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman,'" etc.

It is now well settled that all persons employed on a vessel to assist in the main purpose in which she is engaged are entitled to a lien for wages. The statute above referred to, which declares that persons employed "in any capacity" upon vessels shall be deemed "seamen," seems conclusive upon this point. If it be considered necessary to give a reason for a rule supported by a great weight of authority, it would be found in this, that a vessel and her crew are considered a unit. Each person aboard of her contributes according to his capacity to the success of the enterprise in which she is engaged. If she comes within the maritime jurisdiction, the persons employed aboard of her come also, with all the rights and disabilities which flow therefrom. Among those rights, from the days of Oléron, are that the ship stands responsible for the wages of the seamen.

The decree of the district court, in so far as it is in conflict with the opinions herein expressed, is reversed.

MASTER AND SERVANT—CONTRACT OF HIRING—*Louisville and Nashville R. R. Co. v. Offutt, 36 Southwestern Reporter, page 181.*—Action was brought in the circuit court of Warren County, Ky., by James T. Offutt against the railroad company above named for damages for breach of a contract of hiring. Judgment was rendered for Offutt, and the railroad company appealed the case to the court of appeals of the State, which rendered its decision June 12, 1896, and reversed the judgment of the lower court. The plaintiff in the original action alleged that he had been employed by the railroad company for a number of years as a brakeman and freight conductor and had been discharged for violating some of the rules of the company; that not long after and during a strike on the road he was again employed for special duty, and that the company contracted with him, through its agents, that after the strike was over it would give him regular work as freight conductor, and that said work should continue so long as the plaintiff did faithful and honest work. The evidence showed that after the termination of the strike, which lasted but a few days, the plaintiff was kept on the pay roll as a freight conductor with directions to wait until a place could be found for him; that he was paid up to the end of August, 1890, and that on the 26th day of September, 1890, he received formal notice from the company that he would be allowed no more time, which was equivalent to a discharge from the service of the company. The plaintiff claimed pay up to the 26th day of September and damages for breach of the alleged contract for regular or permanent employment. The court of appeals held in the decision that the alleged contract of employment was a legal one; that the plaintiff was entitled to recover

pay up to September 26, but that he was not entitled to recover damages for breach of contract, as the alleged contract of employment was such an one as could be terminated at any time by either party.

The opinion of said court was delivered by Judge Landes, and so much of the same as bears on the points mentioned above is quoted below:

On the former appeal, the superior court held that the contract alleged in the petition was not illegal or against public policy; that it was not within the statute of frauds; and that a discharged employee for a fixed term, who sues and whose case is tried before the expiration of his term of employment, can recover damages from his employer for discharging him only up to the date of the trial. These are, undoubtedly, correct principles of law, and the first and second, as stated, unquestionably apply to this case as it appears in the record before us. We can conceive of no reason for holding that a contract of employment or of service, either for a fixed term or for an indefinite time, would not be legal, or would be against public policy. In actual experience, such contracts are constantly made; and, on both principle and authority, such contracts must be held not to be within the statute of frauds, and therefore may be made by parol. The third principle or rule is likewise well settled. But whether it applies to this case must be determined from this record. He [Offutt] failed either to allege or prove that he bound himself to serve the appellant either for a definite or indefinite time, even conceding that the appellant promised to employ him as alleged in the petition. Upon his own showing the appellant had no right to make him answer in damages if he failed or refused to enter its services. It will thus be seen that the essential element of mutuality of obligation was omitted from the alleged contract of hiring for the breach of which his suit was brought.

If it be conceded that there was a contract for regular employment, as alleged in the petition and amended petition, still the contract, as alleged and proved, being that "said regular work would continue so long as this plaintiff did faithful and honest work for the defendant," was a contract indefinite as to time or term of employment or service, and was therefore subject to be terminated at any time, at the discretion of either party to it. The inevitable conclusion is that the principle or rule of law laid down in the opinion of the superior court, as to the recovery of damages by an employee for a fixed term, who has been discharged without cause by his employer, has no application to the facts of this case as they are presented in the record. The well-settled rule with reference to the character of hiring that is set up in the petition and amended petition is that when the term of service is left discretionary with either party, or when it is not definite as to time, or when it was for a definite time, provided both parties are satisfied, in either event either party has the right to terminate it at any time, and no cause therefor need be alleged or proved.

