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THE INSPECTION OF FACTORIES AND WORKSHOPS IN THE UNITED STATES. (a)

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THE INSPECTION OF FACTORIES AND WORKSHOPS AS UNDERSTOOD IN THE UNITED STATES.

It is important at the very outset to state clearly what is meant by factory inspection in the United States, for, as will be seen when the legislation by which inspection of factories has been provided for is considered, the true function of factory inspection has by no means been invariably understood, even by those enacting the laws or by those to whom the duties of inspection were intrusted.

Factory inspection has followed and has grown in consequence of the enactment of laws regulating the condition of labor in factories and workshops. A little consideration will show that these two classes of legislation are entirely different in character. The province of the first is to specify conditions; of the second, to see that they are enforced. The name of inspection is in some respects misleading. The real duty of factory inspectors is to enforce laws. Their powers of inspection are but incidental to this duty, and are exercised in order that the latter may be more efficiently performed. Yet, in the majority of the States having factory-inspection laws, the inspection of factories was first provided for, and the power of issuing orders directing factory operators to comply with the provisions of the laws, or at least the granting to the inspectors of adequate powers for enforcing them through judicial

a A report on behalf of the Department of Labor submitted to the *Congrès International des Accidents du Travail et des Assurances Sociales*, at Brussels, Belgium, July, 1897.

action, was only granted later as the necessity for such powers became evident. In a word, the inspector of factories is primarily a police officer with special duties.

The failure to recognize this essential character of the inspectors has retarded the development of factory inspection, not only through the failure to give to them adequate powers, but by attaching the duties of these officers to other bureaus, to the detriment of the work of both.

As regards the field of duties properly coming within the province of inspectors of factories, there is, of course, opportunity for a wide range of difference of opinion. Speaking generally, their duty is to enforce labor laws so far as they relate to factory work. Beyond this, however, there are a number of laws relating to factories and workshops the enforcement of which would seem to fall equally, if not to a greater extent, within the duties of other offices.

First, for instance, are those relating to the construction of factory buildings—the requirement that fire-resisting materials be used, etc. The enforcement of these obligations belongs primarily to the office of inspector of buildings.

Secondly, matters relating to the hygiene and sanitary condition of factories—their proper ventilation, heating, and lighting—are duties usually intrusted to health officers.

Thirdly, a most important State duty is that of the inspection of steam boilers and the examination of engineers and firemen to insure that proper persons are given control over them. This duty can be given to a special officer—the inspector of steam boilers—or intrusted to the factory inspectors.

A fourth field of inspection is that of mines, as in a few States where this industry is not of great importance the inspector of factories has been made the inspector of mines as well.

Finally, the field of inspection has in cases—notably in Massachusetts—been greatly enlarged by including public buildings, schoolhouses, churches, hotels, theaters, etc., among the buildings that should be inspected by the factory inspectors. In these cases the provisions to be enforced relate principally to the provision of fire escapes and of proper heating, lighting, and ventilation arrangements.

It is inevitable that in the different States the enforcement of these laws should be intrusted to different agencies. In the account that follows, therefore, it must be borne in mind that inspection is considered only in so far as it is performed by factory inspectors. A complete showing of the extent of inspection, except as regards the enforcement of labor laws proper, therefore, is not here made. Thus, for example, it will be seen that in a few instances factory inspectors are required to inspect steam boilers. It does not follow that these are the only States performing this duty. Others may do the same through special inspectors of boilers.

A still further diffusion of inspection work occurs from the fact that laws are frequently passed relating only to the larger cities, the

enforcement of which is left to municipal officers. There are thus laws relating specially to New York and Brooklyn, in the State of New York, and to large cities in other States.

This splitting up of the work of inspection, however, applies only to what may be called the supplementary duties of factory inspectors. This is in no way true of factory inspection proper, and the description of the organization and operations of factory inspection that follows gives a complete idea of the extent of factory inspection proper in the United States.

HISTORY OF THE INSPECTION OF FACTORIES AND WORKSHOPS IN THE UNITED STATES.

The history of the development of the official inspection of factories and workshops in the United States is like that of the history of all social legislation. One State has led the way by the enactment of tentative measures, which it has afterwards developed as dictated by experience. Other States have profited by the example and have taken similar steps. The moral influence of the action of States upon each other in the United States is great. A movement at first grows slowly, but as State after State adopts similar measures the pressure upon others to do likewise becomes stronger, and the movement tends to advance at a constantly increasing rate.

In the field of the inspection of factories we are now in the midst of such a movement. Factory inspection in the United States is of comparatively recent development. Though Massachusetts, the first State to take steps in this direction, enacted its first law providing for the inspection of factories in 1877, it was not until six years later, or in 1883, that its example was followed by another State, New Jersey. Wisconsin in the same year provided for inspection through its bureau of labor. Ohio followed in the succeeding year, 1884. The movement, however, once fairly started, has spread with increasing rapidity. In 1886 New York provided for factory inspection. In 1887 Connecticut, Minnesota, and Maine did likewise. These were followed by Pennsylvania in 1889, Missouri and Tennessee in 1891, Illinois and Michigan in 1893, and Rhode Island in 1894. There are, therefore, at the present time fourteen States that have made some provision for factory inspection.

Fourteen States out of forty-five is, of course, a small proportion. As has been stated, however, it is not a completed movement that is being studied. We are rather in the position of one who in the midst of action stops to look back and see what has been accomplished in order better to determine his course for the future.

In considering the progress that has been made, moreover, a comparison should be made not with the total number of States, but rather with the States in which the manufacturing industry is largely developed. It will thus be seen that of the New England and Middle

States, all of which are manufacturing States, the smaller States alone—New Hampshire, Vermont, Delaware, and Maryland—have no inspection. In the Middle Western States, Ohio, Illinois, Michigan, Missouri, Minnesota, and Wisconsin have inspection officers. The far Western and the Southern States, if we except the slight measure of inspection in Tennessee, are absolutely unrepresented. In these States, however, the manufacturing interests are but little developed.

Finally, it is important to recognize that the growth of factory inspection lies not only in the creation of new departments in different States, but in the enlargement of the powers and the broadening of the scope of the work of inspection services after they have once been initiated. The principal development of factory inspection is found in the development of each particular bureau.

An appreciation of this development, therefore, can only be had by studying the development of factory inspection in each State in which action has been taken, after which the general features of the movement can be summarized.

MASSACHUSETTS.

The State of Massachusetts holds the preeminent place among the States as regards social legislation. Just as it has been the first to create a bureau of labor statistics, thus setting an example that has been followed by two-thirds of the other States and several foreign Governments, the first to establish a State board of arbitration and conciliation, the first to regulate the employment of women and children, etc., so it was the first to provide for the inspection of factories. It would be difficult to overestimate the influence that Massachusetts labor legislation has exerted upon the other States. The imprint of its legislation can be found—frequently verbatim—in the labor legislation of all of the other States. Massachusetts, however, in its turn, owes a great deal to the legislation of Great Britain. This is especially true of factory legislation proper.

Massachusetts inaugurated its work of factory inspection by the passage, May 11, 1877, of the act entitled "An act relating to the inspection of factories and public buildings." This act is remarkable from the fact that it immediately made broad and efficient provisions for the regulation of labor in factories. It provided for the guarding of belting, shafting, gearing, etc.; the prohibition of the cleaning of machinery when in motion; the ventilation of factories; the protection of elevators, hoist ways, etc.; the provision of sufficient means of egress in case of fire, etc. Finally, it directed the governor to appoint one or more members of the State detective force to act as inspectors of factories, with the duties not only of enforcing this law, but other legislation relating to the employment of children and the regulation of the hours of labor in manufacturing establishments.

In 1879 this act was slightly amended by an act that abolished the

State detective force and created in its stead a district police force, of which it provided that two or more members should be designated as inspectors of factories. In accordance with this act the governor appointed three inspectors, and the first report of this work was made for the year 1879. This year, therefore, really marks the beginning of factory inspection in the State.

It will not be practicable to mention all of the acts subsequently passed by which new regulations concerning the conditions of labor were enacted and the duties of the inspectors correspondingly increased. Some of the principal stages of the growth of inspection can, however, be briefly mentioned.

In 1880 the duties of inspection were extended to mercantile as well as to manufacturing establishments, and the number of inspectors was increased to 4.

In 1882 the number of members of the police force detailed for inspection work was increased to 5.

In 1885 the district police force was increased to 20, of whom 8 were reported in 1886 as detailed for inspection work.

In 1886 an important increase in the duties of the inspectors was made by the act of June 1, entitled "An act relative to reports of accidents in factories and manufacturing establishments." For the first time, therefore, provision was made for the reporting of accidents to laborers.

The year 1887 was prolific in labor legislation. An act was passed March 24 to secure proper sanitary provisions in factories and workshops; another, April 14, to secure their proper ventilation; a third to secure proper meal hours, and another amending the law relating to the employment of women and children. The number of inspectors was increased from 8 to 10.

By act of March 8, 1888, a much-needed reform was accomplished by dividing the district police force into two separate departments of detective work and inspection. According to this act the inspection department was made to consist of 10 members, not including a chief who was also the chief of the detective department. By a supplemental act of the same year the force of inspectors was increased to 20.

March 10, 1890, the law relating to the reporting of accidents was amended so as to make it relate to all proprietors of mercantile and manufacturing establishments, instead of to corporations only, as had been the case under the old law.

In 1891 the force of inspectors was increased to 26, and it was provided that 2 must be women. An important act of this year was that of May 28, 1891, entitled "An act to prevent the manufacture and sale of clothing made in unhealthy places," by which it was attempted to bring under regulation the growing evil of the sweating system. This act was afterwards amended in 1892 and again in 1893.

In 1893 provision was made for the appointment of an additional district police officer, with the duty of inspecting all uninsured steam boilers.

In 1894 the important service was performed of making a codification of all laws relating to labor in factories, the enforcement of which fell within the duties of the inspection department of the district police force.

In 1895 a great increase was made in the inspection duties of the State by the enactment of a law providing for the appointment of 4 inspectors to examine uninsured steam boilers and to act as a board to examine as to the competency of engineers and firemen intrusted with the care of such boilers.

The inspection force at the present time, therefore, consists of 1 chief, 26 inspectors of factories (2 of whom are women), and 4 inspectors of boilers.

NEW JERSEY.

New Jersey was the first State to follow the example of Massachusetts and provide for the inspection of factories. Its service was inaugurated by the act of March 5, 1883, entitled "An act to limit the age and employment hours of labor of children, minors, and women, and to appoint an inspector for the enforcement of the same." By this act the governor was directed to appoint an inspector of factories at a salary of $1,200 a year, whose duties were to inspect all factories, workshops, etc., and to prosecute all violations of law before the proper judicial authorities. He was allowed expenses not to exceed $500 a year.

In 1884, April 17, a supplemental act was passed providing for the appointment by the inspector of two deputy inspectors, at a salary of $1,000 a year each. The salary of the chief inspector was increased to $1,800, and his allowance for contingent expenses to $1,000. At the same time the original act was modified so as to enable infractions of the law to be better prosecuted. The result of this act was to more than double the efficiency of factory inspection in the State.

April 7, 1885, there was passed what was known as a general factory act, which specified in considerable detail the precautions which must be taken in factories against accidents and the hygienic requirements. The enforcement of this law was intrusted to the factory inspectors.

An act of March 22, 1886, slightly amended this act.

May 6, 1887, a new general factory act was passed in order to amend and elaborate the act of 1885.

In 1889 the number of deputy inspectors was increased from 2 to 6, and the general factory act was amended, especially as regards the provision for fire escapes.

The most important subsequent acts relating to inspection were those of 1893 regulating the sweating system, the enforcement of which was intrusted to the factory inspectors, and of 1894, imposing upon the factory inspectors the duty of mine inspection.

At the present time the inspection force of the State consists of 1 chief and 6 deputy inspectors.

OHIO.

Ohio enacted its first law in regard to the inspection of factories April 4, 1884. This act called for the appointment of an "inspector of the sanitary condition, comfort, and safety of shops and factories," at a salary of $1,500, and traveling expenses not to exceed $600. The duties of this inspector were very limited, indeed. Though he had the power of issuing orders, and noncompliance therewith was deemed a misdemeanor, no provisions were made whereby these infractions could be prosecuted.

April 29, 1885, an act was passed providing for the appointment of 3 district inspectors.

In 1888 an important factory act was passed, bearing date of March 21, whereby the reporting of accidents to laborers was made obligatory upon all manufacturers.

An act of March 23, 1892, made a notable increase in the inspection force by providing for the appointment of 8 additional district inspectors.

The general factory laws were amended by the acts of March 17, 1892, and April 25, 1893, the purposes of which were to regulate the conditions of labor in greater detail, insure that proper precautions be taken against accidents, etc.

At the present time Ohio has 1 chief and 11 district inspectors of factories.

NEW YORK.

New York offers an excellent example of the development of factory inspection in a State after the initial step had once been taken. The first act relating to factory inspection was passed May 18, 1886, and was entitled "An act to regulate the employment of women and children in manufacturing establishments, and to provide for the appointment of inspectors to enforce the same." By this act provision was made for the appointment of a factory inspector at a salary of $2,000, and an assistant inspector at $1,500, with an allotment of $2,500 for contingent expenses.

The following year the legislature greatly extended the inspection service. By an act of May 25, 1887, it authorized the appointment of 8 deputy inspectors, at a salary of $1,000 each, and the powers and duties of the inspectors were so increased as to give them a supervision over all of the most important features of factory life.

June 15, 1889, the law was again slightly amended.

By an act of May 21, 1890, however, the law was materially changed and made more comprehensive. The most important of the new provisions were those providing for the appointment of 8 women as additional factory inspectors, with the same salary as existing deputies, and increasing the allowance for contingent expenses to $3,500, exclusive of traveling expenses.

May 18, 1892, an important extension of the province of factory inspection was made by the act of that date, which attempted to bring under regulation the sweating system. Advantage was also taken of the opportunity to collect in a single act most if not all of the laws relating to factories and their inspection. In a way, then, there was created a factory code. The force of inspectors was maintained at the same number, viz, 1 inspector, 1 assistant inspector, and 16 deputies. Salaries, however, were considerably increased, that of the chief inspector being raised to $3,000, that of the assistant to $2,500, and that of the deputies to $1,200 each. Provision was also made for a sub-office in New York City.

In 1893 the law was still further amended by the act of March 22, and made more stringent in its provisions. From the standpoint of inspection the greatest change was that whereby provision was made for 8 additional deputy inspectors, of whom 2 should be women.

The number of inspectors at the present date is, therefore, 26, or 1 chief, 1 assistant, and 24 deputy inspectors.

CONNECTICUT.

The State of Connecticut created its service for the inspection of factories in 1887. The act provided for the appointment of an inspector of factories, with the general duty of inspecting factories and seeing that proper precautions were taken against accidents, and proper sanitary regulations observed. This law has remained practically unchanged and unsupplemented until the present time, and provides for far from an efficient system of factory inspection. Though Connecticut has upon its statute books laws relating to the employment of women and children, the provision of proper fire escapes, etc., their enforcement does not seem to be intrusted to the factory inspector. There is also no provision calling for the reporting of accidents in factories. The orders of the inspector consist almost entirely of directions concerning the guarding of machinery or the observance of proper sanitary measures.

There is at the present time but 1 inspector, though an appropriation is made for the appointment of special agents as assistant inspectors. Though the law providing for factory inspection was passed in 1887, the first report seems to have been made for the year 1889.

PENNSYLVANIA.

Although Pennsylvania is one of the most important manufacturing States of the Union, the creation of a service of inspection of factories is of comparatively recent date. The first step in this direction was taken by the act of May 20, 1889, entitled "An act to regulate the employment and provide for the safety of women and children in mercantile and manufacturing establishments, and to provide for the appointment of inspectors to enforce the same and other acts providing for the safety or regulating the employment of said persons."

Though its action was considerably delayed, Pennsylvania by this act immediately created an efficient inspection service. The act provided for the appointment of an inspector of factories, at a salary of $1,500 a year, and 6 deputy inspectors, 3 of whom should be women, at $1,000 each per annum. The inspectors were given broad powers to order necessary changes and to enforce them through prosecutions before the proper judicial officers. Although the bureau of industrial statistics exercised no supervision whatever over the factory inspector, the latter was required to report to the chief of that bureau, and his early reports, therefore, are included in the reports of that office.

On June 3, 1893, a new act was passed bearing the same title as the act of 1889 and replacing the latter, which practically doubled the efficiency of the inspection service. The number of deputy inspectors was increased from 6 to 12, 5 of whom should be women, and their salaries were raised to $1,200. The salary of the chief inspector was at the same time raised from $1,500 to $3,000. The inspector was also directed to report directly to the governor. His reports, commencing with that for 1893, have therefore appeared as separate volumes.

In 1895 the duties of the inspectors of factories were still further increased by the act of April 11, which was directed to the regulation of the sweating system in the clothing and tobacco industries. In order to provide for the increased work that would thus have to be done, the number of deputy inspectors was increased from 12 to 20.

The present inspection force, therefore, numbers 21—a chief and 20 deputy inspectors.

ILLINOIS.

The State of Illinois created an inspection service by the act of June 17, 1893. The immediate cause leading to its establishment was the desire to abolish the manufacture of clothing in tenements, or the so-called sweating system. The act, however, not only contains provisions to this effect, but regulates the employment of women and children generally, and authorized the appointment of inspectors to enforce the act. Provision is made for an inspector at a salary of $1,500 a year, an assistant inspector at $1,000, and 10 deputies, 5 of whom must be women, at $750 each. The power is given to them to enforce their orders through judicial prosecution.

A comprehensive inspection service, however, was by no means created, as the duties of the inspectors are strictly limited to enforcing the provisions of the act by which they are authorized, and therefore embrace little but the regulation of the sweating system and the employment of women and children.

RHODE ISLAND.

The State of Rhode Island provided for the inspection of factories by the act of April 26, 1894. This act created at once a very efficient system of factory inspection. It not only provided for the appointment of two inspectors, one of whom must be a woman, but regulated

the employment of children; directed that all elevators or hoistway entrances should be guarded; that no person under 16 years of age should clean machinery while in motion; that machinery should be guarded; that separate toilet facilities should be provided for female and male employees; that accidents should be promptly reported, and, generally, that the inspector should issue all needful orders to secure the proper heating, lighting, ventilation, or sanitary arrangements of factories and workshops.

The power, moreover, of enforcing their orders was given to the inspectors by prosecuting delinquents before the proper courts or magistrates.

MAINE.

An inspection service was first organized in Maine by the act of March 17, 1887, entitled "An act to regulate the hours of labor and the employment of women and children in manufacturing and mechanical establishments." This act provided for the appointment of a "deputy commissioner of labor" at a salary of $1,000 per annum, and specified his duties to be "to inquire into any violations of this act, and also to assist in the collection of statistics and other information which may be required for the use of the bureau of industrial and labor statistics." The appointment of assistant deputies, if needed, at a salary of $2 per day was also authorized.

It will be seen that no really effective system of inspection was provided by this act. The powers of the deputy were strictly limited to that of inspection and report. The means of enforcing his orders, without which inspection has little *raison d'être*, were absolutely wanting.

In 1893 the title of "deputy commissioner of labor" was changed to that of "inspector of factories, workshops, mines, and quarries," a change chiefly significant as showing that the true nature of the office was becoming better understood.

By an act of the legislature, March 29, of the same year it was made the duty of the inspector to examine concerning the extent to which the law in regard to doors swinging outward was complied with, and as to the sanitary condition of factories, workshops, mines, and quarries, and to report annually to the governor. It was under the provisions of this law that the first report of the factory inspector was issued in 1893. These reports are incorporated in the reports of the bureau of industrial and labor statistics. Though the law states that it is the duty of the inspector to enforce certain laws, there is no way specified by which this shall be done, and the reports of the inspector do not indicate that he ever ordered any changes to be made or attempted any prosecutions in order to enforce labor laws.

MICHIGAN.

The first bill to provide for factory inspection in Michigan was introduced in the State legislature in 1891, but failed to pass. In 1893 another bill was introduced, passed, and went into effect August 25,

1893. The bill as introduced contemplated a separate bureau. As it became a law, it provided that factory inspection should be a part of the work of the bureau of labor and industrial statistics. The title of this act was "An act to regulate the employment of women and children in manufacturing establishments of the State, to provide for the inspection and regulation of such manufacturing establishments, and to provide for the enforcement of such regulation and inspection."

This act provided for the annual inspection of manufacturing establishments by the commissioner or deputy commissioner of labor, or by persons acting under their authority, for the payment of which $4,000 should be annually appropriated. This act, in addition to creating an inspection service, also embraces a great many provisions of a general factory act. It thus makes it the duty of the inspectors to see that proper safeguards are taken against accidents; that factories are provided with fire escapes; that suitable toilet facilities are provided for male and female employees in different rooms; that exhaust fans be provided when necessary, etc., and, most important of all, the inspectors were given the power to enforce their orders by prosecutions of all delinquents in the courts of competent jurisdiction.

Michigan thus provided for an efficient system of factory inspection as far as the powers and duties of the inspectors were concerned. The appropriation of only $4,000 a year for this work was, however, far from sufficient to carry out the work, and the mistake was made of making inspection a branch of the bureau of labor instead of an independent service.

For the first year 4 inspectors were appointed, and for the second year 5 inspectors. In 1895 the act was amended by raising the appropriation for inspection from $4,000 to $8,000 a year. No limit was placed upon the number of deputies that might be appointed save by the appropriation.

MISSOURI.

By act of May 19, 1879, Missouri created a "bureau of labor statistics and inspection of factories, mines, and workshops." In spite of its title, however, this bureau by no means constituted a bureau of inspection. An examination of the law and of the reports of the bureau shows that the latter's duties were entirely directed to securing information, and not to inspection with the view of enforcing particular laws.

On April 20, 1891, an act relating to the inspection of factories was passed. This act made a considerable number of technical provisions concerning the provision of safeguards against machinery, the guarding of elevator shafts, the reporting of accidents, the provision of fire escapes, etc. This act, however, was made to apply only to cities and towns with a population of 5,000 or over, and made it obligatory upon such to appoint an inspector with deputies to inspect all factories employing 10 or more persons and to see that the provisions of the act were complied with. These inspectors were directed to report semi-annually to the commissioner of labor.

It would be difficult to conceive of a system less likely to be productive of valuable results than this localization of the work of inspection and distribution of authority. In fact, the commissioner of labor has reported during the succeeding years that this law has been ignored by a great many cities of the State. As yet, therefore, Missouri can not be said to possess any very effective system of factory inspection.

WISCONSIN.

In Wisconsin the law of April 12, 1883, providing for the creation of a bureau of labor, made it a part of the duties of its commissioner to inspect all factories and to see that the laws regarding fire escapes, the protection of employees against accidents, the employment of women and children, etc., were complied with, and to enforce the same by prosecutions before the courts. It was manifestly beyond the power of the commissioner to do more than slightly fulfill these duties.

April 4, 1885, the labor bureau was reorganized, and among other changes provision was made for the appointment of a special inspector of factories as one of the officers of the bureau. At the same time the laws regulating the conduct of labor in factories were considerably elaborated and made more stringent. This law thus provided for a fairly complete system of factory inspection, though but a single inspector was provided for, and he was made an officer of the labor bureau instead of an independent official.

The first report of inspection, therefore, was made for the years 1885 and 1886, and is included in the biennial report of the commissioner of labor. Subsequent reports have appeared in the same way.

In 1887 the inspection laws were enlarged; authority was granted to appoint two inspectors instead of one, and the great defect of prior legislation was remedied by attaching penalties for the violation of the factory acts and increasing the power of the inspectors to enforce their orders and prosecute offenders.

Since this date other acts slightly amending the factory acts have been passed, but the inspection service remains as it was then.

MINNESOTA.

The act of 1887 creating a bureau of labor statistics specifies as a part of the duties of the commissioner that he shall cause to be inspected the factories and workshops of the State, "to see that all laws regulating the employment of children and women and all laws established for the protection of the health and lives of operatives in workshops, factories, and all other places where labor is employed are enforced." In case his orders are not complied with, he is directed to make formal complaint to the county attorney, which officer should proceed to the prosecution of the offender.

The first material change in this law was made in 1893. This act, while leaving inspection a part of the duties of the labor bureau,

provided for the appointment of a special inspector of factories and two deputy inspectors. The duties of these officers are stated broadly to be "to cause to be enforced all laws regulating the employment of children, minors, and women; all laws established for the protection of the health, lives, and limbs of operatives in workshops and factories, on railroads and in other places, and all laws enacted for the protection of the working classes."

The reports of these inspectors are contained in the biennial reports of the commissioner of labor, the first inspection report being that for the years 1893 and 1894.

TENNESSEE.

Such a slight measure of factory inspection has been provided for in Tennessee that the barest mention will be sufficient. The act of March 21, 1891, creating the bureau of labor and mining statistics, also makes it the duty of the commissioner to inspect factories and workshops. As the power of the commissioner is limited to investigation, and his time is so largely taken up with his other duties, practically nothing is accomplished in the way of real factory-inspection work.

In this history of the organization of factory inspection especial attention should be given to the kind of administrative organization that has in each case been selected. This is one of the most important considerations involved in the question of factory inspection, for the efficiency of the service has been largely dependent upon the system that has been adopted. Six of the fourteen States—Maine, Michigan, Missouri, Minnesota, Wisconsin, and Tennessee—have connected the duty of inspection with the bureau of labor statistics. The adoption of this policy is in every way regrettable. An inspection service, to accomplish the best results, should be absolutely independent of all other work.

The function of the factory inspector is to see that certain laws relating to the conduct of labor in factories are enforced, and to do this he should possess a certain technical knowledge, such as that relating to machinery, to hygiene, ventilation, construction of buildings, etc. The duties of the commissioner of labor are to collect facts and present them properly. The greatest objection to joining the two offices, however, is not that it is difficult to find a man with the mental equipment necessary for them both, but that the two classes of duties are largely antagonistic. The labor commissioner has to depend upon the good will of the employers for his information, while the inspector has frequently to oppose the latter's wishes.

The advisability of an independent inspection service can not better be shown than by reproducing the remarks of the chief factory inspector of New York concerning the proposition to combine the three services of the bureau of labor statistics, the board of arbitration, and office of factory inspection.

"Such a plan," he said, "if carried out would be to the detriment of

the work of factory inspection. The duties of a factory inspector are of a police nature. He must see that certain provisions and restrictions of law are obeyed; that children of certain ages must not be employed; that guards must be attached to dangerous machines; that women and children shall not work during certain hours; that unsafe buildings must be made secure, and a score of other matters, concerning all of which he must exercise the compulsory arbitrary powers of the State. In case of refusal to comply with his orders, it involves upon him to swear out warrants for the arrest of the delinquent persons and prosecute them to the full extent of the law. These duties, which are only briefly outlined, are not compatible with the work of gathering statistics and arbitrating differences between employers and employed, especially as the work of factory inspection may oftentimes bring him into contact, if not into conflict with the very persons to whom appeals must be made for reliable statistics or upon whose sense of fairness must rest the conciliatory policy of arbitrating wage or other difficulties in labor controversies. * * * It will thus be seen that the duties of commissioners of statistics and arbitration and those of the factory inspector are in no way harmonious and are in many respects antagonistic and dissimilar."

Experience has more than demonstrated the correctness of this reasoning. In those States in which factory inspection has been joined to the bureau of labor but relatively slight results have been accomplished, and one might almost say that a real system of factory inspection exists only in the eight States of Massachusetts, New Jersey, Ohio, New York, Illinois, Connecticut, Pennsylvania, and Rhode Island, which have independent inspection services.

THE DUTIES AND POWERS OF INSPECTORS OF FACTORIES.

We now turn to a consideration of the character of the work that has been assigned to factory inspectors; in other words, to their duties and powers. In the historical sketch of the development of factory inspection no attempt was made to state all of the duties that were placed upon factory inspectors in each State. Only such were specified as tended to show the growth of the service in each State. In the following table the attempt has been made, after a careful examination of the laws relating to factory inspection or laws the enforcement of which is intrusted to the inspectors, to present in a concise form the duties of factory inspectors in each of the fourteen States. The adoption of this method of presentation makes it possible to compare at a glance the extent of the services in the different States. This table, of course, only indicates the extent of the duties of inspection, but throws no light upon the efficiency with which they are performed. Thus a State that has enumerated but a few duties may provide for an adequate force of inspectors and really accomplish much more valuable

results than another State with an elaborate inspection law, but inadequate provisions for its enforcement.

This table does not pretend to show absolutely all the duties of factory inspectors. Frequently the laws are so generally worded that it is largely left to the discretion of the inspectors to determine whether the conditions under which factory employees labor are sanitary and properly secured against danger. It does show, however, the extent to which the States have specified certain regulations that must be observed, and consequently what are the features with which it is believed that factory inspection should be concerned. The States having provisions concerning the subjects shown in the first column are indicated by an asterisk. It is believed that this table gives a very approximate idea of the scope of the duties of factory inspectors in the United States.

DUTIES OF FACTORY INSPECTORS.

Factory inspectors' duties relate to—	Mass.	N. J.	Ohio.	N. Y.	Conn.	Pa.	Ill.	R. I.	Me.	Mich.	Mo.	Wis.	Minn.	Tenn.
Employment of children	*	*	*	*	.....	*	*	*	*	*	....	*	*	.....
Employment of women.	*	*	.....	.....	.....	*	*	.....	*	*	....	*	*	.....
Payment of wages.....	*	*	*	*	.....	*	....	.....	*	.....	....	.....	.....	.....
Lunch hour, women and children.....	*	....	.....	*	.....	*	....	.....	....	*	....	.....	.....	.....
Seats for females	*	*	*	.....	*	.....	....	*	....	.....	*	.....	*	.....
Separate toilet facilities for the two sexes.	*	*	.....	*	.....	*	....	*	....	*	*	.....	*	.....
Guarding machinery...	*	*	*	*	*	*	....	*	....	*	*	*	.....	.....
Cleaning machinery in motion by children and women	*	*	.....	*	*	*	....	*	....	*	*	.....	.....	.....
Mechanical belt and gear shifters.....	.....	.....	.....	*	.....	.....	.....	.....	....	*	....	.....	*	.....
Communication with engineer's room	*	.....	.....	.....	.....	.....	.....	.....	....	.....	....	*	.....	.....
Guarding vats containing molten metal or hot liquids.....	.....	*	*	*	.....	.....	.....	.....	....	.....	....	.....	.....	.....
Railings on stairways.	.....	.....	*	*	.....	.....	.....	.....	....	*	....	.....	.....	.....
Regulation of dangerous or injurious occupations	*	*	.....	.....	.....	.....	.....	.....	....	.....	....	.....	.....	.....
Use of explosive or inflammable material ..	*	*	.....	.....	.....	.....	.....	.....	....	.....	....	.....	.....	.....
Exhaust fans for dust, etc.....	*	*	.....	*	*	.....	.....	.....	....	*	*	.....	*	.....
Safety appliances for elevators	*	.....	.....	.....	.....	.....	.....	.....	....	.....	....	.....	.....	.....
Guarding elevator and hoistway openings...	*	*	*	*	*	*	....	*	....	*	*	.....	*	.....
Fire escapes.....	*	*	*	*	.....	*	....	.....	....	*	*	*	*	.....
Doors to swing outward; to be unlocked.	*	*	.....	*	.....	.....	....	.....	....	.....	.....	.....	.....	.....
Sanitary condition.....	*	*	*	.....	.....	*	....	*	*	.....	*	.....	*	.....
Ventilation.....	*	*	*	*	*	*	....	*	....	.....	*	.....	.....	.....
Lighting	.....	*	*	.....	.....	.....	....	.....	....	.....	.....	.....	.....	.....
Heating	.....	*	*	.....	.....	.....	....	.....	....	.....	.....	.....	.....	.....
Overcrowding	.....	*	.....	*	.....	.....	....	.....	....	.....	*	*	.....	.....
Lime washing or painting walls.....	.....	*	.....	*	.....	.....	....	.....	....	.....	*	.....	.....	.....
Reporting accidents...	*	*	*	*	.....	*	....	*	....	.....	*	.....	*	.....
Regulation of "sweating system"	*	*	.....	*	.....	*	*	.....	....	.....	.....	.....	.....	.....
Inspection of mercantile establishments ..	.....	....	.....	*	.....	.....	....	.....	....	.....	.....	.....	.....	.....
Inspection of mines ...	.....	*	.....	.....	.....	.....	....	.....	....	.....	*	.....	.....	*
Inspection of steam boilers.....	*	.....	.....	.....	.....	.....	....	.....	....	.....	.....	.....	.....	.....
Inspection of schoolhouses, theaters, etc.	*	.....	*	.....	.....	.....	....	.....	....	.....	.....	.....	.....	.....
Regulation of bakeries.	.....	*	.....	.....	.....	.....	....	.....	....	.....	*	.....	*	.....
Approval of plans for factories.....	*	.....	.....	.....	.....	.....	....	.....	....	.....	.....	.....	.....	.....

An examination of this table shows in the clearest way the character of factory inspection as practiced in the United States. It is at once evident how largely legislation in one State affects legislation in the others. A State enacting new laws frequently but copies the legislation of the other States.

As regards the duties of inspectors, it will be seen that they may be divided into a number of quite distinct classes. First, there is the enforcement of certain general labor laws relating to the employment of women and children, the provision of seats for females, and of separate toilet facilities for the two sexes, the payment of wages in cash and at intervals of certain frequency, and the allowance of an adequate length of time to women and children at noon for their lunch.

A second class of duties is that relating to the provision of suitable means of egress in case of fire. This finds expression in the requirement of fire escapes upon factories, and that doors should be so hung as to open outward and to be kept unlocked during working hours.

A third and most important class is that relating to the obligation of factory operators to take all needful precautions to protect workingmen against accidents. This is done by providing that machinery and vats containing molten metal or hot liquids must be properly guarded; that machinery must not be cleaned while in motion by women or minors; that mechanical belt and gear shifters be provided; that communication through a speaking tube or otherwise exists between any room where machinery is used and the engineer's room; that elevators be provided with safety appliances, and that they and all hoistway openings be properly railed off; that sides or railings be placed on all stairways; that there be exhaust fans to prevent dust or other deleterious products from being inhaled by the operatives; that no use shall be made of explosive or highly inflammable compounds except under special precautions, and, finally, that exceptional precautions, the determination of which lies largely in the discretion of the inspectors, be taken in the case of all dangerous or injurious occupations.

Fourthly, there are the general provisions relating to the sanitary condition, ventilation, lighting, heating, and overcrowding of factories. Under sanitation it is usual to specify that water-closets, privies, and drains shall be tight and kept in good condition. A few States, it will be seen, require walls to be lime washed or painted once a year.

Fifthly, there is the duty of inspectors keeping a record of all accidents to employees of factories, and of reporting annually concerning them. This information is obtained through the obligation placed by law upon all employers of labor to report all accidents to the inspection department. There are few who are interested in or concerned with the inspection of factories but recognize the utility of obtaining as nearly complete data as possible concerning the occurrence of accidents to laborers, their cause, character, etc. Such information is desirable,

first of all, in order to determine which are the industries and the particular manipulations or machines that are responsible for accidents. It is thus possible to determine what steps should be taken for lessening their frequency. It is, secondly, necessary in order that the public and lawmakers may be made to realize the importance of requiring the provision of safety appliances and of the rigid enforcement of precautionary regulations.

The collection of this information, if it is to be made, naturally falls within the province of the factory inspectors. It is much to be regretted, therefore, that these officers for the most part either have not been given the power to obtain this information or have not organized their inquiries on a sufficiently broad basis. Though eight States, as will be seen by the table, provide in their factory laws that accidents shall be reported by manufacturers, in none of them is there any pretense that anything like complete returns of accidents are obtained. Even in the cases of the accidents that are reported, the description of their causes, results, and character is far from sufficiently full. The laws directing the reporting of accidents usually read that the employers of labor shall report to the chief factory inspector all accidents causing the death of an employee or his incapacity to work for a certain duration of time. It is also to be regretted that no uniformity exists in such data in the different States as regards the classification of accidents either by causes, extent of injury, or party at fault. The very important classification of accidents into those causing death, permanent total, permanent partial, temporary total, and temporary partial incapacity is in no case made.

Any attempt to make a study of accidents to labor in factories in the United States is, therefore, out of the question. The only point for congratulation is that the necessity for reporting accidents has been recognized by a number of States, and that thus a beginning has been made that may receive a fuller development in the future.

Within recent years the office of inspector of factories has become of increased importance through the development of the so-called "sweating system," and the attempt to control or abolish it through legislative enactments. Whenever laws have been enacted for this purpose their enforcement through the factory inspectors of the State has constituted an essential feature of the law. In these States, therefore, the regulation of this system of work has become one of the most important duties of the factory inspectors.

The above classes constitute the regular and ordinary duties of factory inspectors. There has been a tendency, however, to impose upon these officers certain additional duties which can be and frequently are intrusted to other officers; such, for instance, are the inspection of mines, the inspection of steam boilers, the inspection of schoolhouses, theaters, and other public buildings.

Finally, one or two States have passed special regulations concerning the conduct of the bread-baking business. These provisions are that such work shall not be carried on in cellars; that workrooms shall not be used as sleeping rooms; that privies and water-closets shall not be maintained within a certain distance of the bakeries, etc.

Of all the States, Massachusetts possesses not only the most advanced and detailed code of labor laws but has made the most efficient provision for their enforcement. No better method, therefore, for showing the character of factory inspection in the United States, where it is best developed, can be adopted than to reproduce the summary of the duties of the inspectors of this State, as recapitulated by the chief factory inspector in his report for the year 1895. There is all the more excuse for reproducing the duties of the inspectors of this State, since it is to its laws that all of the States turn when contemplating similar legislation. On page 5 of this report the chief inspector says:

"There are now 26 officers exclusively employed in the inspection department. Some idea of the extent and nature of the duties of the inspectors may be had by reference to the statutes defining them; but not even the detailed reports of the several inspectors made to this office can give, to those not familiar with the matters discussed, an adequate idea of the vast amount of labor performed by this department. Its duties embrace the enforcement of the laws relating to the hours of labor; the protection of operatives from unguarded machinery; the employment of women and minors; the schooling of children employed in factories and workshops; the preservation of the health of females employed in mechanical, manufacturing, and mercantile establishments; reports of accidents in manufactories; safety appliances for elevators; provisions for escape from hotels and other buildings in case of fire; proper ventilation for factories and workshops, and uniform meal hours for children, young persons, and women employed therein; the suppression of nuisances from drains, and provisions for water-closets, etc., for the use of each sex employed in factories and workshops, and various other sanitary regulations; the inspection of buildings alleged to be unsafe or dangerous to life or limb, in case of fire or otherwise; the submission to the inspector for approval of a copy of plans and specifications of any building designed for certain public purposes, as factory, workshop, mercantile structure, hotels, apartment houses, lodging or tenement houses, above a certain height; communication between engineer's room and each room where machinery is run by steam, in every manufacturing establishment; proper safeguards at hatchways, elevator openings, and wellholes in public buildings, factories, and mercantile establishments; forbidding the use of portable seats in aisles or passageways in public halls, theaters, schoolhouses, churches, and public buildings during any service held therein; requiring fire-

resisting curtains, approved by inspectors, for use in all theaters, etc.; competent watchmen, lights in hotels, gongs or other proper alarms, and notices posted describing means of escape from fire in boarding and lodging houses above a fixed size, family and public hotels; fire escapes on tenement or lodging houses three or more stories in height; prohibiting during working hours the locking of any inside or outside door of any building where operatives are employed; public buildings and schools in respect to cleanliness, suitable ventilation, and sanitary conveniencies; the weekly payment of wages by certain corporations to each of their employees; the inspection of uninsured steam boilers; the examination as to the competency of engineers and firemen in charge thereof; the enforcement of the act relating to the manufacture and sale of clothing made in unhealthy places; the enforcement of the act relative to the heating of street-railway cars, and the enforcement of the act requiring specifications to be furnished to persons employed in cotton, worsted, and woolen factories."

It is not necessary at this date, even were this the place, to attempt to show the necessity for, or all the advantages resulting from, factory inspection. Some of the most important of these latter, however, will bear mention. If it is desirable to have factory and labor laws, it is certainly desirable to have them enforced, and experience has demonstrated that without inspection many labor laws will remain dead letters. But apart from performing the duties for which they are created, they indirectly perform many other services.

Many of the inspectors of factories report that they have been of considerable use in spreading information concerning the best mechanical devices for guarding against accidents. In the performance of their duties they become acquainted with the best contrivances, and are able to suggest their employment in factories inefficiently equipped. The directors of these latter are often only too thankful to have them called to their attention. The reports of the inspectors, moreover, are becoming more and more valuable as being repositories of information concerning labor conditions of a character that can not be obtained elsewhere. They contain descriptions, accompanied by illustrations, and plans of the best devices for guarding machinery, of protecting elevator and shaft openings, of carrying away dust and odors by the use of exhaust fans, of the best forms of fire escapes, of plans for ventilating and heating factories, schoolhouses, and other buildings, etc. The practical contact of inspectors with labor conditions enables them to determine with especial accuracy the results of labor legislation, and to recommend with authority its amendment or elaboration.

In concluding this account of the inspection of factories and workshops in the United States, some mention should be made of the International Association of Factory Inspectors. This organization, though created as the result of private efforts, yet may be said to have

an official standing. It was created and held its first annual convention in 1887, since when annual meetings have been held. The object of the association is to bring together in annual convention all officers of the Government in the United States and Canada whose duties relate to the inspection of factories, workshops, and public buildings. It is scarcely necessary to comment upon the utility of such a gathering. The majority of inspectors are new and inexperienced in their duties. They can thus avail themselves of the experience of the older inspectors. Especially can the very desirable object of rendering more uniform the legislation and practices of the States be advanced. The report of the proceedings and the papers read at the conventions are not only separately published, but are frequently included as appendices to the reports of individual States.

MUTUAL RIGHTS AND DUTIES OF PARENTS AND CHILDREN, GUARDIANSHIP, ETC., UNDER THE LAW. (*a*)

BY F. J. STIMSON.

By the common law of England all persons remained minors until they attained the age of 21, and it was the duty of parents to provide for the maintenance, protection, and education of their children while they remained minors, and for the necessary support of children even beyond that age if unable to work through disease or accident. The father had control of the person of his minor children, and had the right to the wages or benefit of his children's labor while they lived with him, but had no other power over his child's estate than as his trustee or guardian. Both parent and child could justify for their acts in defense of each other, as in cases of self-defense, and children were charged, if of sufficient ability, with the duty of maintaining an indigent parent.

Minors could not sue or be sued but by guardian or next friend, and could, as a rule, make no binding contracts but for necessaries—food, clothing, or education expenses. But a minor might purchase lands, though the purchase would be incomplete, as he might either agree or disagree to it on coming of age. He might, of course, bind himself as an apprentice, and he might, by deed or will, appoint a guardian to his children.

These principles of the common law would, of course, continue without a statute in all the States of the Union where the law is derived from English sources (that is, all States with the exception of Florida, Louisiana, New Mexico, and Arizona); and such statutes as have been passed in the States which have adopted complete codes, or in others, are in substance the mere reexpression of these principles.