Upon the case as it is presented in the record the appellant had the right to terminate the relation between it and the appellee at will and without cause, and is not liable for damages for so doing. But the appellee had and has the right to reasonable pay for the time he waited for employment or work from the appellant up to the date on which he received notice of discharge.

This will entitle the appellee to reasonable pay for his time to the 26th day of September, 1890, deducting what he has received therefor from the appellant.

MASTER AND SERVANT—DEGREE OF CARE—*Fry et al. v. Hillan, 37 Southwestern Reporter, page 359.*—Action was brought in the district court of Bexar County, Tex., by James Hillan against T. C. Fry and others to recover damages for personal injuries. Hillan, an employee of the Galveston, Harrisburg and San Antonio Railway Company, was riding, in the discharge of his duties, on the iron ladder on the side of a freight car which was being moved on a track in the coal yard belonging to Fry and others. Coal was piled so close to the track that the ladder struck it and Hillan was knocked off and severely injured. Upon the above state of facts a judgment was rendered in the district court for the plaintiff, and the defendants appealed the case to the court of civil appeals of the State, which rendered its decision October 14, 1896, and reversed the judgment of the lower court. On one point, however, viz, the degree of care which was imposed by the law upon the coal-yard owners, the court decided in the line of the plaintiff's contention, and on this point, the court, in its opinion, which was delivered by Judge Fly, used the following language:

It is contended by appellants that the court imposed a higher degree of care upon them than the law demands, in instructing the jury that appellants were bound to exercise such care as an ordinarily prudent person would have exercised under like circumstances. Their proposition is: "A trespasser or mere licensee who is injured by any dangerous machine or contrivance on the premises of another can not recover damages unless the contrivance is such that the owner may not lawfully erect or use or when the injury is inflicted willfully, wantonly, or through the gross negligence of the owner or occupier of the premises."

However sound such a proposition might be under a proper state of facts, it can not be applied in this suit, because the facts do not warrant it. Appellee was neither a trespasser nor mere licensee. The track was built into the yards of appellants for the evident purpose of making it possible for the cars of the railway to enter and be unloaded there and then be carried out. The track was built for the common interest and mutual advantage of the railway company and appellants. The construction of the railway track in the yards of appellants carries with it the conclusion that the railway company would use the track. It could have been constructed for no other purpose. The testimony showed that the engine went into the yard on the morning of the accident with the knowledge and consent of the servant of appellants. We are of the opinion that the degree of care demanded of appellants was that which "an ordinarily prudent person would have exercised under the circumstances."

MASTER AND SERVANT—INTERPRETATION OF CONTRACT OF EMPLOYMENT—*Graves v. Lyon Bros. and Co., 68 Northwestern Reporter, page 985.*—This suit originated in justice's court and was appealed to the circuit court of Wayne County, Mich. The evidence of the plaintiff and defendant was conflicting, but the jury by its verdict found the facts in favor of the truth of the plaintiff's statement, and judgment was accordingly rendered for him. The defendant appealed the case to the

supreme court of the State, which rendered its decision November 17, 1896, and affirmed the judgment of the circuit court.

The opinion of the supreme court was delivered by Judge Grant and contains a statement of the facts in the case. The following language was used therein:

He [the plaintiff] sued the defendant corporation to recover a balance claimed to be due on a contract of hire for a year. For two years previous to 1893 he had been employed by the defendant by the month. On January 4, 1893, according to his testimony, the manager of the defendant informed him that his "pay would have to be reduced to $600 for the year;" that he replied: "If that was all he could pay, he would go on doing his work." About the middle of March plaintiff was discharged. At that time he said to the manager of the defendant: "You understand you made a contract with me for $600 for the year from the 1st of January," and he says: "I can't help that; it is a case of two against one." Plaintiff was paid about the 1st of April, obtained other employment at a reduced compensation, and at the close of the year brought this suit, and recovered the year's compensation less what had been paid him and what he had earned.

Defendant insists that there was no change of employment by the month to employment by the year. We think it a fair inference, from plaintiff's version of the conversation, that the contract was for a year. Defendant's agent denied the conversation, and under his view it was a hiring by the month. The court left the question to the jury, instructing them to consider all the evidence in the case in determining the question. We find no error upon the record, and the judgment is affirmed.