SECTION 1. *Who are Minors; Definitions, etc.*—In most of the States, as at common law, children, male or female, become of age at 21; and the California Code defines the period of coming of age to be the first minute of the proper birthday; (*b*) but in Vermont, Ohio, Illinois, Iowa, Minnesota, Kansas, Nebraska, Maryland, Missouri, Arkansas, California, Oregon, Nevada, Washington, Dakota, Montana, and Idaho a woman comes of age at 18; (*c*) and in several States a married woman of any

a The statutes are cited by the general section number, or by chapter, title, etc., and section of the last revision or general statutes of each State; annual laws by the year and chapter. The Dakota code is still in force in South Dakota, *proprio vigore*.

b Cal. Civ. C., 26; Dak. Civ. C., 2509; Mont. Civ. C., 11; Okla., 774.

c Vt., 2736; Ohio, 3136; Ill., 64, 1; Iowa, 2237; Minn., 59, 2; Kans., 67, 1; Nebr., 1, 34, 1; Md., 93, 162; Mo., 5278; Ark., 3567; Cal. Civ. C., 25; Oregon, 2951; Nev., 4943; Wash., 1416; Dak. Civ. C., 10; Mont. Civ. C., 10; Idaho, 2405.

age may exercise all the powers of majority. (*a*) In Nebraska, when a woman over 16 is married, her minority ends. In Iowa, Texas, and Louisiana, all minors, male or female, attain their majority by marriage. (*b*) In Georgia, "the law prescribes certain ages at which persons shall be construed of sufficient maturity to discharge certain civil functions, to make contracts, and dispose of property. Prior to these ages they are minors, and for that disability unable to exercise those rights as citizens." (*c*)

SEC. 2. *Powers of Minors.*—As a general principle, minors can not make any contract whatever. (*d*) So, in Louisiana, minors under 16 can not dispose of any property except by marriage contract. (*e*) But in Connecticut, California, Nevada, Dakota, Idaho, Montana, and Utah every person, male or female, aged 18, may make a will of real or personal estate. (*f*) In Colorado an unmarried female of 18 may make a will, though, for ordinary purposes, she is not apparently of age until 21. (*g*) In Iowa, Texas, Louisiana (see § 1), and in Arizona, every married person, or person who has been married; whatever be his or her age, may make a will of real or personal estate; and so, in Oregon, can a woman, if married. (*h*) (See also § 1, note *a*.) Of course, in States where a woman attains majority at the age of 18, she may make a will under such restrictions as a married woman in ordinary cases; and also in Wisconsin all women of 18, and in Nebraska all women, may make a will, if married. (*i*) In Georgia, every person aged 14, male or female, may make a will of real or personal estate; and in New Mexico every male of 14 and female of 12; while in Kentucky a person under 21 may make a will only in pursuance of a power specially given to that effect. (*j*) In Louisiana, minors over 16 may make wills as if of full age; (*k*) and in several States wills in writing of personal property alone may be made by males, or unmarried females of 18. (*l*) So, in New York, a male of 18, or unmarried female of 16, may make a will of personal property; and in Colorado a male or unmarried female of 17. (*m*) The Louisiana Code reads, "the minor above 16 can dispose only *mortis causa;* but he may dispose in this manner of the same amount as a person of full age." (*k*)

SEC. 3. *Contracts Specially Permitted to Minors, etc.*—As a general

a Tex., 2858; Oregon, 2953; Wash., 1417.
b Iowa, *ut supra;* Tex., 4857; La. C. P., 110; C. C., 379.
c Ga., 1657.
d Ga., 2731; but his deeds are voidable at his pleasure on attaining majority; Ga., 2694.
e La. C. C., 1476.
f Conn., 537; Cal. Civ. C., 1270; Nev., 3000; Dak. Civ. C., 1720; N. Dak., 3639; Idaho, 5725; Mont. Civ. C., 1720; Utah, 2647.
g Colo., 4652.
h Iowa, 2237, 2322; Tex., 1851, 4857; Ariz., 3232; Oregon, 3068.
i Wis., 2277, 2281; Nebr., 1, 23, 123.
j Ga., 2405, 2406; N. Mex., 1378; Ky., 4826.
k La. C. C., 1477.
l R. I., 203, 5; Va., 2513; W. Va., 77, 2; Mo., 8868; Ark., 6491; Oregon, 3067; Ala., 1951.
m N. Y. R. S., pt. ii, ch. 6, t. 1, § 21; Colo., 4652.

principle, contracts of an infant are void except for necessaries; for necessaries they are not, in Georgia, valid, unless the party furnishing them proves that the parent or guardian fails or refuses to supply sufficient necessaries for the infant. (*a*) In California, and the States copying its code, (*b*) the contract of a minor, if made while he is under the age of 18, may be disaffirmed by the minor himself, either before his majority, or within one year's time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor while he is over the age of 18, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it is received, it being itself equivalent, with interest.(*c*) By the Indiana statute, the deed of an infant is void; in Georgia it is voidable at his pleasure on attaining majority.(*d*)

In California, etc., a minor can not disaffirm a contract, otherwise valid, to pay the reasonable value for the things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them; and a minor can not disaffirm an obligation otherwise valid entered into by him under the express authority or direction of a statute. (*e*) In the same States, a minor can not give a delegation of power, nor, under the age of 18, make a contract relating to real property, or any interest therein; or relating to personal property not in his immediate possession or control; but may make any other contract that is above specified in the same manner as an adult, subject to his power of disaffirmance upon attaining his majority, etc. (*f*) In Montana, Washington, and Utah, a minor is bound, not only by contracts for necessaries, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money and property received by him in virtue of the contract, and remaining within his control at any time after his attaining his majority. (*g*) And in these States, as well as in Iowa and Kansas, no contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to majority, or from his having engaged in business as an adult, the other party had good reasons to believe the minor capable of contract. (*h*)

By the California Code, and in some other States, if a parent neglects to provide for his child who is under his charge articles necessary

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a Ga., 2731.

b These States are, generally, N. Dak., S. Dak., Mont., Okla., and sometimes Idaho.

c Cal. Civ. C., 35; Dak. Civ. C., 17; N. Dak., 2703; Idaho, 2407; Mont. Civ. C., 18; Okla., 3607. It will be observed that the Dakota Code has been reenacted in the North Dakota Code, while in South Dakota it is still in force, though not yet printed in the statutes of that State.

d Ind., 2917; Ga., 2694.

e Cal. Civ. C., 36, 37; Dak. Civ. C., 17, 18; N. Dak.; 2704, 2705; Mont Civ. C., 19, 20; Idaho, 2408, 2409; Okla., 774.

f Cal. Civ. C., 33, 34; Dak. Civ. C., 15, 16; N. Dak., 2701, 2702; Mont. Civ. C., 16, 17; Okla., 774.

g Mont. Civ. C., 18; Wash., 2433; Utah, 2561.

h Wash., 2434; Utah, 2562; Iowa, 2239; Kans., 67, 3.

according to his circumstances, a third person may, in good faith, supply such necessaries and recover the reasonable value thereof from the parent. (*a*)

By the Georgia Code, if an infant, by permission of his parent or guardian or that of the law, practices any trade or engages in business, he is bound for all contracts connected with such trade or business. (*b*)

The Louisiana Code reads substantially that minors have no capacity to contract except when emancipated, or when a contract is made through a guardian, or with consent of a family meeting; but a minor, having no tutor, may make a contract for necessaries, may accept the contract of mandate, subject to certain restrictions, and may make a marriage contract with the consent of those whose authority is in such cases recognized. But persons who have contracted with minors can not avail themselves of the disability. (*c*)

It is frequently provided that debts for liquor sold to minors shall not be collected, or made a penal offense to sell liquor or cigarettes to minors; and debts contracted by students for such articles are frequently, by the statutes of the older States, declared void. As liquor can hardly be considered a necessary article, it is probable that debts for liquor sold minors are not valid by the common law, but the New Mexico Code takes the trouble so to provide specifically; (*d*) and in Maryland, where a license to sell liquor or other articles may be granted minors, it must be upon special order of a judge of court. In such case contracts made in prosecution of such a business under the license are binding upon the minor. (*e*)

SEC. 4. *Wages and Property of Minors.*—In Alabama, conveyances of personal property in favor of minor children, except by will, where the custody is suffered to remain with the parent of such children, vests an absolute estate with such parent in favor of his or her purchasers or creditors, without notice, unless the conveyance be recorded within three years after such possession commenced in the county of the parent's residence. (*f*) In other States the statutes are silent as to the acquisition of property by minors by gift or devise, and they can, therefore, as by the common law, receive property as persons of full age, subject to the control of parents or guardians.

As a general rule, the earnings of a minor belong to the parent, if claimed by him, if the minor be living with him; but, as by the common law, it is probable that wages paid to a minor not living with the parent can not be recovered by the latter; and so, in a few States, there are statutes. Thus, the California Code provides that the wages of a minor employed in service may be paid to him until the parent or

a Cal. Civ. C., 207; Dak. Civ. C., 98; N. Dak., 2788; Idaho, 2532; Miss., 3148; Mont. Civ. C., 294; Okla., 3557.
b Ga., 2733.
c La. C. C., 1785, 1791.
d N. Mex., 852.
e Md., 56, 36.
f Ala., 1819.

guardian entitled thereto gives the employer notice that he claims such wages. (*a*) But in Idaho such notice must be given within thirty days after the service commenced, or it will have no effect; and by an old New York statute a parent must give notice within thirty days after the beginning of work, or a payment of wages to his child will be valid. (*b*) So, in Iowa, Kansas, Washington, and Utah, when a contract for the personal services of a minor has been made with him alone, and those services are afterwards performed, payment made therefor to such minor in accordance with the terms of the contract is a full satisfaction for those services, and the parents or guardians can not recover therefor. (*c*)

In Massachusetts the bounty and pay of a minor enlisted in the military or naval service of the United States is not subject to legal process on account of debts due from his parent; and a transfer of such bounty or pay by the parent to the minor is not to be deemed fraudulent as against creditors. (*d*)

In many States the wages of a minor are not attachable in a suit against the parent; that is, no person shall be adjudged a trustee by reason of any money or credits which are due for the wages of the personal labor or services of [the wife] or minor children of the defendant. (*e*)

So, in the California Code States, when a wife is living separate from her husband the earnings of minor children with her are declared by statute to be her separate property. (*f*)

In Ohio there is a new statute forbidding employers to withold from minor employees wages by reason of their negligence, failure to comply with rules, breakage of machinery, incompetence, etc.; and the same statute provides that no person shall employ a minor without written statement from parents or guardians that such minor is of legal age to be so employed; nor without agreeing with said minor what compensation he shall receive. (*g*) This provision as to the age of children employed in factories is frequently made by the various factory acts, though sometimes the certificate is to be made out by the overseers of the poor, superintendent of schools, or other person.

SEC. 5. *Deposits in Savings Banks.*—In most of the States there are statutes enabling minors in their own right to make and withdraw deposits in savings banks or loan corporations and give valid receipts therefor. (*h*) In Rhode Island minors may do the same when not under

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a Cal. Civ. C., 212; Dak. Civ. C., 103; N. Dak., 2793; Idaho, 2533; Okla., 3562; Mont. Civ. C., 299.

b N. Y., 1850, 266. This is possibly repealed.

c Iowa, 2240; Kans., 67, 4; Wash., 2435; Utah, 2563.

d Mass., 149, 23.

e Mass., 183, 29; Me., 86, 55; N. H., 245, 20; R. I., 255, 13; Vt., 1312.

f Cal. Civ. C., 169; Idaho, 2502; Okla., 2972; Dak. Civ. C., 83; N. Dak., 2770; Mont. Civ. C., 224.

g Ohio, 1893, p. 55.

h Cal. Civ. C., 575; Colo., 525; Fla., 2199; Ky., 591; Mont. G. L., 561; La., 1892, 95; Me., 47, 117; 1889, 188; Nebr., 8, 32; Mich., 3208 d; Ohio, 3801; N. Y., 1892, 689, 114; N. J., *Savings Banks*, 24; Pa., *Banks*, § 215; Utah, 2517.

guardianship; and in Wisconsin and most of the other States the law applies to deposits in savings banks only. (*a*) So in other States the statute provides that money deposited in the name of a minor may, at the discretion of the trustees or board of investment, be paid to such minor or to the person making such deposit; the same shall be a valid payment. (*b*) And in Vermont such deposits may not be trusteed if they were earned by the minor or belonged to him. (*c*) So, in Alabama, the statute reads that minors may make in their own names deposits in any bank, which shall be paid only to such minor and not to his or her parents or guardians. (*d*) In Michigan an older statute provided that when a deposit is made with any savings bank, by or in the name of any minor, the treasurer may, if directed by the trustees of the bank, pay the same to such minor or the person making such deposit, and the same shall be a valid payment. (*e*)

SEC. 6. *Parents' Rights and Duties, Possession of Children, etc.*—By the common law, a father, or, in case of his death, the mother, is entitled to the custody of his children; and sometimes this is expressed in statutes by saying that he or she is the natural guardian of the minor. (For such laws see below, §§ 13, 16, as well as for the rights of parents to the custody of children for whom a guardian other than the parents has been appointed.) The California Code provides that the parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the father is unable to give adequate support, etc., the mother must assist him to the extent of her ability; (*f*) but the parent as such has no control over the property of the child. (*g*) A parent entitled to the custody of the child has a right to change his residence, subject to the power of the proper court to restrain a removal which will prejudice the rights or welfare of the child. (*h*) So, in Georgia, the father has the right to the custody of the person of his minor child (*i*). By the Georgia Code, until majority, it is the duty of the father to provide for the maintenance, protection, and education of his child; (*j*) and the child remains under the control of the father, who is entitled to his services and the proceeds of his labor. This parental power is lost—

1. By voluntary contract, releasing the right to a third person or to the child (and so, also, in Kansas—Kans., 67, 5);

2. By the consent to the adoption of the child by a third person;

3. By the failure of the father to provide necessaries for his child or his abandonment of his family;

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a R. I., 178, 60; Wis., 2020.
b Mass., 1894, 317, 30; Vt., 4087; W. Va., 54, 81 a; N. C., 1893, 344.
c Vt., 4088.
d Ala., 1530.
e Mich., 3230.
f Cal. Civ. C., 196; Dak. Civ. C., 89; N. Dak., 2779; Mont. Civ. C., 283; Ohio, 3110; Okla., 3548.
g Cal. Civ. C., 202; Dak. Civ. C., 93; N. Dak., 2783; Okla., 3552; Mont. Civ. C., 289.
h Cal. Civ. C., 213; Dak. Civ. C., 104; N. Dak., 2794; Okla. 3563; Mont. Civ. C., 300.
i Ga., 1793.
j Ga., 1792.

4. By his consent to the child's receiving the proceeds of his own labor, which consent shall be revocable at any time;

5. By consent to the marriage of the child, who then assumes inconsistent responsibilities;

6. By cruel treatment of the child. (*a*) (See also in § 11.)

Upon the death of the father, the mother is entitled to the possession of the child until his arrival at such age that his education requires the guardian to take possession of him. In cases of separation of the parents or the subsequent marriage of the survivor, the court, upon writ of habeas corpus, may exercise a discretion as to the possession of the child, looking solely to his interest and welfare. (*b*) In Maine, by a new statute, fathers and mothers shall jointly have the care and custody of the persons of their minor children. If they be living apart, the judge of probate may decree which parent shall have such custody, as the good of the child may require. (*c*) Widowed mothers have the same right to the custody and earnings of minor children without guardians as a father has. (*d*) So, in Oregon, the rights and responsibilities of the parents, in the absence of misconduct, are equal, and the mother is as fully entitled to the custody and control of the children and their earnings as the father, and in case of the father's death the mother shall come into as full and complete control of the children and their estate as the father does in case of the mother's death. (*e*) In Pennsylvania a married woman, mother of a minor child, who contributes by the efforts of her own labor or otherwise toward the support, etc., of such child, has the same power, control, and authority over such child and an equal right to its custody and services as is now by law possessed by her husband, the father of such child, provided she be otherwise qualified as a fit and proper person to have such custody. In all cases of dispute between the father and mother of such minor child as to which shall be entitled to its custody or services, the court may decide to which parent, if either, the custody of such minor child shall be committed, regard first being had to the fitness of such parent and the best interest and permanent welfare of the child. (*f*) In Ohio, when there are children 10 years of age or more, they are allowed to choose which parent they prefer to live with, unless such parent so selected by said children be unfitted to take charge of them by reason of moral depravity, habitual drunkenness, or incapacity; then said court shall determine the custodian of such children. If both parents are improper persons, the court may designate some reputable and discreet person to take charge of such children, or may commit them to a county home. (*g*)

By the California Code, the husband and father, as such, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of the children of the marriage while

a Ga., 1793.
b Ga., 1794.
c Me., 1895, chap. 43.
d Me., 59, 24.
e Oregon M. L., 2878.
f Pa., 1895,232, §§ 1, 2.
g Ohio, 1893, p. 186.

such husband and wife live separate and apart from each other. (*a*) Without application for divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage, and the court may make such order in regard to the support, custody, etc., of the children as may be just. (*b*) A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause. (*c*) A husband is not bound to maintain his wife's children by a former marriage; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and where such is the case they are not liable to him for their support, nor he to them for their services. (*d*) Where a child, after attaining majority, continues to be supported by the parent, neither party is entitled to compensation in the absence of any agreement therefor. (*e*) In New York, whenever a parent has abandoned an infant child, such parent is deemed to have forfeited all claim to the custody of said child, or otherwise, as against any other person who may have adopted him. (*f*) When any husband and wife live in a state of separation, without being divorced, the supreme court, upon habeas corpus, may award the custody of the child to the mother for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require. (*g*) So, in many States, where the husband and wife live in a state of separation, without divorce, and have minor children, courts are vested with authority to award to the wife the care and custody of the children. (*h*) In North Carolina and in Vermont the custody of the children in such case may be awarded to the husband or wife, at the court's discretion. (*i*)

The statutes of all the States provide for awarding the custody of the children to either wife or husband upon divorce or during pendency of divorce proceedings. In Michigan, in case of the separation of husband and wife, the mother is entitled to the care and custody of minor children under the age of 12 and the father of those over 12. (*j*)

In Florida it is made a penal offense to employ any minor under 15, who is under the legal control of any person, for more than sixty days without such person's consent. (*k*) So, in South Carolina, if any person shall hire or employ any minor without the knowledge or consent of his parents or guardian, he is liable to the parents or guardian for the

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a Cal. Civ. C., 198; Dak. Civ. C., 106; N. Dak., 2796; Mont. Civ. C., 285; Ohio, 1893, p. 186; Okla., 3565.
b Cal. Civ. C., 199; Dak., N. Dak., Okla., *ut supra;* Mont. Civ. C., 286.
c Cal. Civ. C., 208; Dak. Civ. C., 99; N. Dak., 2789; Okla., 3558; Mont. Civ. C., 295.
d Cal. Civ. C., 209; Dak. Civ. C., 100; N. Dak., 2790; Okla., 3559; Mont. Civ. C., 296.
e Cal. Civ. C., 210; Dak. Civ. C., 101; N. Dak., 2791; Okla., 3560; Mont. Civ. C., 297.
f N. Y., 1873, 830, 11.
g N. Y. R. S., pt. ii, ch. 8, t. 2, §§ 1, 2.
h Del., vol. 16, ch. 477; Vt., 2699, 2701; Va., 2610.
i N. C., 1661; Vt., 2700.
j Mich., 6294.
k Fla., 2733.

full value of the labor of said minor from and after the notice from the parents or guardian that payment for such services shall be made to him or them. (*a*)

The provisions of the Civil Code of Louisiana are extensive and peculiar. They will be found appended in a footnote. (*b*)

SEC. 7. *Parents' Rights to Earnings, etc.* (See §§ 4 and 5, above.)—Several of the States provide that nothing contained in the statutes concerning apprentices shall affect the father's right at common law to assign or contract for the services of his children during their minority. (*c*) In Vermont a married woman, whose husband deserts her, or from intemperance or other causes becomes incapacitated or neglects to provide for his family, may make contracts for the labor of her minor children, shall be entitled to their wages, and may in her own name sue for and recover for them. (*d*)

By the California Code the father of a legitimate unmarried minor child, and the mother of an illegitimate unmarried minor child, is entitled to its custody, services, and earnings; but he can not transfer such custody or services to any other person except the mother without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable or refuse to take the custody, or has abandoned his family, the mother is entitled thereto. (*e*)

But the parent, whether solvent or insolvent, may relinquish to the child the right of controlling him or receiving his earnings. Abandon-

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a S. C., 2062.

b The Louisiana Code provides as follows: A child, whatever be his age, owes honor and respect to his father and mother (La. C. C., 215);

He remains under their authority until majority or emancipation. In cases of difference between the parents the authority of the father prevails (La. C. C., 216);

As long as the child remains under the authority of his father and mother he is bound to obey them in everything which is not contrary to good morals and laws (La. C. C., 217);

A child under the age of puberty can not quit the paternal house without the permission of his father and mother, who have a right to correct him, provided it be done in a reasonable manner (La. C. C., 218);

Fathers and mothers may delegate part of their authority to teachers and others to whom they intrust their children for education (La. C. C., 220);

The father during the marriage is administrator of the estate of his minor children and accountable to them for the property and revenues of the same, to the use of which he is not entitled by law, and for the property only of estates the usufruct of which the law gives him. This administration ceases at the time of the majority or emancipation of the children (La. C. C., 221);

Fathers and mothers shall have during marriage the enjoyment of the estate of their children until their majority or emancipation (La. C. C., 223);

The obligations resulting from this enjoyment are (1) to which usufructuaries are subject; (2) to support, to maintain, and to educate their children according to their situation in life (La. C. C., 224);

But this usufruct does not extend to any estate which the children may acquire by their own labor and industry, nor to such an estate as is given or left them under the express condition that the father and mother shall not enjoy such usage (La. C. C., 226).

c Mass., 149, 22; Mich., 6376; Minn., 60, 18; Wis., 2394; Oregon, 2936.

d Vt., 2649.

e Cal. Civ. C., 197, 200; Dak. Civ. C., 90, 91; N. Dak., 2780, 2781; Okla., 3549, 3550; Mont. Civ. C., 284, 287.

ment by the parent is presumptive evidence of such relinquishment. (*a*)

SEC. 8. *Support of Children by Parents.* (See also § 6, above.)—Parents are, of course, liable for the support of their minor children; and they are commonly liable, as at common law, for the support of children of any age who are incapacitated or unable to support themselves; and, conversely, children are liable for the support of their parents. Such matters are usually provided for in the poor laws; but a few States have laws defining the general principle. Thus, where a poor person is unable to support himself, the parents, grandparents, children, or grandchildren are liable for his support in that order. (*b*) In Nebraska the duty is extended to brothers and sisters, in the absence of parents and children, and before the grandchildren. (*c*) In Florida, apparently, the duty of support is only encumbered upon children as to parents who are unable to support themselves, (*d*) while in Louisiana, Michigan, and Oregon it is a reciprocal duty between the father and mother and the children. (*e*)

By the California Code, followed also in other States, it is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability. (*f*) In Massachusetts a new statute provides that the guardian of a minor may apply for an order of the probate court to the parents to contribute to the support and maintenance of such minor. (*g*)

In many States it is made a penal offense for a father to fail to support his minor children, (*h*) and in nearly all the States so of actual abandonment of a child by a parent.

In both Louisiana and New Mexico the right of testamentary disposition of property is strongly limited in favor of children or descendants, and they may not be disinherited by will except for certain specified causes, and the converse is true, though to a less extent, as to inheriting by parents from children having no issue; and in New York there is a statute forbidding a person having children or issue to will more than one-half his estate to charities.

SEC. 9. *Mutual Liabilities of Parent and Child.*—At the common law a parent is answerable for the tort of his child, but not, of course, for his contracts, except for necessaries. Parents and children may mutually

a Cal. Civ. C., 211; Dak. Civ. C., 102; N. Dak., 2792; Okla., 3561; Mont. Civ. C., 298.
b Del., 48, 14; N. J., *Poor*, § 30; N. H., 84, 12; R. I., 79, 5.
c Nebr., 3926, 3927.
d Fla., 2077.
e La. C. C., 229; Mich., 1741; Oregon M. L., 2875.
f Cal. Civ. C., 206; Dak. Civ. C., 97; Ga., 764; Idaho, 2531; Mont. Civ. C., 293; Miss., 3148; Mich., 1741; N. Dak., 2787; Okla., 3556; Wis., 1502.
g Mass., 1891, 358, 1.
h Cal. P. C., 270; Conn., 3402; Dak. P. C., 336; Colo., 1893, 74; Del., 48, 15; Idaho, 6782; Ind., 2133; Ky., 328; Minn., 1889, 212; N. Mex., 1887, 21; Mo., 3501; N. H., 265, 1; N. J., *Infants*, 26; Mont. P. C., 470; N. Y. Crim. C., 899; N. C., 972; Nev., 600 (of illegitimate children only); Ohio, 1890, p. 216; Okla., 2176; R. I., 281, 24; Utah, 4505; Vt., 1890, 33; Wyo., 2284; but not in Kentucky, if the child be over 14; or in Missouri, 12; or in Wyoming, 16.

justify acts done in protection by either of the other as acts of self-defense. These principles probably exist in all the States. But the Dakota Code reads that "neither parent nor child is answerable, as such, for the act of either." (*a*)

SEC. 10. *Liability of Minors for Torts.*—At the common law minors were severally responsible, with their separate estate, for their torts, and the same is probably law throughout the United States. But the California Code provides that they shall not be liable in exemplary damages, unless at the time of the act they were capable of knowing it was wrongful. (*b*) So, under the Georgia Code, "infancy is no defense to an action for a tort," and the same is the case in Louisiana. (*c*)

SEC. 11. *Emancipation.*—(For emancipation by the parent, or without court process, see also § 7, above.) The California Code provides as follows: "The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisors of the county where the child resides; and where the abuse is established, the child may be freed from the domination of the parent, and the duty of support and education enforced." (*d*) This provision of the California Code corresponds to the less formal provisions of the statutes of other States for the commitment of children of unfit or incompetent parents to orphan asylums, reform schools, etc.

The authority of the parent ceases (1) upon the abandonment of the care to the guardian of the person of a child, (2) upon the marriage of a child, or (3) upon its attaining majority. (*e*)

In several of the States there is a process by which any minor may obtain a decree of court rendering him of age for all purposes of property right, contracts, conduct of business, etc. (*f*)

In Alabama, Florida, and Louisiana minors, to be emancipated, must, however, be of the age of 18. The process is generally by petition in court, notice to the parents, etc. As a rule such emancipation gives the minor all rights except that of suffrage; but the Louisiana provisions restrict such rights with some detail.

In Louisiana minors are also emancipated by marriage or by the father; but if no father, by the mother when the minor has arrived at the age of 15. (*g*)

GUARDIAN AND WARD.

SEC. 12. *Definitions.*—Guardians are generally divided into natural guardians (the father or mother) and guardians appointed by the courts; into guardians of the property, or curators, and guardians of the per-

a Dak. Civ. C., 105; N. Dak., 2795.
b Cal. Civ. C., 41; Dak. Civ. C., 23; N. Dak., 2709; Okla., 774.
c Ga., 3064; La. C. C., 1785.
d Cal. Civ. C., 203; Dak. Civ. C., 94; N. Dak., 2784; Okla., 3553; Mont. Civ. C., 290.
e Cal. Civ. C., 204; Dak. Civ. C., 95; N. Dak., 2785; Okla., 3554; Mont. Civ. C., 291.
f Ala., 2357–2363; Ark., 1362; Fla., 1501–1504; Kans., 67, 8, 9; La. C. C., 367–388; Miss., 493; Tex., 1881, 23; Okla., 1895, 37, 3.
g La. C. C., 365, 366, 379.

son, or tutors; or into special guardians (guardians of the person or property alone) and general guardians (guardians of both), and into guardians appointed by the court and guardians appointed by will or deed of the parent, which latter are called testamentary guardians. Georgia substantially adopts this division in its code; but in Montana and Utah, guardians are declared to be general or special guardians, and the former are defined to be "guardians of the person or property or both." (*a*) This is not the usual meaning of the term "general guardian." In New Mexico the appointment of guardians shall specify whether it be of the person or of the person and estate. (*b*) In North Carolina, instead of granting general guardianship to one person, "the tuition and custody of the person may be granted to one and the charge of the estate to another." (See § 17, below.) (*c*) So, in Arkansas and Missouri, separate persons may be appointed guardians of the persons and curators of the estate of minors if the court so decides. (*d*)

SEC. 13. *Natural Guardians.*—As natural guardian, the father, or, "in some cases," as Blackstone says, "the mother of the child," is, at common law, entitled to the custody of the child. The common law also recognizes testamentary guardians and guardians in *socage* "when the minor is entitled to some estate in lands, and then * * * guardianship devolves upon his next of kin to whom the inheritance can not possibly descend."

Following the common law, the general rule is that the father, and in case of his death, the mother, is natural guardian of the child and entitled to the custody of his person; but neither father nor mother, as such—that is, as natural guardian—is entitled to the possession of the child's estate. (*e*) (For States where no natural guardianship is recognized, but the father or mother is entitled to a preference in appointment by the court, see § 16, below).

So, in Georgia and Maryland, natural guardians appear to be recognized, but they must give bond and file account like other guardians. (*f*)

Thus, in Arkansas, Georgia, Missouri, New Mexico, and North Carolina, the father, while living, and after his death, the mother, is the natural guardian of the children, and has the custody and care of their persons, education, and estates; but when such estate is not derived from the person acting as guardian, such parent shall give bond, etc., like other guardians. (*g*) And this section shall not, in North Carolina, abridge the powers of the courts to appoint guardians.

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a Ga., 1802; Mont. Civ. C., 330–334; Utah, 2536, 2540. By the La. C. C., 247, 248, there are four sorts of tutorship: (1) By nature, (2) by will, (3) by the effect of law, (4) by the appointment of the judge. The first takes place of right; the others must either be confirmed or given by the judge.

b N. Mex., 1032.

c N. C., 1567.

d Ark., 3581; Mo., 5288.

e Ga., 1803; Wyo., 2250; and see in § 16.

f Ga., 1803; Md., 93, 185.

g Ark., 3568; Ga., 1803; Mo., 5279; N. Mex., 1030; N. C., 1565.

In New York, Colorado, and Nebraska every married woman is declared the joint guardian of her children with her husband, with equal powers, rights, and duties in regard to them with him; (*a*) and the parent, father or mother, is very generally entitled, if a competent person, to the custody and tuition of the ward despite the fact that a court guardian has been appointed. (See § 14, below.)

In Texas, where the parents of the minor live together, the father is the natural guardian of the persons of the minor children by the marriage, and is entitled to be appointed guardian of their estates. Where the parents do not live together, their rights are equal and the guardianship of their minor children shall be assigned to one or the other, according to the circumstances of each case, taking into consideration the interest of the child alone. Where one of the parents is dead, the survivor is the natural guardian of the persons of the minor children and entitled to be appointed guardian of their estates. (*b*)

While in other States, "no person, whether a parent or otherwise, has any power as guardian of property except by appointment of court." (*c*) And this is the common law.

When a father is tutoring, he may not be removed nor may he be excluded from appointment except for unfaithfulness of his administration or for notoriously bad conduct. (*d*)

"After dissolution of marriage by death of either parent, the tutorship of minor children belongs of right to the surviving one. This is tutorship by nature." (*e*)

SEC. 14. *Guardians Appointed by the Courts.*—In some States, recognizing natural guardians, with powers both as to person and property (see above), it is possible that no guardians can be appointed by the courts while the parents are living; but in most of the States guardians, at least of the property, or general guardians having powers over the property, may be appointed by the courts for any minor under legal age, and so, generally, where the parent is incompetent or unfit, an habitual drunkard, or neglects the child. Many such provisions of law are specially provided for in the charter or act creating orphan asylums or reform schools; others must be looked for in the criminal statutes concerning the arraignment and punishment of children for petty offenses. The important general provisions will be found below. A court guardian can not, of course, be appointed when there is a testamentary guardian legally appointed who accepts the trust, though a testamentary guardian may be removed by the court for cause, like other guardians. (See § 18, below.)

Thus, the probate, county, or orphans' court of the proper county (i. e., the county where the minor resides or has property) has power

a N. Y. R. S., pt. ii, ch. 8, t. 3, § 1; Colo., 1895, 80; Nebr., 3217.
b Tex., 2494–2496.
c Cal. Civ. C., 242; Dak. Civ. C., 123; Del., 78, 1; Mont. Prob. C., 415; Mont. Civ. C., 336; N. Mex., 1002; N. Dak., 2813; Utah, 2543.
d La. C. C., 305.
e La. C. C., 250.

to appoint guardians to minors "whenever it appears necessary or convenient;" (*a*) when a minor has no parents living, or if they be adjudged or are incompetent or unfit; (*b*) when a minor is possessed of any property, real or personal, although the father be alive; (*c*) but in such case the father may commonly be appointed. (See § 15, below.) More special provisions are appended. (See note *d*.)

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a Cal. C. Civ. P., 1747; Tenn., 3363; Nev., 548; N. Dak., 6537; Dak. Prob. C., 333; S. Dak., 1895, 71; Idaho, 5770; Mont. Civ. P., 2950; Mich., 6302; Nebr., 3213; Okla., 1504; Oregon M. L., 2880; Utah, 4305; Wash. Civ. P., 1128.

b N. Mex., 1041; Wyo., 2251.

c N. J., *Orphans' Courts*, 38.

d Thus in New York "the surrogate's court may appoint guardians of the person or property as the chancellor had authority to do December 31, 1846." It has also power and authority to appoint the general guardian of the person or of the property, or both, of any infant whose father or mother is living, and to appoint a general guardian of the property only of an infant married woman. The same person may be appointed guardian in both capacities; but the guardianship of the person and property may be given to different persons. (N. Y. C. C., 2821.)

In Pennsylvania the orphans' courts have power "to admit minors when there shall be occasion to make choice of guardians, and to appoint guardians for such as they should judge too young, or otherwise incompetent to make choice for themselves: *Provided*, That persons of the same religious persuasion as the parents of the minors shall in all cases be preferred." (Pa. *Decedents' Estates*, § 49.)

In Rhode Island courts of probate, apparently, have the right to appoint a guardian of the person or estate, or the person alone, or the estate alone, of any minor resident in the town, whether such minor have a parent or not. (R. I., 196, 3.)

In Vermont the court may appoint a guardian (1) where a minor has no parent living and authorized to act; (2) when he has a parent living but is the owner of an estate real or personal, or when the parent is incompetent, etc.; (3) when the father resides without the State and has not contributed to the minor's support for three years, etc. (Vt., 2739.) And also when the minor is interested in an estate in course of settlement. (Vt., 2740.)

In Texas "whenever it shall come to the knowledge of the county judge that there is within his county any minor without a guardian of his person or estate, he shall cause a citation to be posted to all persons to show cause why a guardian of such minor shall not be appointed; and if such minor be 14 years of age, he shall be personally summoned." (Tex., 493.)

In Missouri and Arkansas whenever any justice of the peace, sheriff, or constable has knowledge that there is within the county any minor without a legal or natural guardian, he shall communicate the fact to the probate court, which shall thereupon proceed to appoint one for the minor. If over 14 the court shall notify him to appear and choose a guardian; and if he fails shall appoint one itself. (Mo., 5285, 5286; Ark., 3577, 3578.)

So, when a minor is entitled to or possessed of an estate not derived from the parent who is natural guardian, and it be suggested to the court that such parent is incompetent to take care of or is mismanaging or wasting the same, the court may issue a notice to him to appear and show cause why a curator should not be appointed. (Mo., 5280; Ark., 3580.)

In the same States if a minor have no parents or the parents be adjudged incompetent or unfit, the court shall appoint guardians to such minors under the age of 14, and permit those over that age to choose guardians, subject to the court's approval. (Mo., 5281; Ark., 3569.)

Guardians may also be appointed of persons or estates of a minor whose father is in prison, with full power and control; but the mother of such minor is not by such appointment deprived of her rights, and the guardian's authority ceases upon the father's discharge from prison, unless he consents thereto. (Mo., 5282; Ark., 3572.)

Guardians may in all cases be appointed to deaf and dumb people although over 14 and their parents be living. (Mo., 5282; Ark., 3571.)

In Colorado there is an elaborate new statute providing, among other things, that whenever the county commissioners of any county find therein any child under 16 who in their opinion is dependent on the public for support, or who is neglected or maltreated, or "whose environments are such as to warrant the State assuming the guardianship of said child," they may file a petition in the county court and obtain an order for commitment to the State home, and the effect of such is, among other things, that the rights of the parents to the custody, service, or earnings of said

Guardians *ad litem* must usually be appointed in all States when an infant is represented in any litigation pending before any court; but they are appointed for purposes of the suit only, and the office has no

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child, and their parental duties and responsibilities cease. (Colo., 1895, chap. 26, §§ 10, 12.)

In Mississippi "when no guardian has been appointed by the parent, or he has not qualified, the court appoints one." (Miss., 2186.)

In Maryland the court may appoint guardians to any infants having property, although a father or mother be living, provided notice be given to such father or mother; but such father or mother may be appointed if a fit and proper person. (Md., 93, 146.)

In New Mexico the probate courts have power to appoint guardians for minors when one or both of the parents shall have died and the minor shall have property in his own right, or if it shall appear to the court that such guardian is necessary for the personal welfare of the minor. (N. Mex., 999.)

When any person shall have in his charge any minor for at least seven years whose parents are living, or either of them, and desires to be appointed guardian of such minor who has not arrived at the age of 10, he may petition to such effect, and the court may appoint him if there be good reason. (N. Mex., 1028, 1029.)

In New Jersey infants having interest in real estate may be made wards in chancery; guardians may be appointed to protect their interests, etc. (N. J., *Infants*, pp. 1712, 1713.)

In Georgia any person may apply to the ordinary, alleging "the cruel treatment of a child by his father," and the ordinary may, after citation and hearing, appoint a guardian of the person of such child. (Ga., 1795.)

In Louisiana guardians may be appointed for minors in ordinary cases if the father or mother be dead; but the father is entitled to the tutorship if he so petition; or the mother if the father be dead, and she not having entered into a second marriage. If so remarried, it can only be confirmed with the advice of a family meeting. (La. C. P., 945, 949–951.) And when affidavit is made that the physical or moral welfare of any child is injured by the neglect, habits, etc., of its parents, or by their inability or neglect to properly care for such child, upon summons and hearing the child may be removed from the custody of the parents and provided with a home or place of safe-keeping; and thereafter it is a misdemeanor for the parents to interfere with or remove such child. (La., 1894, chap. 79.)

In Ohio guardians may be appointed to take charge "only of the estate of the minor," and at the time, or subsequently, if the minor have no father or mother, or they be unsuitable, or his interest will for any other cause be promoted thereby, the court may also appoint a guardian for the maintenance and education; but generally, if not limited by order, the person appointed is guardian of both person and estate, and shall be appointed such unless the interest of the minor will, in the court's opinion, be promoted by the appointment of separate guardians for person and estate. (Ohio, 6255.)

In Nevada and other States the county court of each county, "when it appears necessary or convenient," may appoint guardians for the persons and estates, or either, of minors who have no testamentary guardians. (Nev., 548; Dak. Prob. C., 333; S. Dak., 1895, 71; Wash. C. P., 1128.)

In Tennessee, when a minor is entitled to an estate, the court appoints a special guardian for the preservation of the same, who shall give bond as if said minor were an orphan; but the father, or, if he be dead, the mother, is preferred for such guardian unless the court thinks the interest of the minor requires the appointment of some other person. (Tenn., 3356.)

In Wyoming, although the parents be living and of sound mind, yet if the minor has property not derived from either of them, a guardian of the property must be appointed. (Wyo., 2252.)

But the father or, in case of his death, the mother, if suitable, may be appointed. (Wyo., 2253.)

In North Carolina "guardians may be appointed to minors, although the father be living." (N. C., 1572.)

Guardians in socage.—The statutes of New York and New Jersey still appear to recognize guardians in socage. Thus, in New York, "when estate in land shall become vested in an infant, the guardianship of such infant, with the rights, powers, and duties of a guardian in socage, shall belong (1) to the father of the infant; (2) if no father, to the mother; (3) to the nearest and eldest relative, males in the same degree to be preferred." (N. Y. R. S., pt. ii, ch. 1, t. 1, art. 1, § 5.)

The provision about wards in chancery in New Jersey seems of the same effect. (N. J., *Infants*, pp. 1712, 1713.)

resemblance with that of the general guardian. Usually a general guardian, if not interested, may appear as guardian *ad litem* in any suit; but in Vermont a guardian *ad litem* must be appointed whenever a minor is interested in an estate in course of settlement as heir, etc., before any part of it is assigned to the minor, although he has a parent living who is authorized to act as guardian. (*a*)

SEC. 15. *May be Nominated by Ward.*—In nearly all the States minors over 14 may nominate their guardians, subject to the approval of the court. (*b*)

When a guardian nominated by a minor is not approved by the judge, or if the minor neglects to nominate a suitable person, the judge may generally nominate and appoint the guardian in the same manner as he would if the ward were under the age of 14. (*c*)

And if a guardian has been appointed by the court for a minor under the age of 14, the minor after attaining that age may appoint his own guardian, subject to the approval of the court, etc. (*d*) In Texas this provision is limited to the case of no testamentary guardian being appointed; but the same is probably implied in other States. (See § 17, below.) But in Washington, when a guardian has been appointed for a minor under the age of 14, he shall not be removed after the minor arrives at such age except for good cause shown. (*e*) In New Mexico any minor over 10, whose person is under the guardianship of any person not the mother or father, may nominate some other person, and the judge of probate may appoint such person, if he be not of bad reputation. (*f*) In New Jersey, letters of guardianship are granted on the orphan's petition, if he be aged 14; but if he be under that age, the mother or next of kin, or anyone of several next of kin in the same degree, giving due notice to the rest, may petition to be appointed, or to have a stranger appointed, until the ward attains the age of 14 and chooses another guardian. (*g*) So, in New York, until the infant arrives at the age of 14 a temporary guardian is appointed. (*h*) In Ohio male infants over 14, or female infants over 12, have a right to select a guardian, but may not appoint separate guardians of the person and

a Vt., 2740.

b Ala., 2371; Ark., 3579; Cal. C. C. P., 1748; Colo., 1893, 101; Dak. Prob. C., 334; N. Dak., 6538; S. Dak., 1895, chap. 71; Del., 96, 7; Ga., 1806; Idaho, 5770; Ky., 2022; Miss., 2186; Mass., 139, 2; Me., 67, 2; Mont. C. P., 2950; Mich., 6303; Mo., 5286; Nebr., 3214; N. H., 178, 2; N. Y. Civ. C., 2822; Nev., 549; Okla., 1505; Oregon M. L., 2881; R. I., 196, 4; S. C. C. P., 50; Tex., 2492, 2505; Utah, 4306; Va., 2599; Vt., 2743; Wash. C. P., 1129; W. Va., 82, 4; Wis., 3962; Wyo., 2254.

c N. H., 178, 2; Mo., 5287; Mont. C. P., 2952; Ark., 3579; Cal. C. C. P., 1749; Dak. Prob. C., 335; N. Dak., 6539; Ky., Miss., Mass., Me.; Nev., 550; Okla., 1506; Utah, 4307; Vt., 2744; Va., 2600; R. I., 196, 5; W. Va., 82, 4; Wash. C. P., 1130; Wis., 3963; and see also § 14, where several States, as will be seen, make this a special cause for appointing court guardians.

d Cal. C. C. P., 1750; Dak. Prob. C., 336; N. Dak., 6540; N. H., 178, 3; Nev., 551; Okla., 1507; Tex., 2510; Utah, 4308; Vt., 2745; Wis., 3973; Mo., 5290; Ark., 3583; Mont. C. P., 2953.

e Wash., C. P. 1131.

f N. Mex., 1026.

g N. J., *Orphans' Courts*, § 36.

h N. Y. C. C., 2877.

estate unless the courts specifically approve. (*a*) (For Pennsylvania, see § 14, above.)