LAWS OF VARIOUS STATES RELATING TO LABOR ENACTED SINCE JANUARY 1, 1896.

NEW JERSEY.

ACTS OF 1896.

CHAPTER 27.—*Wages preferred—In executions, etc.*

(Amending an act approved March 13, 1856, page 749, revision of 1877.)

SECTION 1. Section one of the act of which this act is amendatory [shall] be amended so as to read as follows:

SECTION 1. No goods, chattels or personal property whatsoever, being in this State, and belonging to any manufacturer or other person or persons, or to any corporation, shall be liable to be removed by virtue of any execution, attachment or other process, unless the party by whom or at whose suit the said execution, attachment or other process was issued or sued out, shall first pay or cause to be paid to the operatives, mechanics and other employees employed by such manufacturer, person or persons or corporation, the wages then owing from such manufacturer, person, persons or corporation to the operatives, mechanics and other employees employed by them; *Provided*, The same shall not exceed two months' wages, and in case the sum owing as aforesaid shall exceed two months' wages, then the said party at whose suit such process is sued out, upon paying the said operatives, mechanics and other employees two months' wages, may proceed to execute his process as he might have done before the passage of this act; and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for wages as the money to be made by virtue of such process.

SEC. 2. Section two of said act [shall] be amended so as to read as follows:

SECTION 2. If the sheriff or other officer shall, by virtue of any execution, attachment or other process, remove from the possession or premises of any person, persons or corporation against whom such process may be issued, any goods, chattels or personal property, without first paying to the operatives, mechanics and other employees of such person or persons or corporation, their wages to the amount in the preceding section specified, such goods or chattels or personal property shall not be sold by such sheriff or other officer so taking or removing the same, until ten days after such removal, and then not until the plaintiff or party at whose suit such goods or chattels are taken as aforesaid shall, before the sale thereof, pay to the operatives, mechanics and other employees of such person or persons or corporation against whom such process is issued, the wages due them at the time of such removal; *Provided*, The same shall not in any case exceed two months' wages, and if more than two months' wages is owing to such operatives, mechanics or other employees, then the party by whom or at whose suit such execution or other process is issued, by paying two months' wages, may proceed to execute his process, and sell such goods or personal property; *Provided*, The persons to whom such wages may be owing shall, before the expiration of said ten days after such removal, give notice to the sheriff or other officer holding such process of the amount of wages due and claim the same, which notice may be served by delivering the same to said officer or leaving a copy thereof at his usual place of abode.

SEC. 3. All acts and parts of acts inconsistent with this act [shall] be and the same are hereby repealed, and this act shall take effect immediately.

Approved March 9, 1896.

CHAPTER 179.—*Payment of wages.*

SECTION 1. Every manufacturing, mining or quarrying and lumbering corporation, partnership, association and establishment in this State employing persons in the business of manufacturing, mining or quarrying, shall pay at least every two weeks, in lawful money of the United States, each and every employee engaged in

its business, or their representatives, the full amount of wages due to such employees up to within twelve days of such payment; *Provided, however*, That if at any time of payment any employee shall be absent from his regular place of labor, and shall not receive his wages through a duly authorized representative, he shall be entitled to said payment at any time thereafter upon demand.

SEC. 2. No assignment of future wages payable every two weeks, under the provisions of this act, shall be valid if made to the employer or employers from whom such wages are to become due, or to any person on behalf of such employer or employers, or if made or procured to be made to any person for the purpose of relieving such employer or employers from the obligation to pay weekly under the provisions of this act.

SEC. 3. It shall not be legal for any such company or establishment, or the agent of any such company or establishment, to enter into or make any agreement with any employee for the payment of the wages of any such employee otherwise than as provided in section one of this act, except it be to pay such wages at shorter intervals than every two weeks, and every agreement made in violation of this act is hereby declared to be null and void; *And provided*, That each and every one of such employees with whom any agreement, in violation of this act, shall be made by any such person, company, establishment or agent, shall have his or her action and right of action against any such partnership, association, company or establishment for the full amount of such wages in any court of competent jurisdiction in this State.