When a guardian is appointed for a minor under the age of 10, unless such appointment be testamentary, the minor after arriving at the age of 10 may choose another person, who shall be appointed by the court, if there shall be no just cause to the contrary. (*b*)

SEC. 16. *Who Appointed.*—Where the father or mother is living he or she is very often entitled to a preference in being appointed guardian of the children; and where the father and mother are not living, there is in some States a special order of choice provided by statute.

Thus, in California, and the States following its code, the father of a minor, if living, and in case of his decease the mother, where (except in Montana) she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, must be entitled to the guardianship of the minor. (*c*) In other States, the father if living, or the mother if he be deceased, being competent, etc., is entitled "to the custody of the person and care of education of the minor;" but for the property, etc., a guardian may be appointed. (*d*) (See also § 19, below.)

In Alabama and New Jersey, if suitable and proper, and willing to qualify, the father is entitled to the preference. (*e*) If there are two or more applications for the guardianship, the court must prefer that person who is of nearest relationship, and will, in its opinion, best manage the estate of the ward. (*f*) In the California Code States, in awarding the custody of a minor, or in appointing a general guardian, the court is to be guided by the following considerations: By what appears to be for the best interest of the child, and the court may consider the child's preference if it be of sufficient age to form one intelligently. As between parents adversely claiming, neither parent is entitled to it by right; but other things being equal, the mother is to be preferred if the child be of tender age; or the father, if the child be of an age requiring education and preparation for labor and business. Of persons equally entitled to the custody in other respects, preference is to be given (1) to the parent; (2) to one who was indicated by the wishes of a deceased parent; (3) to one who already stands in the position of trustee of a fund to be applied to the child's support; (4) to a relative. (*g*)

In New Hampshire the judge may appoint the father or mother, or any person nominated by either, to be the guardian of a child. If a

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a Ohio, 6257.

b N. Mex., 1000.

c Cal. C. C. P., 1751; Dak. Prob. C., 337; N. Dak., 6541; Idaho, 5774; Mont. Civ. C., 2954; Nev., 552; Okla., 1508; Utah, 4309; Tenn., 3356; Wash. C. P., 1132.

d Mass., 139, 4; Me., 67, 3; Mich., 6306, Amt.; N. Mex., 1002; Ohio, 6264; Oregon M. L., 2883; Va., 2603; W. Va., 82, 7; Wis., 3964.

e Ala., 2372; N. J., *Orphans' Courts*, § 38.

f Ala., 2375.

g Cal. Civ. C., 246; Dak. Civ. C., 127; N. Dak., 2817, 2818; Mont. Civ. C., 340; Utah, 2546.

cause exists, which if continued may be cause of divorce, the preference shall be given to the parent injured, or to a suitable person nominated by such parent. (*a*) In New Mexico no person to whom the estate of any minor will probably descend, except the father or mother, shall be appointed guardian. (*b*) In New York if the father, or if he be dead the mother, is not to be appointed, the petition must set forth the circumstances which render the appointment of another person expedient, etc.; and the father or mother must be cited to show cause. (*c*)

In Georgia in the appointment of guardians the widow has preference, and then the nearest of kin by blood, males being preferred to females; but the court may exercise its discretion. (*d*) In Kentucky "in appointing a guardian, the court shall observe the following precedence, unless it deems that prudence and the interests of the infant require it to depart therefrom:

1. The father, or a testamentary guardian of his appointing;
2. The mother, if unmarried;
3. The next of kin, giving preference to males." (*e*)

In Oregon the nearest relative has precedence, provided he be of good moral character, and otherwise competent to discharge the duties of guardian; so, in Mississippi, the natural guardian or the next of kin; while in Maryland "the father or mother may be appointed if a fit and proper person." (*f*)

In Tennessee a wife abandoned by her husband may be appointed guardian of her children if it appear to the court the abandonment was without lawful cause, and she may also be appointed guardian in the court where her bill for divorce is filed, etc., and in both cases she will have the custody, care, and education of her children, and give a bond with surety as their guardian. (*g*)

In Texas where the minor is an orphan and no testamentary guardian has been appointed, the nearest ascendant in the direct line, if not disqualified, is entitled to the guardianship of both the person and estate. If there be more than one ascendant in the same degree in the direct line, they are equally entitled, and the guardianship shall be given to one or the other according to circumstances, taking into consideration the circumstances of the orphan alone. If no ascendant in the direct line, to the nearest of kin in the collateral line who comes immediately after the presumptive heir or heirs of the orphan; and if there be two or more in the same degree, to one or other according to circumstances, taking into consideration the circumstances of the orphan. If there be no relative qualified, and if no person entitled applies, the court shall appoint some proper person to be such guardian. (*h*)

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a N. H., 178, 3.
b N. Mex., 1003.
c N. Y. C. C., 2823.
d Ga., 1808.
e Ky., 2021.
f Oregon, 2879; Miss., 2186; Md., 93, 146.
g Tenn., 3355.
h Tex., 2498-2501.

The following persons shall not be appointed guardians:

Minors, except the father or mother; persons whose conduct is notoriously bad; persons of unsound mind; habitual drunkards; those who are themselves, or whose father or mother are, parties to a lawsuit on the result of which the condition of the minor or part of his fortune may depend.

Those who are debtors to the minor, unless they discharge the debt prior to the appointment; but this does not apply to the father or mother. (*a*)

In Vermont the father of a legitimate minor child, or, if the father be dead, the mother, shall be guardian of such child, and the mother shall be guardian of any illegitimate minor child until another guardian is appointed. When a parent authorized to act as guardian is living, and the appointment of a guardian is required, such parent, if approved by the court, may be appointed. The father of a minor, or, if he be dead, the mother, may have the custody of the person and the care and education of the minor, if the court at the time of appointing a guardian deems that they are competent and suitable; but if it deems otherwise, it shall direct accordingly in the letters of guardianship. (*b*) And in Maryland (see § 14, above) it appears the father or mother may be appointed, if a fit and proper person. (*c*) Provided, that if the judge make an order declaring either or both of the parents incompetent or unsuitable to have the custody of the person or care of the education of the minor, in such case the guardian appointed by the probate court shall have the custody of the person of the minor and the care of his or her education. (*d*)

In Louisiana, after the father, the relations of a child appear to be entitled to the tutorship in the order of their consanguinity, and no one of a more remote degree can be appointed without notice served to those of nearer degree to show cause why the appointment prayed for should not be made.

If no relation of a minor claim the tutorship or will accept it, the judge may appoint, with the advice of a meeting of the minor's relations or friends, some discreet and responsible person to be tutor and another to be undertutor. (*e*)

Where minor children are left without father or mother and unprovided with a tutor, and there is no male relation entitled or who will accept the tutorship, the court may, upon the advice of a family meeting, appoint any female person over 21 who is related to said children within the fourth degree, provided the father or mother of such minors dying last shall have left a will intrusting his or her minor children to the care of said female relation. (*f*)

If there is no testamentary guardian, the judge ought to appoint the

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a Tex., 2504.
b Vt., 2737, 2738, 2741, 2747.
c Md., 93, 146.
d Mich., 6306, Amt.
e La. C. P., 952, 953, 957.
f La. 1894, chap. 45.

nearest ascendant in the direct line of the minor, preference being given to males; but if there are several in the same degree of the same sex the judge must appoint by advice of the family meeting. The grandmother is the only woman who can claim tutorship by the fact of law. If there be no ascendants, the tutorship is given to the nearest of kin in the collateral line. If there are two or more of the same degree, one is appointed with the advice of a family meeting. The relation even in the fourth degree, inclusively, who refuses to take charge of the tutorship is responsible to the minor for all losses and damages which may result therefrom. (La. C. C., 263–268.)

Where a minor is an orphan, and has no testamentary guardian or any relation entitled by law, or such relation is excused, the judge appoints a tutor by and with the advice of a family meeting. (La. C. C., 270.)

In Louisiana an undertutor must always be appointed, whose duty it is to act for the minor whenever his interest is in opposition to that of the tutor. (La. C. C., 275.)

Appointment of Married Women.—In many States married women may be appointed guardian (of their own or other children) in all respects as if sole.(*a*) But in Missouri and Arkansas no married woman shall be guardian or curator of the estate of a minor; but a married woman may be guardian of the person of a minor.(*b*)

So, in many States, the marriage of the woman guardian does not extinguish her authority,(*c*) but in other States it does, and she may not be appointed guardian if married.(*d*)

If the mother who is tutrix to her children wishes to marry again, she must apply to the judge to have a family meeting called for the purpose of deciding whether she shall remain tutrix, and failing to do so, shall be deprived of the tutorship.(*e*)

SEC. 17. *Duration of Guardianship.*—Generally speaking, the guardianship lasts until the ward arrives at the age of 21, or other legal majority, or the guardian be removed by court; (*f*) but in some States the marriage of a minor ward of either sex absolutely terminates the guardianship. (*g*) In other States such a marriage terminates guardianship of the person of the ward, but not of the estate. (*h*) In other States marriage of female wards only terminates the guardianship in all

a Mass., 147, 5; Mont. C. P., 2954; N. H., 178, 4; Ohio, 1893, p. 194; Vt., 2645; Wis., 3992; Tex., 2523.

b Mo., 5292; Ark., 3589.

c Vt., 2815; N. H., 178, 5. But her guardianship may be revoked by the court's discretion.

d Mo., 5292; Ark., 3589; W. Va., 82, 7.

e La. C. C., 254.

f N. H., 178, 6; Mich., 6308, Amt.; Ohio, 6258, 6264; Nebr., 3212; Nev., 4943; N. Mex., 999; W. Va., 82, 7; Okla., 1510; Wash. C. P., 1134; Oregon M. L., 2883.

g Cal. C. Civ. P., 1753; Dak. Prob. C., 339; N. Dak., 6543; Idaho, 5776; N. Mex., 1024; Del., 96, 7; Nev., 586; Utah, 4311; Mont. C. P., 2956; C. C., 348 (of testamentary guardians).

h Cal. C. P., 1802; Utah, 2555; Mont. C. P., 3052; C. C., 349.

respects. (*a*) In other States such marriage of a female ward terminates the guardianship as to the person only, but not as to the property. (*b*) (For the appointment of new guardians when the ward arrives at the age of 14, etc., see § 15, above.) In New Jersey, New York, and Ohio it is specifically provided that the authority of guardians appointed when the ward be under 14 (12 in Ohio, in the case of females) shall only continue until the ward arrives at such age. (*c*) (See § 15, above.)

SEC. 18. *Testamentary Guardians.*—At common law any father under age, or of full age, might, by deed or will, dispose of the custody of his child, either born or unborn, to any person until such child attained the age of 21. This law is followed by the statutes of many States; and very generally, if the father be deceased, the mother may appoint a testamentary guardian.

Thus, in many States, a father (though he be a minor), (*d*) or in case the father has died without exercising the power the mother, (*e*) may by his or her last will (or in some States by deed), (*d*) in writing, appoint guardians for his or her children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for a less time. (*f*) But in Michigan, if the mother survive the father, the appointment by the father must be confirmed by the judge, and she may show cause against it, etc. So, in the California Code States, "a guardian of the person or estate, or both, may be appointed by will or by deed to take effect upon the death of the parent appointing; such appointment to be made by either parent if the other be dead or incapable of consent. (*g*) If the child be legitimate, the appointment must in all these States be made by the father, with the written consent of the mother; but if illegitimate the appointment may (except in Utah) be made by the mother only.

In other States the last surviving parent only may appoint. Thus, in New York and Colorado, upon the death of either father or mother, the surviving parent, whether of full age or a minor, of a minor child, born or to be born, may by deed or last will dispose of the custody and tuition of such child during its minority, or for any less time to any proper person (*h*). But in New York such appointment does not appear to be valid, if the child be married. So, in other States, the lawful surviving parent of any minor may by last will appoint a guardian, and such minor is not allowed to choose another guardian upon arriving at

a Nebr., 3212; Md., 93, 153; Ky., 2025; Vt., 2816; Tex., 2512; Va., 2603.
b Mass., 139, 41; Ohio, 6265; Mich., 6329; Wis., 3970.
c Ohio, 6258.
d N. C., S. C., Tenn.
e But the power to appoint a testamentary guardian is not extended to the mother in Tennessee, Virginia, and South Carolina, and in West Virginia she must not have remarried.
f Mass., 139, 5; Mich., 6311 Amt.; N. C., 1562; Ohio, 6266, 6267; Oregon, 1891, p. 87; Nev., 558; S. C., 2058; Tenn., 3362; Wis., 3965; Va., 2597; W. Va., 82, 1.
g Cal. Civ. C., 241; Dak. Civ. C., 122; N. Dak., 2812; Idaho, 5781; Mont. Civ. C., 335; Okla., 3581; Utah, 2541.
h N. Y. R. S., pt. ii, ch. 8, t. 3, § 1; Colo., 1895, 80.

the age of 14, unless the testamentary guardian declines to serve any longer and notifies the court thereof (*a*). But if any testamentary guardian fails to qualify within six months after probate of the will, the court may appoint a guardian in his stead (*b*). So, in Arkansas and Missouri, if a minor having a guardian or curator, appointed by the court, upon attaining the age of 14 chooses another guardian who is competent, the court shall appoint him (*c*). And so, in California, etc., the power of the testamentary guardian is superseded by his removal, by the solemnized marriage of the ward, or by the ward's attaining majority (*d*).

In other States, as at common law, testamentary guardians may be appointed by the father only (and see for Virginia, etc., above). Thus, they may be appointed in Alabama by last will of the father; (*e*) but the mother is entitled to the person of the ward until it is 14 years of age. (Exceptional provisions of the other States will be found in a footnote.) (*f*) So, in Delaware, the father may by deed or will name a

a Ark., 3574–3576; Miss., 2184, 2185; Mo., 5283, 5284. In New York, within 30 days; N. Y. Civ. C., 2852, 2853.

b Ark., Miss., Mo., *ut supra;* Va., 2598; W. Va., 82, 2.

c Conn., 462; Ark., 3583; Mo., 5290.

d Cal. Civ. C., 254; Dak. Civ. C., 135; N. Dak., 2826; Idaho, 5822; Mont. Prob. C., 427; Utah, 2554.

e Ala., 2373.

f In Connecticut any parent who, if living, would be entitled to the guardianship may by will appoint a guardian to his infant child, to continue until the age of 14, etc. (Conn., 462.)

In Georgia every father may, by will, appoint guardians for the persons or property, or both, of his children, and such guardians shall not be required to give bonds. (Ga., 1804.)

And the mother, if a widow, shall have power by will to appoint testamentary guardians for such children as have none as to their persons, and as to such property as they may inherit from her. (Ga., 1805.)

In Maine the father may nominate a guardian for his children under 14 in his last will, who shall be appointed if suitable. (Me., 62, 2.)

In Nebraska the surviving parent may, by last will in writing, appoint a guardian being competent to transact their [sic] own business, and not otherwise unsuitable, for any of the children, whether born at the time or afterwards, and such testamentary guardian has the same powers and duties with regard to the person and estate of the ward as one appointed by the court, and shall give bond in like manner, unless the testator have requested that no bond be given. (Nebr., 32, 22, 23.)

In New Mexico every father or mother may, by deed or last will, name a guardian who shall be appointed unless he refuses or neglects to give security, or there be other sufficient reasons against appointing him or her. (N. Mex., 1004.)

In Maryland the father may appoint a guardian by will, and the mother also, provided she be capable at law to execute a will. (Md., 93, 148.)

In New Jersey when any person has a child under 21 and not married at the time of his death, the father, whether at the age of 21 or not, may by deed or last will dispose of the custody and tuition of such child, while it remains under the age of 21 or for any less time, to any person or persons in possession or remainder, provided that the mother, if living, consent in writing, signed and acknowledged by her before two witnesses; and such disposition is good "as guardian in socage or otherwise," and such person so appointed may maintain action for possession of the ward, etc., and is entitled to the profits of the real estate of such child for his use, and to the custody and management of personal estate, for such time as the appointment lasts. The mother of any minor child, being a widow, may appoint a guardian in the same manner by last will, provided no guardian have been appointed by the father as above. (N. J., *Guardians*, 1, 2.) And where by last will a testamentary guardian is appointed, the court may upon petition and notice to him inquire into the present custody of the minor child, and make such order concerning the testamentary guardianship as may be for its welfare. (N. J., *Orphans' Courts*, 207.)

But in Michigan, when both father and mother are dead, and the father or mother

guardian for his child, who shall be appointed, if there is no just cause to the contrary, and such guardianship continues until the age of 21. (*a*) And in Florida fathers may appoint guardians for their children during any part of their infancy by deed in writing, attested by two witnesses, or by last will. (*b*)

Powers of Testamentary Guardians.—As a general rule, testamentary guardians have the same powers as guardians appointed by the courts with regard to the person and estate of the ward. (*c*) (For such see

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attempting to appoint a testamentary guardian was not a resident of the State, and had not the custody of the infant prior to his or her death, but it was under the lawful control of citizens of the State for one year prior thereto, or a citizen of Michigan had been appointed lawful guardian, it is not competent by will to transfer the control of the ward from such citizen or guardian to the testamentary guardian. (Mich., 6311, Amt.)

In Pennsylvania every person competent to make a will, being the father of a minor child unmarried, may devise the custody of such child during its minority, or for any shorter period; but no father who has for one year previous to his death willfully neglected or refused to provide for his child may appoint such testamentary guardian. If the father be not living, and have not appointed such guardian, the mother who shall leave to such child an estate, real or personal, may do so; and the mother who has been appointed testamentary guardian by her deceased husband's will may by her last will appoint a successor. Whenever any husband has neglected to provide for his wife and children, or has deserted them, the wife, if she leave to her children any estate, real or personal, may appoint a testamentary guardian for them. (Pa., *Decedents' Estates*, 44–48.)

In Rhode Island every person authorized to make a will may appoint by will a guardian for his or her children during minority, provided that in the case of husband and wife the survivor, being otherwise qualified, shall be guardian of their children; but the probate court has to confirm such appointment. (R. I., 196, 1; 203, 3.)

A married woman may be testamentary guardian whether she was married at the execution of the will or not; but she may not be appointed guardian by the court except in the case of her own children. (R. I., 194, 11.)

In Texas the surviving parent of a minor may by will or written declaration appoint any person, not disqualified, to be guardian of the persons of his or her children after the death of such parent; and such person shall be appointed guardian of their estates also after the death of such parent; and in such case the minor can not choose his own guardian, although over 14. (Texas 2497, 2505.)

In Vermont and Washington a father may by will appoint guardians for his minor children, whether born or to be born, and they shall be governed by the laws applicable to guardians appointed by court. (Vt., 2748; Wash. C. P., 1142.)

In Wyoming the natural and actual guardian of a minor may by will appoint another guardian for such minor. (Wyo., 2251.)

If the father or mother of a minor have appointed a tutor for him by will, the tutor thus appointed shall present a petition and may be appointed by the court. (La. C. P., 956.)

The right of appointing a tutor, whether a relation or a stranger, belongs exclusively to the father or mother dying last. This may be given by will or by declaration of the surviving parent executed before a notary and two witnesses. But the mother who has married again and has not been maintained in the tutorship of the children has no right to appoint a tutor to them; and so of the father or mother against whom a divorce has been obtained. (La. C. C., 257, 258.)

The judge may refuse to confirm the tutorship given by the surviving father or mother with the advice of a family meeting, and in such case a tutor is appointed by the court. (La. C. C., 260.)

If one of two parents be an interdict or notoriously insane, the other parent has the right to appoint a tutor to his or her minor children, as provided by law, in the case of a father or mother dying last: *Provided*, That if the parent would be restored to reason such tutorship by will shall be vacated. (La. 1892, chap. 61.)

a Del., 96, 8.

b Fla., 2086.

c Mass., 1395; Mich., 6311, Amt.; Nev., 558; N. C., 1562, 1564; Ohio, 6267; Oregon, 1891, p. 87; Wis., 3965.

the next section.) But in New York and a few other States there are special provisions. (*a*)

SEC. 19. *Powers of Guardians.*—As a general rule, it may be stated that the guardian has entire control over the ward's estate, may collect debts, rent real estate, sue and be sued, and dispose of the income; and he has entire control over the person of the ward and his or her education; but where there is a guardian of the property only and a guardian of the person the functions are divided accordingly; and in most States, where the ward has a parent living, such parent, if competent and the proper person, is entitled to the custody of the ward and the care of his education. (See § 6, above.)

Thus every guardian has the custody and the care of the education of the minor, and the care and management of his estate until such minor arrives at the age of majority, or marries, or the guardian is otherwise discharged. (See § 17, above.) (*b*)

But in Alabama no guardian appointed by court can exercise any control over the person of the ward during the life of the father, or during the life of the mother, if the ward is a female, or a male under 14. (*c*) So, in other States, "if a minor have no father or mother living competent to have the custody and care of his education, the guardian appointed shall have the same" (and compare § 6). (*d*) And in Kentucky and Oregon, despite the guardianship, the father of a minor, if living, or if he be dead, the mother, if suited to the trust, shall be allowed by the court to have the custody, nurture, and educa-

a Every such disposition, from the time it shall take effect, shall vest in the person or persons to whom it shall be made all the rights and powers, and subject him or them to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody or tuition of such minor, as guardian in socage or otherwise. (N. Y. R. S., pt. ii, ch. 8, t. 3, § 2; S. C., 2190.)

Any person to whom the custody of any minor is so disposed of may take the custody and tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor, and shall recover damages in such actions, for the benefit of his ward. He shall also take the custody and management of the personal estate of such minor and the profits of his real estate during the time for which such disposition shall have been made, and may bring such actions in relation thereto as a guardian in socage might by law. (N. Y. R. S., pt. ii, ch. 8, t. 3, § 3; S. C., 2191, 2192.)

And by the provisions of the civil code no person can act as testamentary guardian until the will has been proved and letters of guardianship duly issued, or the deed appointing been acknowledged or approved and certified and recorded. If a deed of appointment is not recorded within three months after the grantor's death, the guardian is presumed to have renounced the appointment. (N. Y. C. C. 2851.)

Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties with regard to the person and estate of his ward as guardians appointed by the probate court, except so far as their powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed. (Okla., 1515; Utah, 4316; Cal. C. C. P., 1758; Dak. Prob. C., 344; Idaho, 5782.)

b Cal. C. Civ. P., 1753; Dak. Prob. C., 339; N. Dak., 6543; Idaho, 5776; Mont. C. C., 341; C. P., 2956; N. H., 177, 3; 178, 6; Ohio, 6264; Okla., 1510; Wash. C. P., 1134; Del., 78, 2; Ky., 2032; Mass., 139, 4; Oregon M. L., 2883; Tex., 2540–2546; Utah, 2547, 4311; Va., 2603; W. Va., 82, 7; Wyo., 2257.

c Ala., 2372.

d Nev., 553; Okla., 1509; Utah, 4310; Wis., 3964; Mich., 6307, Amt.; Nebr., 3218; Wash. C. P., 1133; Mont. C. P., 2955.

tion of the ward. (*a*) And in Mississippi the guardian of a minor whose father or mother is living, and a suitable person, shall not be entitled as against the parent to the custody of the ward. (*b*) In Massachusetts the probate court may order the guardian to have the custody of the ward, upon hearing and notice, if it find the parents unfit, or one of them be unfit, and the other file in court his or her written consent. (*c*)

So, in Maine, the court may only decree the care of the person and education of the minor to the guardian, if it deems it for his welfare, when the parents be living. (*d*) In North Carolina, if the father be living, guardians have no authority over the person of the minor in any case. (*e*) So, in Michigan, the guardian appointed by the probate court has the custody of the person of the minor and care of his education only upon order declaring either or both the parents incompetent. (*f*) In Rhode Island "every guardian of the person shall take suitable charge of the person, and every guardian of the property shall improve such estate frugally and without waste." (*g*) In Arkansas and Missouri the guardian of the person, whether natural or legal, is entitled to the charge, custody, and control of the person of the ward, and the care of his education, support, and maintenance. (*h*) In Colorado no person appointed guardian, other than the father or mother, has control over the person of the minor, but only over his estate. (*i*) (A few more specific provisions will be found in a footnote.) (*j*)

Bonds, etc.—Generally speaking, both natural and testamentary guardians must give bond with surety or sureties, but in some States testamentary guardians need not give bond when exempted from so doing by the testator, but a bond may usually be required by the court then or later if the circumstances, etc., demand it. But in some States a bond is required only of guardians of the property.

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a Ky., 2033; Oregon, 1891, p. 87.
b Miss., 2192.
c Mass., 139, 4.
d Me., 67, 3.
e N. C., 1572.
f Mich., 6306, Amt.
g R. I., 196, 34.
h Ark., 3588; Mo., 5297.
i Colo., 1893, 101.

j In Texas the guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. It is his duty to take care of the person of such minor; to treat him humanely, and to see that he is educated in the manner suitable to his condition, and, if necessary for his support, that he learn a trade or adopt some suitable profession. (Tex., 2540, 2541.)

The guardian of the estate is entitled to the possession and management of all property belonging to the ward, may collect debts, bring suits, etc., and the guardian of both person and estate has all the rights, powers, and duties of both kinds of guardians. (Tex., 2542, 2543.)

In Utah and Montana a guardian of the person is charged with the custody of the ward, and must look to his support and education, and he may fix the residence of the ward at any place within the State, but not elsewhere without permission of the court. (Utah, 2548; Mont. C. C., 342.)

In Vermont a guardian of a minor appointed by the court "shall have the care

THE MUNICIPAL OR COOPERATIVE RESTAURANT OF GRENOBLE, FRANCE.

BY C. OSBORNE WARD.

The municipal restaurant of Grenoble is of interest, as affording an example of a restaurant owned and indirectly managed by a city, the operations of which can be studied during a period of over forty-five years. It grew out of an unsuccessful experiment which in 1848 was tried at Geneva, Switzerland, and was afterwards worked out by M. Frederick Taulier, mayor of the city of Grenoble, department of the Isère, France, during the years 1850 and 1851. The original Swiss experiment had to be suspended until 1850, on account of the revolutionary excitement then prevailing in Europe. In that year permission was obtained from the French Government to resume at Grenoble, and it has since continued as a municipal restaurant, working with perfect regularity, and, according to its own authorized publications, with "a success which has never been called in question." One of these official documents contains the following statement:

The service it has rendered during this period of years, some of which have been marked by dearness of supplies, has silenced the voices heard in opposition during the early stages of the enterprise, so that to-day, within and without the city of Grenoble, there exists unanimity both in recognizing and proclaiming the utility of this institution.

The entire property belongs to the city of Grenoble, the land and several of the buildings having been formerly used for a school. It is founded on the ruins of the old convent of St. Maria. In fact, there is still maintained a school in the upper part of one of the largest buildings. The city not only owns and conducts this school, but feeds the children at the restaurant.

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and management of the estate and, except as otherwise provided, the care and tuition of the minor; shall furnish him suitable employment, provide for his education and instruction in science or some trade or profession according to his circumstances, and may bind him out to service as provided by law." (Vt., 2746.)

When minor children inherit real or personal estate as representatives of their deceased mother, or take the same by her will, and the father as guardian has the custody of their persons and estates, he shall, if the probate court directs, furnish a bond to and pay the principal of such estate only. The income may be expended by him for the benefit of the children without accounting to the probate court. (Vt., 2764.)

In California, etc., "when any person is appointed guardian of a minor, the probate court may, with the consent of such person, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education, and welfare of the minor. The performance of such conditions is a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible." (Cal. Civ. P., 1755; Dak. Prob. C., 341; Okla., 1512; Utah, 4313.)

The municipal restaurant of Grenoble is called a cooperative society of shareholders because, according to its published statements, it is a "union of persons who cause their food to be prepared in a common kitchen." These so-called shareholders are thousands in number, and include many of the most respected citizens. The food is either delivered at the consumers' residences or enjoyed at the refectories of the establishment. The title of membership is merely nominal, since any person may visit the restaurant and will receive exactly the same treatment as the members. Any person to obtain this title of membership has only to take out a card, without the ceremony of election or initiation. This is generally done yearly, and at a cost of only 20 cents. The salutary effect of this seemingly sham arrangement is that there is never wanting a large body of interested citizens from among whom, at a general meeting, to choose the commission or board of fifteen, which in turn elects a committee of one hundred from the ranks of the people, three of whom meet each day to count the checks and audit the finances. At the close of this work they partake of a good dinner in a special room as their only compensation.

At the mayor's office this method of transacting business is not recognized as governmental, since the so-called shareholders receive no pay. It is called the "moral" work of the institution.

In auditing the accounts no profits are awarded any person or institution, but the municipality of Grenoble receives a nominal rental for the property's use. The city and the members receiving no profit in any form, the incentive to speculation is entirely ruled out. In order that the prices of the dishes may be reduced to an unalterable minimum, it is provided that if at the close of the year a surplus has accrued it shall be deposited in the city's treasury as a reserve for other years when prices of provisions are high. A perfect equilibrium is thus realized. In this manner the prices of dishes have, with one exception, that of a slight variation in the price of meat, remained unchanged for forty-five years at all seasons and through all financial depressions.

At the inaugural meeting which was convened January 5, 1851, at which date all was in readiness, the mayor convoked at the city hall the board of aldermen, the administrative council, various presidents of charitable institutions, and 800 other influential citizens, all of whom subscribed. Municipal support was deemed necessary. In the official account of its foundation occur these words:

The municipal council voted in favor of founding this alimentary association. The enterprise needed from the start encouragement and aid from the municipal administration.

There are nine buildings joined more or less to each other, and so arranged as to form a large central court. This court is tastefully decorated with flowers, adorned with statues and fountains, and furnished with tables for those who prefer to take their meals outside of

the regular dining halls. The eating rooms are five in number, or if the open court is counted, six, and are arranged as follows: There is one at the main entrance to the establishment, which is situated near the river Isère. This is a select room, 25 by 20 feet in size, 14 feet high, and provided with 7 marble tables, each 6 feet long and 3 feet wide, accommodating in all 70 persons. This is the more elegant part of the establishment. It is entered from a vestibule in which are spigots providing pure water, and washbowls of modern pattern, and is itself nicely furnished. Any person of either sex can enter without restriction or formality, and the quality, quantity, and prices are the same as at the other tables, with the exception that 2 cents additional are charged at each meal for the extra service of waiters, napkins, etc.

The second eating room adjoins the one described, and is the largest of all, being 40 by 20 feet, and furnished with 8 long wooden tables. It has benches, hooks for hats and coats, and is lighted with gas. Eighty persons may easily be seated in this room at one time.

A third hall of nearly the same proportions is located at the lower end of the second, and is furnished in the same manner. It runs at right angles to it, and at the opposite extremity leads directly to the great kitchen.

Still below this, and approached by an alleyway running between the kitchen and this hall, is the large dining room for women and children, no men being admitted unless accompanied by their wives or other women. This room is 33 feet long by 21 feet wide and has 9 tables.

There is another eating room for the children of the school, situated on the floor above and not seen by the ordinary visitor. A private arrangement also exists by which the assistants of the large Vaucanson College are served through another wicket at the great kitchen. This entire school, including teachers, is fed by the institution, and the service and accounts are kept apart. The dishes are carried to the refectory of the college.

In order to obtain all possible information every room belonging to the establishment was visited. They are 27 in number, including cellars and lofts, but exclusive of the schools, which are not considered as a part of the institution, although they occupy its plant and the children are fed by it.

The apartment which, of all others, is most interesting and important, and to which all the others are subsidiary, is the kitchen. This occupies a square building in the inclosure, and is built over one of the large cellars or storing vaults. It is 40 by 40 feet in size, with the ceiling high and ventilation good. Near the center of the kitchen is the mammoth range, which is heated with charcoal and coke. It is 11 feet in length, 6 feet wide, and 22 inches high, flat on the top, and contains apertures variable in size to accord with the different sizes of the cooking utensils. This range, which is independent of the warming ovens and boiler,

is large enough to cook for 600 persons at once. Not far from it is the copper boiler for soups and boiled meats, the capacity of which is between 400 and 500 quarts. All around the kitchen are shelves, hooks, niches, cupboards, etc., for placing the various utensils. At one end of the kitchen is the wicket, where the metal checks are exchanged for dishes of food.

Another large room, 25 by 20 feet and 12 feet high, situated in close proximity to the kitchen, and properly belonging to it, is provided with a similar wicket, through which are handed the bread, wine, and dessert. On both sides of its walls are shelves and sideboards for the knives, forks, spoons, and dishes which are for the use of the patrons of the restaurant.

The employees of the restaurant are at present 13 in number, and all the work of the establishment, including that of keeping the accounts, which is performed by an agent of the city, but is paid for by the restaurant, is done by them. Their wages per month are as follows:

One head manager	$28.95
One receiver of money for checks	19.30
One chief cook	15.44
One assistant cook	13.51
One storekeeper	11.58
One porter	7.72
Four waiters	3.86 to 9.65
Two janitors	4.83
One accountant for the city	8.04

These, with the exception of the accountant, live at the establishment, being furnished with board and lodging in addition to their wages.

The visitor who desires his meals at the special tables first described enters from the street through the vestibule, as in any public restaurant, and does not purchase metal checks at the wicket, but pays the waiter for his meals. If a card holder, he shows his card.

The great mass of frequenters, however, pass through an entrance from the same street and purchase metal checks representing the dish or dishes desired. These checks are sold by the receiver, who stands in the ticket office, the operation resembling that of buying tickets at a railroad station. The prices and quantity of food called for by these checks are as follows:

	Cents.
Soup, 1 quart	2
Meat or fish, 4½ ounces	4
Plate of vegetables	2
Wine, ½ pint	2
Bread, 4⅜ ounces	1
Dessert	2

There are different varieties of soups, meats, vegetables, dessert, etc., which the patron specifies as he presents the checks at the wicket of

the kitchen, whither he now proceeds on his way to one of the eating rooms. His soup check, for instance, calls for four varieties of soup, from which he can make a choice. His check for meat is good for either a beefsteak, a roast, a cutlet, or other meats. So with the other checks. Exception must be mentioned of wine, only one quality being handled. This is red wine, stored according to law for about two years in the wine cellar, and absolutely pure. The check for dessert is good for nuts, sweetmeats, several kinds of cheese, etc.

According to a stringent rule, which has been constantly observed from the foundation of the restaurant, nothing but the purest articles are purchased. Large quantities of butter, wine, potatoes, oil, vinegar, and other goods are stored and kept on hand in the cellars. A buyer, who is generally the head manager, is much of the time absent among the farmers, from whom he purchases all raw materials, paying cash for the same. To ascertain the permanent, economic, and social effects of the institution among produce and cattle growers in the vicinity of Grenoble, farms at a considerable distance were visited and the farmers questioned. They unanimously reported that wherever the influence of the establishment is felt it is regarded as beneficial, not so much on account of the higher prices it may offer as on account of its permanency and business integrity and the high moral standard that it sets. The farmers are thrifty and prosperous, and there is probably not a more stable agricultural tract in France than this region of the Isère and the Drac. Instances are numerous in France of the plan being patterned after, and there are several establishments in existence in Paris, Lyons, and Bordeaux, all of which however, not enjoying municipal aid, are in a languishing condition. The original model makes no advocacy of its system, but trusts to its natural virtues for any development.

In 1879 the administration of the establishment devoted 40,000 francs ($7,720), which had accumulated in the reserve fund over and above all liabilities, to the constitution of a fund for insuring the wages of employees and for awarding them a pension after they had served a certain number of years. Another feature of the institution relates to its claim as a promoter of temperance. Although a certain amount of wine is allowed, it can not by law be more than a pint, and must be pure and nearly two years old. No distilled alcoholic intoxicants are allowed.

There is a custom among working people to group in fours for greater economy. Four persons frequenting this restaurant together may do a little better than one alone. For 12 cents each, or 48 cents altogether, they are able to obtain a dinner such as at a hotel would cost double that amount. By a mutual assent, which is very common, they may thus all dine on four or five varieties of meat and vegetables and dessert of a half dozen sorts.

The manner of keeping the accounts is simple and peculiar. As

already observed, three of the committee of one hundred convene every day at 2 o'clock in the countingroom of the establishment. One of them receives the checks from the kitchen wicket, for each of which a dish has been exchanged. The other takes the money from the cashier or receiving teller at the entrance wicket. The third makes an inspection of the eating rooms and the establishment generally. In presence of the managing director, the two examiners compare the checks with the cash, and if the two fail to agree, their duty is to investigate and report accordingly to the committee of one hundred. The accountant who officiates in the interest of the city has charge of verifying the monthly statements and of making an annual inventory. At the close of each year when the general assembly convenes, all accounts are audited and straightened and the business entered upon for the new year. The deliberations of this meeting, which is usually held in November or December, form the material for the annual report.

Although the original object in the formation of this institution was to improve the condition of the working people, who to this day are its most numerous customers, yet numbers of wealthy glove and silk manufacturers, as well as clergymen and merchants, are constant in their practical patronage as well as their praise.

There is a constant difficulty, not yet adverted to, which besets the cooperative kitchen as a municipal undertaking. It is the opposition it encounters from other restaurants, coffee houses, saloons, and provision dealers of all kinds existing in this and the neighboring towns. There is a stereotyped language of abuse among them against it, which has exerted a considerable influence in blinding public opinion as to its actual merits. Of those who were questioned at Paris, no one had ever heard of it. Even the official office of labor was unable to give any information of its existence. An examination of the register of business concerns revealed no mention of it, although it regularly transacts an annual business of about 165,000 francs ($31,845). In a cyclopedic publication of joint-stock companies, a bare mention was found under the title of Alimentary Association of Shareholders.

It is due to a strong public opinion and support, as well as the vigorous foothold enjoyed by the institution, that, although these people thus competed with succeed in turning opinion to some extent against it, on the other hand, they are forced by it to sell purer articles, and at a lower profit, than those who traffic in the same goods in towns and cities where no such institutions exist.

The best manner of presenting the statistics of the daily business is to give from the books of the concern the number of meals prepared and dispensed daily, taking the average for a considerable period. This is, however, only for the public at large, who paid cash for their checks and tickets, and does not include the school and the Vaucanson College, which are fed in their own refectories, as already stated.

During the year 1889, April and September being left out, the average number of meals per day was as follows:

January	997
February	1,075
March	1,278
May	1,293
June	1,495
July	1,651
August	1,463
October	1,274
November	1,147
December	1,042

This gives a general average of 1,272 meals per day, not counting the schools. The number of checks for each meal averages less than three, the breakfast being only a quart bowl of beef stew with an admixture of bread, which for the workingman is thought to be sufficient until noon, when he buys four dishes and eats heartily. Again, at 6 o'clock the number of tickets bought is two to four, so that the average number purchased per day by each consumer is found on observation to be eight. Thus 3,392 dishes of food were, on an average, prepared and sold to the people at large each day during 1889; but the amount of the business varies with circumstances.

Another matter which should be mentioned is that the growth of the city is toward an opposite point, the mountains, gardens, military reservation, and cemetery, preventing its enlargement in the direction of the restaurant. The restaurant is largely resorted to by the working people, but as the trend of industries is toward the river Drac, a mill stream in an opposite direction from it, their occupation leads them too far away, and the restaurant loses somewhat in consequence.

It was thought that the business for 1896 would reach the usual average, for which the returns for 1889 may be considered as representative.

From the beginning the restaurant has been in the habit of sending out dishes to persons wishing to take their meals at their homes. A small extra charge is made to pay the cost of the porter where the purchasers or their servants do not come for the dishes.

There has been considerable discussion regarding the rise in the price of meat, which has reached the figure of 38 cents per kilogram (2.20462 pounds) for the best quality, which is required by the rules. In 1895 permission was obtained from the city government to raise the price of the checks for meat, by issuing two kinds, one at 4 cents and the other at 6 cents; and a new aluminium check was stamped, making now seven sorts of checks instead of the six which have been so well known for nearly half a century. The amount of meat represented by the new aluminium check is, however, only about the same as that previously represented by the 4-cent check.

As stated, a board of 15 supervisors appoints the committee of 100, 3 of whom daily visit the establishment, without pay, to assist the man-

ager in counting the money and straightening the accounts. It is argued at Grenoble that, as these guardians are not on the city pay rolls, the restaurant is not a municipal institution, although it is owned by the city and its operations are accounted for in the books of the municipality. Another explanation of the refusal to class it as such is found in the fact that the city does not expend any money from its own exchequer in defraying its cost. The establishment's own auditor is paid for keeping the books of the city out of the reserve fund of the concern. The policy has always been to have the dishes sold at a price high enough to cover every charge. It does this and also turns into the public treasury a considerable sum as a reserve each year. The people are thus subjected to no taxation on its account.

But the most intelligible and plausible reason for not regarding it as a municipal undertaking is the danger of an admission that it is such. The power of the dominant class of France is opposed to public ownership and control of industries because these lessen individual initiative. This industry for feeding the people works on steadfastly year after year almost without remark, and its influence, though the growth is small, is greatest in moral effect upon distant towns, where the same kind of establishments not enjoying municipal recognition are less successful.

RECENT REPORTS OF STATE BUREAUS OF LABOR STATISTICS.

CALIFORNIA.

Seventh Biennial Report of the Bureau of Labor Statistics of the State of California, for the Years 1895, 1896. E. L. Fitzgerald, Commissioner. 164 pp.

The following subjects are treated in this report: The free employment system, 41 pages; employment agencies, 15 pages; registration bureaus, 5 pages; collection of wages, 11 pages; time-check system, 9 pages; eight-hour day, 9 pages; Japanese labor, 26 pages; bake shops, 6 pages; sweat shops, 3 pages; trades unions, 13 pages; strikes, 12 pages; financial report, 2 pages; résumé of the work of the department, 2 pages.

THE FREE EMPLOYMENT SYSTEM.—This chapter contains a short review of the employment system and the results accomplished in Ohio and elsewhere, followed by a report on the operations of the free employment department of the California Bureau of Labor Statistics. During the period from July 15, 1895, to August 1, 1896, which was the first year of its operation, 18,920 applications for employment were received, of which 14,251 were from males and 4,669 from females. Positions were found for 5,845 persons, 3,314 of whom were males and 2,531 females. This shows that 30.89 per cent of the applicants were successful. It is estimated that if this work had been done by private agencies the cost to employment seekers, in fees and commissions, would have amounted to $90,252. The report contains detailed tables and analyses regarding occupations, ages, nationality, etc., of applicants and of persons for whom work was secured.

EMPLOYMENT AGENCIES AND REGISTRATION BUREAUS.—An account is given of the principal private employment agencies and registration bureaus in the State, and their methods of work, and of complaints made by persons who have dealt with such institutions.

COLLECTION OF WAGES.—The bureau has handled 1,424 cases of unpaid wages to working people, thereby assisting in the collection of $52,155.72 of wages due.

TIME-CHECK SYSTEM.—An exposition is given of the abuses of the time-check system of wage payments in the State and the resulting hardships to the working people.

EIGHT-HOUR DAY.—The present operation of the eight-hour law in the State is described and attention is directed to the defects whereby some of its provisions are rendered inoperative.

JAPANESE LABOR.—This is the result of an investigation into the question of Japanese labor. It contains a description of the methods employed to secure the immigration of Japanese laborers by an evasion of the contract-labor law and the evils resulting from the traffic in such labor, an historical account of the commercial relations between this country and Japan, and statistics of Japanese immigration. The effects of the competition of Japanese manufactures and labor are pointed out and suggestions are made regarding the policy to be pursued in order to avoid the evils resulting from existing conditions.

BAKE SHOPS.—Visits were made to 201 bake shops in San Francisco in order to ascertain their sanitary condition. No statistics are published regarding the result, only a few instances of extreme cases being cited.