SEC. 4. Any employer or employers who may violate any of the provisions of this act shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding two hundred dollars and not less than fifty dollars for each violation, to be paid to the people of the State, at the discretion of the court; *Provided*, That an action for such violation is commenced within thirty days from the date thereof.

SEC. 5. The factory inspector of this State and his deputies shall bring an action against any employer or employers who neglect to comply with the provisions of this act for a period of two weeks after having been notified in writing by said inspector or his deputies that such action will be brought; and it is hereby made the duty of county prosecutors of the pleas to appear in behalf of such proceedings brought hereunder by the factory inspector or his deputies.

SEC. 6. When an employer or employers against whom action is brought under this act fail to appear, after having been duly served with the process, the default shall be recorded, the allegations in the complaint taken to be true and judgment rendered accordingly.

SEC. 7. When judgment is rendered upon any complaint for the violation of any of the provisions of this act the court may issue a warrant of distress to compel the payment of the penalty prescribed by law, together with costs.

SEC. 8. The provisions of this act shall not apply or affect any contract now existing or that shall hereafter be entered into between any manufacturer or corporation and any employee or employees or any bona fide trades union or labor organization.

SEC. 9. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved April 16, 1896.

CHAPTER 181.—*Bakeries, etc.—Inspection, hours of labor, etc.*

SECTION 1. No employee shall be required, permitted or suffered to work in a biscuit, bread or cake bakery, or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter workday on the last day of the week, nor more hours in any one week than will make an average of ten hours per day for the whole number of days in which such person shall so work during such week; but it shall be lawful in cases of emergency for employers to permit any employee and for the latter to work an additional time not exceeding two hours per day, such extra work to be remunerated at the current rate of the weekly wages paid to such employee for his weekly work of sixty hours; no employee in any biscuit, bread or cake bakery shall be discharged by his employer for having made any truthful statement as a witness in a court or to the factory inspector or a deputy factory inspector, in pursuance of this act.

SEC. 2. All buildings or rooms, occupied as biscuit, bread or cake bakeries, shall be drained and plumbed in a manner to conduce to the proper and healthful sanitary condition thereof, and constructed with air-shafts, windows or ventilating pipes sufficient to insure ventilation, as the factory inspector or any of his deputies shall direct; no cellar or basement not now occupied as a bakery shall hereafter be occupied and used as a bakery, and a cellar bakery heretofore occupied, when once closed shall not be re-opened, unless the proprietor shall have previously complied with the provisions of this act.

SEC. 3. Every room used for the manufacture of flour or meal food products shall be at least eight feet in height and shall have, if deemed necessary by the factory inspector, an impermeable floor, constructed of cement or of wood properly saturated

with linseed oil; the side walls of such rooms shall be plastered or wainscoted, except where brick walls are shown, and, if required by the factory inspector, shall be whitewashed at least once in three months; the furniture and utensils in such rooms shall be so arranged that the furniture and floor may at all times be kept in a proper and healthful, sanitary and clean condition; no domestic animal, except cats, shall be allowed to remain in a room used as a biscuit, bread or cake bakery, or for the storage of flour or meal food products.

SEC. 4. The manufactured flour or meal products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned.

SEC. 5. Every such bakery shall be provided with a proper wash-room and water-closet or closets, apart from the bake-room or rooms where the manufacturing of such food products is conducted; and no water-closet, earth-closet or privy shall be within or communicate directly with the bake-room of any bakery, hotel or public restaurant.

SEC. 6. The sleeping places for the persons employed in a bakery shall be kept separate from the room or rooms where flour or meal food products are manufactured or stored, and the factory inspector or a deputy factory inspector may inspect such sleeping places, if they are on the same premises as the bakery, and order them cleaned or changed in compliance with sanitary principles.

SEC. 7. Any person who violates any of the provisions of this act, or refuses to comply with any requirement of the factory inspector or deputy factory inspector, as provided herein, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty nor more than fifty dollars for the first offense, and not less than fifty nor more than one hundred dollars for a second offense or imprisonment for not more than ten days, and for a third offense by a fine of not less than two hundred and fifty dollars and not more than thirty days' imprisonment.

SEC. 8. The factory inspector and his deputies shall inspect all bakeries and see that the provisions of this act are observed therein; such deputies shall have all power and duties of the deputy inspectors and shall be amenable to the supervision and control of the factory inspector; the factory inspector or a deputy factory inspector authorized by him may issue a certificate to a person conducting a bakery that such bakery is conducted in compliance with all the provisions of this act.

SEC. 9. The owner, agent or lessee of any property affected by the provisions of section two, three or five of this act shall, within sixty days after the service of a notice requiring any alterations to be made in or upon such premises, comply therewith, and such notice shall be in writing and may be served upon such owner, agent or lessee, either personally or by mail, and a notice mailed to the last known address of such owner, agent or lessee shall be deemed sufficient for the purposes of this act.

Approved April 16, 1896.

CHAPTER 185.—*Insolvency of corporations—Wages preferred.*

SECTION 83. In case of the insolvency of any corporation the laborers and workmen, and all persons doing labor or service of whatever character, in the regular employ of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, work and services done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation.

SEC. 84. Such lien shall be prior to all other liens that can or may be acquired upon or against such assets, except the lien and encumbrance of a chattel mortgage, recorded more than two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, and except the lien and encumbrance of a chattel mortgage recorded within two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, for money loaned or for goods purchased within said period of two months; and also except as against the lien of mortgages given upon the lands and real estate of such insolvent corporation.

Approved April 21, 1896.

SOUTH CAROLINA.

ACTS OF 1896.

ACT NO. 84.—*Payment of wages by contractors.*

SECTION 1. On and after the passage of this act it shall be the duty of any contractor or contractors in the erection, alteration or repairing of buildings in the State of South Carolina to pay all laborers, subcontractors and material men for their lawful services and material furnished out of the money received for the erection,

alteration or repairs of buildings upon which said laborers, subcontractors and material men are employed or interested, and said laborers, as well as all subcontractors and persons who shall furnish material for said building, shall have a first lien on the money received by said contractor or contractors for the erection, alteration or repair of said buildings in proportion to the amount of their respective claims. Nothing herein contained shall make the owner of the building responsible in any way: *Provided, further,* That nothing contained in this section shall be construed to prevent any contractor or contractors or subcontractors from borrowing money on such contract.

SEC. 2. Any contractor or contractors or subcontractors who shall for other purposes than paying the money loaned upon said contract expend and on that account fail to pay to any or all laborers, subcontractors and material men out of the money received, as provided in section 1 of this act, and as admitted by such contractor or contractors, or as may be adjudged by any court of competent jurisdiction, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisonment [imprisoned] not less than three months nor more than twelve months: *Provided,* Said contractor or contractors or subcontractors may have the right of arbitration by agreement with said laborers, subcontractors and material men.

Approved the second day of March, A. D. 1896.

RECENT GOVERNMENT CONTRACTS.

[The Secretaries of the Treasury, War, and Navy Departments have consented to furnish statements of all contracts for constructions and repairs entered into by them. These, as received, will appear from time to time in the Bulletin.]

The following contracts have been made by the office of the Supervising Architect of the Treasury:

PUEBLO, COLO.—December 22, 1896. Contract with J. J. Hanighen, Omaha, Nebr., for plumbing and gas piping for post-office, $8,300. Work to be completed within twelve months.

ALLEGHENY, PA.—December 28, 1896. Contract with W. C. Peake, Washington, D. C., for interior finish, plumbing, and approaches for post-office, $35,527. Work to be completed within nine months.

LYNN, MASS.—January 9, 1897. Contract with L. L. Leach & Son, Chicago, Ill., for erection and completion of post-office, except heating apparatus, $69,000. Work to be completed within ten months.

OMAHA, NEBR.—January 14, 1897. Contract with Bernhard J. Jobst, for interior finish of basement, first story, and all outside windows of court-house, custom-house, and post-office, $83,598. Work to be completed within eight months.

LOS ANGELES, CAL.—February 4, 1897. Contract with John Hanlon for miscellaneous changes in and extension to court-house and post-office, $8,380. Work to be completed within fourteen weeks.

WASHINGTON, D. C.—February 4, 1897. Contract with William H. Doyle, Philadelphia, Pa., for plumbing, gas piping, etc., in post-office, $49,950. Work to be completed within six months.