SWEAT SHOPS.—This contains brief accounts of visits to 16 places reported as being sweat shops, showing the number of employees, wages, and other conditions under which the labor was conducted.

TRADES UNIONS.—In June, 1896, schedules of inquiry were sent to 175 addresses of labor unions in the State requesting information relating to their history, object, membership, etc. Forty unions responded. The following table shows the name, date of organization, and membership of each, and the wages and hours of labor of the members:

MEMBERSHIP, WAGES, AND HOURS OF LABOR REPORTED BY LABOR ORGANIZATIONS.

Labor organizations.	Date of organization.	Membership, 1896.	Wages per day.	Hours of labor per day.
American Bakers' Union No. 51, San Francisco	1887	102	a $16.00 and $20.00	10½
American Railway Local Union No. 80, Los Angeles	1893	533	.....	.....
American Railway Union No. 345, San Francisco	1894	101	.....	.....
Bakers' and Confectioners' Union No. 85, Sacramento	1886	28	b 2.00	10
Bakers' Union No. 37, Los Angeles	1881	98	a 15.00 and 20.00	10
Bookbinders' Union No. 35, Sacramento	1891	39	3.00 to 4.00	8 to 10
Bricklayers' Protective Union of Los Angeles	1895	113	4.00	8
Brotherhood of Locomotive Engineers No. 398, Los Angeles	.....	77	3.50	10
Carpenters and Joiners of America Local Union No. 332, Los Angeles	1892	399	.....	8
Carpenters and Joiners of America Local Union, Oakland	1896	308	3.00	8
Cigar Makers' Union No. 225, Los Angeles	.....	58	a 11.00 to 18.00	a 47
Furniture Workers' Union, San Francisco	1888	95	4.00	8
Glass Bottle Blowers of the United States and Canada, San Francisco	1893	39	a 22.00	8
Hotel and Restaurant Employees' Alliance No. 54, Los Angeles	1894	150	c 10.00 and 12.00	10 to 12
International Association of Machinists No. 68, San Francisco	1896	150	2.80	10
Iron Molders' Union No. 199, Sacramento	1868	38	.....	.....
Journeymen Stonecutters of America, Los Angeles	.....	25	4.00	8
Journeymen Tailors' Protective and Benevolent Union, San Francisco	1873	150	a 10.00 to 20.00	10 to 11
Lathers' Protective Union, Los Angeles	1896	102	.....	8
Miners' Union, Grass Valley	1894	659	3.00	10
Miners' Union, Nevada City	.....	123	2.50 and 3.00	10
Musicians' Mutual Protective Union, San Francisco	.....	500	.....	.....
Musicians' Union of Alameda County, Oakland	1890	80	.....	.....
National Brotherhood of Electrical Workers, Sacramento	.....	26	2.50	10

a Per week. b Minimum. c Per week and board.

MEMBERSHIP, WAGES, AND HOURS OF LABOR REPORTED BY LABOR ORGANIZATIONS—Concluded.

Labor organizations.	Date of organization.	Membership, 1896.	Wages per day.	Hours of labor per day.
Order of Railway Conductors No. 111, Los Angeles	1884	120	.....	.....
Order of Railway Conductors No. 115, San Francisco	1884	155	a $75.00 to $125.00	7 to 12
Painters' Union No. 1 of S. F. P. B. of P. and D. of California, San Francisco	1895	1,327	3.00 and 3.50	8
Plasterers' Protective Union, San Francisco	1861	150	4.00	8
Printing Pressmen's Union No. 24, San Francisco	1896	189	2.50 to 3.50	8
Retail Clerks' Protective Association No. 83, Los Angeles	1896	75	.....	10 to 16
Shinglers' Association No. 1, Los Angeles	1895	27	2.50	8
Typographical Union No. 46, Sacramento	1859	.....	3.50 to 4.50	8 to 10
United Association of Journeymen Plumbers, Gas and Steam Fitters No. 78, Los Angeles	1892	85	2.50 and 4.00	8
United Brotherhood of Carpenters and Joiners of America No. 23, Berkeley	1895	68	2.50	8
United Brotherhood of Carpenters and Joiners of America, Sacramento	1896	34	2.50 to 3.50	9
United Brotherhood of Carpenters and Joiners of America No. 22, San Francisco	1882	874	3.00	8
United Brotherhood of Carpenters and Joiners of America No. 304, San Francisco	1887	87	3.00	8
United Brotherhood of Carpenters and Joiners of America No. 316, San José	1887	75	3.00	8
United Brotherhood of Carpenters and Joiners of America No. 35, San Rafael	1882	28	3.00	8
United Brotherhood of Carpenters and Joiners of America No. 226, Santa Barbara	1886	14	2.50 to 3.00	8

a Per month.

STRIKES.—Only three strikes are mentioned under this head, namely, the American Railway Union strike in 1894, a printing pressmen's strike in San Francisco in 1895, and a painters' union strike in 1896. The first of these was a sympathetic strike and the others were in reference to wages and hours of labor. None of them seem to have been successful.

MICHIGAN.

Fourteenth Annual Report of the Bureau of Labor and Industrial Statistics of Michigan, Year ending February 1, 1897. Charles H. Morse, Commissioner of Labor. xv, 436 pp.

The subjects treated in this report are as follows: Vehicle manufacture, 190 pages; the eight-hour workday, 30 pages; forest statistics, 134 pages; penal and reformatory institutions, 15 pages; strikes, 28 pages; decisions of courts, 36 pages.

VEHICLE MANUFACTURE.—Each year since its establishment in 1883, the bureau has made a special canvass of a certain industry. In the present report that of the vehicle manufacture was selected. The information was obtained by canvassers, who visited employees and manufacturers throughout the State and noted the facts on uniform schedules. Data were obtained from 4,650 employees and 126 establishments in 41 cities and towns.

The employees' schedules contained 44 questions, relating to their nationality, earnings, and condition in general. Of the 4,650 employees considered, 3,315, or 71.3 per cent, were native born; 1,327, or 28.5 per

cent, foreign born, and 8, or 0.2 per cent, did not report their nationality. There were 104 occupations represented. Regarding the nature of the work, 3,483, or 74.9 per cent, were employed at time work, and 1,154, or 24.8 per cent, at piecework, 13, or 0.3 per cent, not reporting; 1,192 worked overtime, and of these 1,058 received extra pay. The length of the average working-day was 10 hours. During the year, 3,759 lost time, 2,631 on account of lack of work and 1,025 from other causes, 103 not stating the cause. The average time lost was 58 days. The earnings of all employees amounted to an average of $426.98 each, and the savings of the 1,549 who saved money during the year averaged $120.07. Of the 1,138 owning homes, 568 had incumbrances on their property. The average monthly rent paid by those renting was $7.03. Three hundred and ninety-one employees belonged to labor organizations, 307 carried accident insurance, 1,184 fraternal life insurance, and 558 other life insurance.

The following statement summarizes the more important data obtained from the proprietors of the 126 establishments canvassed:

Incorporated firms	46
Copartnerships	39
Individuals	41
Capital invested	$4,626,553
Value of material used in 1895	$3,674,717
Value of product in 1895	$8,044,222
Number of vehicles and parts of vehicles manufactured	814,839
Employees:	
Salaried officers and clerks	289
Traveling salesmen	178
Others	5,776
Total	6,243
Monthly pay roll	$231,911
Average monthly pay:	
Salaried officers and clerks	$77.23
Traveling salesmen	$75.91
Others	$33.94
All employees	$37.15

THE EIGHT-HOUR WORKDAY.—In connection with the preceding investigation, inquiries were made of employees and employers engaged in the manufacture of vehicles in regard to an eight-hour working day. Of 4,650 employees canvassed, 3,498, or 75 per cent, favored an eight-hour working day; 1,100, or 24 per cent, did not favor it, and 52 failed to respond. Of those favoring the eight-hour day, 594 favored a corresponding reduction in wages, 2,788 did not favor it, and 116 did not answer the inquiry. Of the total employees, 1,067 thought that they could accomplish as much work in 8 hours as in 10, 3,501 did not think so, and 82 did not answer.

Of 126 establishments canvassed, 32, or 25 per cent, favored an eight-hour day; 81, or 64 per cent, did not favor it, and 13 did not answer. Of those favoring an eight-hour day, 15 favored a corresponding reduc-

tion in wages, 13 did not favor it, and 4 did not respond. Of the total employers, 5 thought that employees could accomplish as much in 8 hours as in 10, 111 did not think so, and 10 did not respond.

PENAL AND REFORMATORY INSTITUTIONS.—On October 31, 1896, there were six of these institutions reported in the State, with a total of 2,836 inmates and 268 employees. The following table gives a summary of the more important data presented:

STATISTICS OF PENAL AND REFORMATORY INSTITUTIONS, OCTOBER 31, 1896.

Name of prison.	Employees.	Convicts or inmates.						
		Total.	On contract work.	On State work.	Cooks, scavengers, etc.	Idle.	In hospital.	Cost per capita for feeding and clothing.
State prison at Jackson	58	820	575	121	91	33	7	$0.09
State House of Correction at Ionia	55	518	58	256	45	39	8	.08½
Branch prison at Marquette	24	205	(a)	(a)	16	(a)	1	.12½
Detroit House of Correction	45	425	(a)	370	107	.....	4	b.08
Industrial School for Boys	50	564	(a)	(a)	(a)	(a)	3	.09½
Industrial Home for Girls	36	304	(a)	(a)	(a)	(a)	.....	.11
Total	268	2,836	.....	.....	.....	.....	.....	.....

a Not reported. b Cost for food only.

The total number of convicts represents those in the institutions on October 31, 1896, while the number shown in the other columns in some cases represents the average for the year. This accounts for the apparent discrepancy in the figures.

STRIKES.—Short accounts of 12 different strikes occurring during the year are presented. These included strikes of cigar makers, printers, bookbinders, bakers, stove mounters, carpenters, woodworkers, metal polishers, laborers in salt and lumber works, shipyard employees, and coal miners. Very little statistical information is given. The greater part of the chapter is devoted to a review of the Tenth Annual Report of the United States Commissioner of Labor on Strikes and Lockouts.

DECISIONS OF COURTS AFFECTING LABOR.—This consists of a reproduction of extracts from issues of this Bulletin.

MONTANA.

Fourth Annual Report of the Bureau of Agriculture, Labor, and Industry of Montana, for the Year ended November 30, 1896. James H. Mills, Commissioner. iv, 133 pp.

The subject-matter of this report may be grouped as follows: Introduction, 17 pages; statistics of counties, calendar year 1895, 12 pages; railroad wages and traffic, 11 pages; prices of farm products, propor-

tion imported, and cost of staple groceries, 16 pages; farms and farm wages, dairying, fruit growing, business establishments, etc., 11 pages; cattle, sheep, and wool industries, herders' wages, etc., 13 pages; labor and employment, 10 pages; manufacturers, general employers, etc., 13 pages; metal products of Montana, 6 pages.

INTRODUCTION.—This part of the report consists of comments upon agricultural statistics, immigration, and other matters pertaining to agriculture. Figures are also presented showing the operations of the free public employment office at Helena. The total expenses of this office, including salaries, etc., were $1,481.88 for the first year of its operation, ending November 30, 1896. During this period there were 966 applicants for employment and 873 for help. Positions were secured for 607 persons.

RAILROAD WAGES AND TRAFFIC.—Tables are presented showing the number, occupations, average wages, etc., of employees receiving less than $2,000 per annum, and the amount of freight traffic, as reported by each railroad company in Montana, June 30, 1895, and June 30, 1896.

LABOR AND EMPLOYMENT.—This chapter contains a directory of labor organizations in Montana and tables showing estimated number of the employed and unemployed in the State.

Following is a list of labor organizations and their membership, corrected to June 30, 1896:

MEMBERSHIP OF LABOR ORGANIZATIONS, JUNE 30, 1896.

Labor organizations.	Number of local unions, branches, or divisions.	Membership.		
		Male.	Female.	Total.
Federal Labor Union	5	577	.....	577
Miners' Union	9	6,170	.....	6,170
Mill and Smeltermen's Union	1	570	.....	570
Typographical Union	5	146	6	152
Order of Railway Conductors	3	72	.....	72
Brotherhood of Locomotive Engineers	5	177	.....	177
Brotherhood of Locomotive Firemen	4	86	.....	86
Brotherhood of Railway Trainmen	2	31	.....	31
National Association of Stationary Engineers	3	64	.....	64
Brotherhood of Stationary Engineers	3	268	.....	268
International Association of Machinists	3	87	.....	87
Brotherhood of Boiler Makers, etc	1	6	.....	6
International Brotherhood of Blacksmiths	1	50	.....	50
Iron Molders' Union of North America	2	65	.....	65
United Brotherhood of Carpenters and Joiners of America	5	544	.....	544
Plumbers and Steam Fitters' Union	2	33	.....	33
Bricklayers and Masons' International Union	3	134	.....	134
Stone Masons' Union	1	20	.....	20
Journeymen Stonecutters' Association of North America	1	7	.....	7
Journeymen Tailors' Union of America	2	45	3	48
Cigar Makers' International Union of America	3	41	3	44
Musicians' Mutual Protective Union, National League	3	207	14	221
Bricklayers' International Union	1	21	.....	21
Lathers' Protective Union	2	14	.....	14
Building Laborers' International Protective Union of America	2	110	.....	110
Retail Clerks' National Protective Association	2	60	5	65
Branch Labor Exchange	1	126	1	127

The following statement shows the estimated number of employed and unemployed wage-earners in the State on June 30, 1896:

ESTIMATED EMPLOYED AND UNEMPLOYED WAGE-EARNERS, JUNE 30, 1896.

Industries.	Employed.	Unemployed.	Total.
Farming and stock raising	7,589	981	8,570
Quartz mining, including working owners	10,590	1,955	12,545
Milling and smelting	7,126	1,232	8,358
Coal mining	2,168	350	2,518
Placer mining, including working owners	1,391	40	1,431
Lumbering	1,978	250	2,228
Wood chopping	1,725	190	1,915
All other wage-earners, including clerks, laborers, etc	11,055	2,450	13,505
Total	43,622	7,448	51,070

Railroad employees, of whom there were 7,425, and farm owners and stock growers and male members of their families over 18 years of age, of whom 12,032 were reported, are not included in the above statement.

Statistics of strikes and lockouts in Montana are quoted from the reports of the United States Commissioner of Labor on Strikes and Lockouts.

MANUFACTURERS, GENERAL EMPLOYERS, ETC.—Reports received from employers of labor in the mining, smelting, printing and publishing, flour milling, lumber, brick and sewer pipe, brewery, cigar and tobacco, foundry and machine shop industries are presented in tables showing average wages, number of employees, hours of labor, production, capital invested, etc., during the current fiscal year.

NEW HAMPSHIRE.

First Biennial Report of the Bureau of Labor of the State of New Hampshire. 1895, 1896. Julian F. Trask, Commissioner. 415 pp.

The first two reports of the New Hampshire Bureau of Labor were made annually, as required by law, and designated as Volume I and Volume II. In 1895 the law was altered so as to provide for biennial reports, so that this, while the first biennial report, is the third report of the bureau, and is designated as Volume III.

The following subjects are treated in this report: The shoe industry, 180 pages; retail prices of food and fuel, 131 pages; strikes and lockouts, 19 pages; industrial chronology, 9 pages; statistics of manufactures, 33 pages; labor legislation, 6 pages; historic epitome, 6 pages; miscellaneous subjects, 24 pages.

THE SHOE INDUSTRY.—This is an investigation of the shoe manufacturing industry of the State. The subject is introduced by a short historical sketch of the industry and a description of the operations of shoe manufacture. A brief account of the development and pres-

ent status of the industry in each town and city is given, including illustrations of some of the leading establishments. This is followed by a comparative statement showing the number of shoe manufacturing establishments, the number of employees, the amount of wages paid, the value of the material used, and the value of the product, in each of the 19 States in which shoe manufacturing is extensively carried on.

The greater part of this chapter on the shoe industry consists of statistics relating to the industry in New Hampshire, secured mainly through agents employed by special contract. The statistics cover social, industrial, economic, and sanitary conditions relating to the shoe workers of the State. It appears from the statistics given that as regards shoe manufacturing New Hampshire ranks third among the States of the Union. It has 64 establishments, which pay annually $3,469,918 for wages and employ 8,069 persons, the cost of the material used amounting to $6,749,322 and the value of the finished product to $11,986,008.

Of the 1,815 shoe workers considered in these returns only about 6 per cent claimed to have given a year's time to learning the business. In regard to wages 74 reported an increase and 173 a reduction. As to the cost of living, 759, or 42 per cent of the total number reporting, saved a portion of the wages earned, while 1,056, or 58 per cent, reported no savings. The tendency of wages is reported to be toward piecework, and that mode of payment is now adopted by nearly every shoe manufacturer. While the tables are full of interesting information, no summaries were published from which a further analysis could be made. The chapter also contains a statement showing a comparison of shoe workers' wages in 12 States, the information having been obtained by correspondence.

RETAIL PRICES OF FOOD AND FUEL. — This information was obtained from retail storekeepers in 235 cities and towns. The prices given are for the months of June and December, 1895. As in the case of the preceding tables, no summary is published. In treating of the general result of this inquiry the report says: "Two important facts seem to have been established, viz: (1) That there has been a general decline in the prices of commodities." * * * "(2) That there has been a general advance in wages, especially marked in locations where employees of prosperous manufacturers comprise a larger proportion of the patrons of retail dealers in food and fuel."

STRIKES AND LOCKOUTS, 1895 AND 1896.—Brief accounts are given of 18 strikes and 1 lockout, arranged according to localities. The following statement shows the causes and results of these strikes and lockouts and the number and occupations of the strikers and persons locked out, as collated from the text.

STRIKES AND LOCKOUTS, 1895 AND 1896.

Occupations.	Cause or object.	Number of strikers or persons locked out.			Result.
		Male.	Female.	Total.	
Strikes, 1895.					
Barbers	For reduction of hours	1	.....	1	Failed.
Brass molders	For increase of wages of 10 per cent.	7	.....	7	Failed.
Cutters and stitchers, shoe factory.	Against piecework	180	100	280	Failed.
Cutters and stitchers, shoe factory.	(a)	(a)	(a)	7	Failed.
Employees, hosiery-knitting machines.	For restoration of wages	(a)	(a)	20	Failed.
Employees, woolen goods	For restoration of wages of 10 per cent.	19	6	25	Failed.
Granite cutters	Against reduction of wages	(a)	(a)	(a)	Succeeded.
Lasters and shoe workers	Against reduction of wages and for discharge of nonunion employees.	50	75	125	Failed.
Spinners and weavers	For restoration of wages of 10 per cent.	(a)	(a)	250	Succeeded.
Spinners, woolen mills	For increase of wages	(a)	(a)	12	Failed.
Weavers	For increase of wages	(a)	(a)	(a)	Failed.
Weavers, cotton mills	For increase of wages	(a)	(a)	32	Failed
Strikes, 1896.					
Employees, finishing room	Against piecework	.....	(a)	(a)	(a)
Employees, shoe factory	Against reduction of wages	4	.....	4	Failed.
Employees, shoe factory	Against reduction of wages	(a)	(a)	(a)	Failed.
Employees, spooling room	Against amount of work to be done.	.....	20	20	Failed.
Shipping clerks, print works.	For increase of wages	7	.....	7	Failed.
Spinners, hosiery mills	Against working overtime	12	.....	12	Failed.
Lockouts, 1895.					
Employees, shoe factory	For demanding increase of wages for 7 lasters.	(a)	(a)	44	Succeeded.

a Not reported.

Twelve strikes and 1 lockout were reported in 1895 and 6 strikes in 1896. Of the 18 strikes in 1895 and 1896, 12 were on account of wages, 1 for reduction of hours of labor, 2 against the introduction of piecework, 1 against working overtime, and 1 against amount of work to be done. In one case the cause was not reported. Two of the strikes were successful, 15 were failures, and in one case the result was not reported.

A series of tables on strikes and lockouts in New Hampshire, prepared from the Tenth Annual Report of the United States Commissioner of Labor, closes the chapter.

INDUSTRIAL CHRONOLOGY.—Brief accounts are given of important changes and other events affecting industrial establishments in the different towns and cities of the State and their employees.

STATISTICS OF MANUFACTURES.—Tables are presented showing the returns received from 632 establishments in 1895 and 420 establishments in 1896, and comparative data for the years 1894 and 1895 from 293 identical establishments. The data comprise capital invested, cost of material used, value of product, number of male and female employees, total wages paid, and average yearly wages. The data are arranged by industries.

The following statement shows comparative statistics for the 293 identical establishments reporting for the years 1894 and 1895:

STATISTICS OF MANUFACTURES, 1894 AND 1895.

Items.	1894.	1895.	Increase.
Capital invested	$21,083,354	$21,364,805	$281,451
Cost of material	$13,224,175	$13,522,690	$298,515
Value of product	$24,694,295	$25,049,412	$355,117
Number of male employees	12,491	12,814	323
Number of female employees	6,144	6,207	63
Total wages paid	$6,668,051	$6,900,203	$232,152
Average yearly wages of employees	$386.16	$394.48	$8.32

The returns received from 632 establishments in 1895 are summarized in the following statement:

Establishments considered	632
Capital invested	$33,727,241
Cost of material	$28,306,585
Wages paid	$12,630,850
Value of product	$46,454,057
Number of male employees	23,678
Number of female employees	11,139
Highest weekly wages paid males	$36.00
Lowest weekly wages paid males	$1.50
Highest weekly wages paid females	$15.00
Lowest weekly wages paid females	$1.00
Average number of days in operation	262

The returns received from 420 establishments in 1896 are not presented in summarized form.

MISCELLANEOUS SUBJECTS.—The report also has chapters on labor legislation, habits of economy, church statistics, unimproved and unutilized water powers, and an historic epitome.

RHODE ISLAND.

Ninth Annual Report of the Commissioner of Industrial Statistics, made to the General Assembly at its January Session, 1896. Henry E. Tiepke, Commissioner. vii, 155 pp.

The statistics presented in this report relate to the following subjects: Employees' returns, city of Pawtucket, 81 pages; strikes, 1886–1894, 11 pages; statistics of manufactures, 1894, 1895, textile industries, 57 pages.

EMPLOYEES' RETURNS, CITY OF PAWTUCKET.—This is an inquiry relating to the industrial and social condition of the wage-earning people of the city of Pawtucket. It is supplementary to the census returns and contains information for the year ending June 1, 1895. The occupations are arranged in 64 divisions, grouped as manufacturing and mechanical, professional, trade, transportation, government, and miscellaneous. The statements following give a summary of the results.

STATISTICS OF WAGE EARNERS OF PAWTUCKET, BY SEX.

Items.	Males.	Females.	Total.
Population	15,604	16,973	32,577
Wage earners reporting	7,149	3,466	10,615
Native born	3,857	2,049	5,906
Foreign born	3,292	1,417	4,709
Married	3,884	308	4,192
Single	2,999	2,969	5,968
Widowed or divorced	266	189	455
Average age	33	26	.....

Of the 10,615 wage earners considered, 4,172 were heads of families. Of these, 260 lived in their own homes free from debt, 566 in homes not free from debt, and 3,346 lived in rented homes. The average family consisted of 6 persons.

The following figures give an interesting comparison of persons of native and of foreign birth:

STATISTICS OF WAGE EARNERS OF PAWTUCKET, BY NATIVITY.

Items.	Native born.	Foreign born.
Persons reporting	5,906	4,709
Persons owning homes	366	460
Persons living in rented homes	1,571	1,775
Average number of rooms per family	6	5
Average monthly rent paid	$11.16	$9.43
Average weekly amount paid for board	$4.85	$4.40
Average daily wages	$1.66	$1.59

The native born formed 55.64 per cent of the number of wage earners returned, and they earned on an average higher wages than the foreign-born wage earners. Of the total number owning homes, however, only 44.31 per cent were native born.

Of the 10,615 persons returned, 9,417 were regularly employed, 308 were otherwise employed, 584 were unemployed, and 306 made no returns on this point.

STRIKES, 1886–1894.—This chapter consists of a reproduction of that part of Table I relating to Rhode Island, published in the Tenth Annual Report of the United States Commissioner of Labor.

STATISTICS OF MANUFACTURES, 1894, 1895.—This information relates only to the textile industries. Reports covering complete statistics for both years were received from 123 establishments. Of these, 60 were engaged in the manufacture of cotton goods; 8, hosiery and knit goods; 9, printing, dyeing, and bleaching; 3, silk and silk goods, and 43, woolen goods. The information is given in detail for each branch of the industry.

The following is a summary of the figures presented:

STATISTICS OF TEXTILE MANUFACTURING ESTABLISHMENTS, 1894 AND 1895.

Items.	1894.	1895.	Increase.	
			Amount.	Per cent.
Establishments	123	123	.....	.....
Firms	54	48	*a* 6	*a* 11.11
Corporations	69	75	6	8.70
Partners and stockholders	1,343	1,347	4	.30
Capital invested	$42,029,778	$48,835,724	$6,805,946	16.19
Cost of material used	$21,776,562	$20,728,591	*a*$1,047,971	*a* 4.81
Value of goods made	$38,722,193	$43,447,884	$4,725,691	12.20
Aggregate wages paid	$8,824,298	$10,432,233	$1,607,935	18.22
Average days in operation	262.07	288.72	26.65	10.17
Employees:				
Average number	27,201	28,681	1,480	5.44
Greatest number	30,319	30,700	381	1.26
Smallest number	21,170	24,191	3,021	14.27
Average yearly earnings	$324.41	$363.73	39.32	12.12

a Decrease.

RECENT FOREIGN STATISTICAL PUBLICATIONS.

Fourteenth Annual Report of the Bureau of Industries for the Province of Ontario, 1895. C. C. James, Secretary. xvi, 331 pp. (Published by the Ontario Department of Agriculture.)

The statistics contained in this report comprise the following subjects: Weather and crops, 66 pages; live stock, the dairy, and the apiary, 44 pages; values, rents, and farm wages, 38 pages; loan and investment companies, 24 pages; chattel mortgages, 3 pages; municipal statistics, 147 pages.

VALUES, RENTS, AND FARM WAGES.—The total value of farm lands in 1895 is given at $931,989,574, of which $572,938,472 represents land, $204,148,670 buildings, $50,944,385 implements, and $103,958,047 live stock. There has been a steady decline in farm values since 1892. The average rental of leased farms was $236, or 4.45 per cent of the value of land and buildings.

Rates of wages paid to all classes of farm labor have generally declined during the year. Yearly hands, with board, received in 1895 an average of $150, or $6 less than in 1894, while without board $246 was paid, or $1 less than in 1894. The monthly rate during the working season was $15.38 with board in 1895, or $1.17 less than in 1894, and $25.45 without board, or $0.16 less than in 1894. The wages paid to domestic servants have fallen from $6.23 per month in 1894 to $6.07 in 1895.

LOAN AND INVESTMENT COMPANIES.—The returns as reported show a steady increase in the number and operations of these institutions since 1890. In 1895, 92 companies were in existence, of which 90 made returns. These 90 had a total subscribed capital of $98,822,324. Their total liabilities were $139,004,930, of which $52,185,843 were liabilities to stockholders and $86,819,087 to the public. The secured-loan assets were $120,779,454, and the property assets $18,225,476.

CHATTEL MORTGAGES.—During the year ending December 31, 1895, there were 22,391 chattel mortgages, representing $11,012,320, on record and undischarged. This was an increase in number, but a slight decrease in amount, over the preceding year. Of the chattel mortgages in 1895, 12,288, representing $3,767,596, were registered against farmers.

MUNICIPAL STATISTICS.—The following statement is compiled from the municipal statistics of the Province for 1894 and 1895:

MUNICIPAL STATISTICS OF ONTARIO, 1894 AND 1895.

Items.	1894.	1895.
Population	1,936,219	1,957,390
Total assessed valuation	$826,179,370	$821,466,166
Taxes imposed for all purposes	$12,320,312	$12,316,429
Rate per head	$6.36	$6.29
Mills on the dollar	14.91	14.99
Bonded debt	$49,724,587	(a)
Rate per head	$25.68	(a)
Floating debt	$6,669,567	(a)
Interest paid on loans and debentures	$2,552,607	(a)

a Statistics for 1895 not yet complete.

Eighth Report on Trade Unions in Great Britain and Ireland, 1894 and 1895. xxix, 515 pp. (Published by the Labor Department of the British Board of Trade.)

This report on trade unions in Great Britain and Ireland is one of a series, the publication of which was begun in 1887. The information relative to this class of organizations is presented under the following heads: General introduction, including analysis of tables; membership of trade unions, 1870, 1875, and 1880 to 1895; expenditure of trade unions per head on various benefits for a series of years; accounts of trade unions, 1894 and 1895, including analysis of income, expenditure, etc., for each of these years, and contributions per head, by members, 1870, 1875, and 1880 to 1895; statements showing location, etc., of federations of trade unions and of trade councils; mortality among members of trade unions; extracts from the annual or periodical reports of certain trade unions; directory of secretaries of trade unions and trade councils in November, 1896. The information for 1894 covers membership and financial transactions of all societies reporting, but for 1895 the membership only is given of all societies, while the financial transactions are confined to 100 of the principal trade societies.

For the year 1895 information was obtained from 1,250 trade unions, having 1,330,104 members. In 1894, 832 unions were reported, having a membership of 1,256,448. This increase in number does not indicate a corresponding growth in the number of societies actually existing, but is due rather to the greater completeness of the returns obtained for the later year. The larger part of the membership of trade unions is contained in a comparatively small number of societies. Out of the 1,250 unions reporting in 1895, 941 had less than 500 members each, while nearly half the total membership of all the unions, namely, 631,041 out of 1,330,104, was found within 25 societies. The average magnitude of the societies is greatest in the mining trades, namely, 3,500 members per union, and least in the wood-working trades, where it is about 300 members per union.

The following table shows the number and membership of trade unions by groups of industries for the four years 1892 to 895:

NUMBER AND MEMBERSHIP OF TRADE UNIONS, BY GROUPS OF INDUSTRIES, 1892 TO 1895.

Groups of industries.	Unions making returns.				Membership of such unions as far as known.			
	1892.	1893.	1894.	1895.	1892.	1893.	1894.	1895.
Building	77	88	111	208	141,185	163,449	174,284	186,605
Metal, engineering, and ship building (a)	132	141	153	219	237,235	230,819	239,401	243,069
Furnishing and wood working	32	44	58	89	20,864	21,676	22,241	26,086
Mining and quarrying	74	75	67	78	287,558	288,337	272,159	268,384
Food and tobacco preparation	21	23	29	40	18,409	15,632	15,465	17,442
Glass, pottery, india rubber, and leather	23	23	35	61	10,218	11,509	16,095	19,216
Paper, printing, and book binding	33	35	47	53	42,259	44,451	45,933	48,674
Textile	64	91	126	211	95,218	149,286	156,790	197,035
Clothing	21	22	38	61	75,495	78,233	82,242	83,823
Transportation (land and sea)	43	43	47	56	130,348	115,533	107,089	111,084
Agriculture and general labor	38	40	39	44	155,661	124,518	89,053	75,458
Miscellaneous	41	62	82	130	22,917	27,346	35,696	53,228
Total	599	687	832	1,250	1,237,367	1,270,789	1,256,448	1,330,104

a By the term "engineering" is meant such occupations as machinists, machine builders, turners, pattern makers, etc.

It appears from the above table that the group of industries having the largest membership during each of the years given is that of mining and quarrying. This is closely followed by the group of metal, engineering, and shipbuilding industries. The membership of the former in 1895 was 268,384, and of the latter, 243,069. The next groups in magnitude in 1895 are the textile, with 197,035 members, and the building, with 186,605 members. These four groups contain, collectively, 895,093 members, or 67 per cent of the total membership of the British trade unions. All the groups, except those of mining and quarrying and agriculture and general labor, show an increase in membership from 1894 to 1895. A general comparison of the industries in which the unions have grown in membership with those in which they have fallen off since 1894 shows the increase to have been in the more highly skilled trades, while the decrease has taken place in the unions containing a large proportion of unskilled labor.

The following comparative statement shows the financial operations of the 100 principal trade unions for the four years 1892 to 1895:

FINANCIAL OPERATIONS OF 100 PRINCIPAL TRADE UNIONS, 1892 TO 1895.

Year.	Income.		Expenditure.		Funds on hand at end of year.	
	Total.	Per head.	Total.	Per head.	Total.	Per head.
1892	$7,070,470	$7.82½	$6,894,064	$7.63	$7,707,699	$8.53
1893	7,877,540	8.75½	8,980,576	9.98	6,576,617	7.31
1894	7,904,812	8.52½	6,992,635	7.57	7,548,394	8.16½
1895	7,561,105	8.29½	6,814,735	7.47	8,304,765	9.11

This statement shows that both the income and expenditure per head were less in 1895 than in 1894, but the funds on hand per head were greater. Taking the most important groups of industries, it was found that, except in the building and clothing, there was, during 1895, a general decline in income or expenditure, or both. The funds on hand, however, increased in all the groups of industries except the clothing, in which they were largely reduced on account of expenditures occasioned by an extensive dispute in the boot and shoe industry.

The chief items of expenditure incurred by the trade unions, as presented in the report, make an interesting showing, for they bring out the extent to which the beneficial features of trade unions in Great Britain and Ireland have been carried. Following is a comparative statement showing the expenditures of 100 principal trade unions on various benefits, etc., during the years 1894 and 1895:

EXPENDITURES OF 100 PRINCIPAL TRADE UNIONS ON VARIOUS BENEFITS, ETC., 1894 AND 1895.

Object.	Expenditures.		Increase (+) or decrease (—).
	1894.	1895.	
Unemployed benefit	$2,248,133	$2,121,775	—$126,358
Dispute benefit	744,823	926,353	+ 181,530
Sick benefit	1,016,208	1,157,259	+ 141,051
Accident benefit	99,904	126,840	+ 26,936
Superannuation benefit	587,309	632,231	+ 44,922
Funeral benefit	337,930	368,282	+ 30,352
Other benefits	173,768	131,571	— 42,197
Grants to other societies	427,230	103,661	— 323,569
Working expenses	1,357,330	1,246,763	— 110,567
Total	6,992,635	6,814,735	— 177,900

The largest item of expenditure for benefits in 1895 was that in aid of the unemployed, namely, $2,121,775. There was, however, a decrease in the amount of this item from that of 1894, probably due to improved conditions of employment. All the other principal benefits show an increase of expenditures. Next to the amount paid in aid of the unemployed, that paid for the sick, or $1,157,259, was greatest. The smallest of the principal benefits noted was that for accidents, namely, $126,840. The decided increase in the amount of expenditures for strikes, or $181,530, was due largely to the fact that in 1894 many of the expenditures of this character were included in the item "grants to other societies." As a matter of fact, there were fewer strikes in 1895 than in 1894. The two items of "dispute benefit" and "grants to other societies," when taken together, show a material falling off in amount when the two years are compared.

Taking the 100 principal trade unions grouped by industries, it is found that the diminution of the expenditures on unemployed benefits extended to all groups except mining and quarrying, in which there was an increase from $128,018 in 1894 to $319,773 in 1895; the textiles, which showed an increase from $180,513 to $217,416; and food and

tobacco preparation, in which there was a slight increase. The group of industries showing the greatest decrease in the amount paid for unemployed benefits was that of metal, engineering, and shipbuilding, the expenditure being $1,298,903 in 1894 and $1,008,606 in 1895.

Under the head of "dispute benefits," the groups of clothing trades and metal, engineering, and shipbuilding show the greatest increase. Most of the other groups show a decline in expenditures for this purpose.

The following detailed tables, showing the number, membership, accounts, etc., of 100 leading trade unions in Great Britain and Ireland at the end of 1895, are presented for purposes of reference and comparison:

MEMBERSHIP OF 100 PRINCIPAL TRADE UNIONS AND FUNDS ON HAND AT END OF YEAR 1895.

Trade unions.	Number of unions.	Minor branches.	Members.	Amount of funds at end of year.
Bakers and confectioners	2	35	6,997	$23,291
Brush makers	1	34	1,411	2,647
Building trades:				
Bricklayers	2	362	27,623	321,841
Carpenters and joiners	3	1,032	57,116	467,632
Painters and decorators	2	195	10,091	75,329
Plasterers	1	151	8,486	56,018
Plumbers	1	163	8,146	47,195
Sawyers and woodcutting machinists	1	48	2,208	7,762
Stone masons	2	387	25,503	132,719
Builders' laborers	3	70	13,285	27,014
Cabinetmaking and furniture trades	4	149	8,406	39,823
Cigar and tobacco trades	1	.....	1,921	10,964
Clothing trades:				
Boot and shoe manufacture	1	61	40,720	152,876
Hat manufacture	2	15	4,434	35,024
Hosiery manufacture	1	.....	3,386	326
Tailoring	2	390	19,170	44,674
Coach-making and carriage-building trades	2	159	6,808	119,643
Engineers and firemen, stationary	3	40	4,787	19,442
Glass trades	2	38	4,671	131,809
General labor	5	452	58,778	86,225
Leather trades	1	66	1,064	34,372
Metal trades:				
Iron and steel smelters	2	46	6,742	14,833
Iron and steel workers	1	22	5,000	24,795
Iron founders	2	138	21,788	253,978
Engine makers	2	656	86,219	1,151,385
Pattern makers	1	61	3,160	38,557
Spindle and flyer makers	1	13	1,432	16,823
Blacksmiths and strikers	2	44	4,681	50,427
Brass workers	1	20	5,751	29,111
Mining and quarrying:				
Coal mining	11	34	192,229	1,141,496
Ironstone mining	1	23	2,847	9,110
Quarrying	1	.....	1,423	6,025
Paper making	1	.....	1,469	1,859
Printing and bookbinding:				
Printing	4	191	29,911	408,908
Bookbinding	2	.....	4,614	31,369
River navigation, dock, and water-side labor	4	75	25,853	65,956
Shipbuilding	2	365	53,376	941,025
Textile trades:				
Cotton manufacture	9	40	77,839	1,087,196
Flax manufacture	2	.....	2,516	14,517
Lace manufacture	1	5	3,528	122,276
Woolen manufacture	2	7	7,096	26,941
Transportation (land):				
General railway workers	2	529	41,913	775,905
Engineers and firemen, locomotive	1	113	7,920	230,735
Street-railway employees, hack drivers, hostlers, teamsters, etc	3	.....	9,548	30,912
Total	100	6,229	911,866	8,304,765

RECEIPTS OF 100 PRINCIPAL TRADE UNIONS, 1895.

Trade unions.	Contributions.		Entrance fees.	Interest on funds.	Other sources.	Total.
	Amount.	Average per member. (a)				
Bakers and confectioners	$11,913	$1.70½	$438	$219	$2,910	$15,480
Brush makers	27,574	19.54	418	10	608	28,610
Building trades:						
Bricklayers	187,472	6.78½	8,458	4,497	4,312	204,739
Carpenters and joiners	649,157	11.36½	16,498	6,555	12,283	684,493
Painters and decorators	72,769	7.21	4,720	886	526	78,901
Plasterers	41,200	4.85½	1,353	997	1,270	44,820
Plumbers	70,243	8.62½	2,229	472	647	73,591
Sawyers and woodcutting machinists	18,162	8.22½	540	194	88	18,984
Stone masons	118,207	4.63½	8,979	822	2,088	130,096
Builders' laborers	28,274	2.13	1,898	282	1,407	31,861
Cabinetmaking and furniture trades	85,913	10.22	3,611	190	1,343	91,057
Cigar and tobacco trades	15,962	8.31	433	278	29	16,702
Clothing trades:						
Boot and shoe manufacture	199,434	4.90	.....	2,107	15,860	217,401
Hat manufacture	52,252	11.78½	180	360	1,382	54,174
Hosiery manufacture	19,558	5.77½	.....	.....	4,482	24,040
Tailoring	142,550	7.43½	438	837	1,747	145,572
Coach-making and carriage-building trades	65,162	9.57	1,587	2,034	4,555	73,338
Engineers and firemen, stationary	17,617	3.68	725	297	233	18,872
Glass trades	90,541	19.38½	667	3,222	433	94,863
General labor	157,709	2.68½	4,112	1,177	1,606	164,604
Leather trades	15,602	14.66½	49	730	160	16,541
Metal trades:						
Iron and steel smelters	23,885	3.54½	1,139	107	404	25,535
Iron and steel workers	11,938	2.39	24	389	.....	12,351
Iron founders	378,385	17.36½	6,560	3,708	11,553	400,206
Engine makers	1,475,250	17.11	22,444	23,496	16,517	1,537,707
Pattern makers	41,229	13.04½	939	740	234	43,142
Spindle and flyer makers	25,136	17.55½	370	589	277	26,372
Blacksmiths and strikers	43,151	9.22	895	565	584	45,195
Brass workers	34,299	5.96½	195	696	58	35,248
Mining and quarrying:						
Coal mining	1,002,090	5.21½	6,842	16,279	12,546	1,037,757
Ironstone mining	5,314	1.86½	.....	34	44	5,392
Quarrying	944	.66½	.....	.....	29	973
Paper making	3,825	2.60½	87	15	49	3,976
Printing and bookbinding:						
Printing	260,475	8.71	4,044	5,913	4,136	274,568
Bookbinding	35,024	7.59	.....	73	205	35,302
River navigation, dock, and waterside labor	71,567	2.77	3,504	773	2,005	77,849
Shipbuilding	623,739	11.68½	22,469	26,435	14,809	687,452
Textile trades:						
Cotton manufacture	615,033	7.90	.....	8,278	26,776	650,087
Flax manufacture	13,685	5.44	63	297	418	14,463
Lace manufacture	47,560	13.48	.....	2,672	34	50,266
Woolen manufacture	23,418	3.30	633	379	1,299	25,729
Transportation (land):						
General railway workers	179,734	4.29	1,913	15,398	42,752	239,797
Engineers and firemen, locomotive	61,308	7.74	691	5,888	3,071	70,958
Street-railway employees, hack drivers, hostlers, teamsters, etc.	30,893	3.23½	433	350	365	32,041
Total	7,095,153	7.78	130,578	139,240	196,134	7,561,105

a The averages are based on the number of members at the close of the year.

EXPENDITURES OF 100 PRINCIPAL TRADE UNIONS, 1895.

Trade unions.	Unemployed, traveling, and emigration.	Dispute.	Sick.	Superannuation.	Funeral.	Grants to other unions, federation payments, etc.	Working and other expenses, including other benefits.	Total.
Bakers and confectioners	$49	$214	$89	.....	$3,601	$88	$6,769	$10,760
Brush makers	14,045	49	4,686	$4,049	1,484	.....	3,538	27,851
Building trades:								
Bricklayers	2,399	16,449	84,526	2,180	15,154	706	50,407	171,821
Carpenters and joiners	209,561	52,758	164,084	60,739	24,722	321	145,883	658,068
Painters and decorators	27,082	886	12,293	1,095	3,996	895	19,563	65,810
Plasterers	1,348	4,618	7,582	3,217	3,426	492	9,188	29,871
Plumbers	2,599	12,156	16,123	1,864	4,127	24	30,459	67,352
Sawyers and wood-cutting machinists	8,331	1,718	3,591	448	1,412	.....	4,954	20,454
Stone masons	10,590	6,531	10,405	24,425	20,035	574	37,092	109,652
Builders' laborers	.....	4,467	5	.....	3,032	1,786	18,123	27,413
Cabinetmaking and furniture trades	29,817	6,005	10,293	618	3,236	399	26,513	76,881
Cigar and tobacco trades	10,239	.....	3,358	.....	603	307	4,219	18,726
Clothing trades:								
Boot and shoe manufacture	3,796	282,734	64,311	.....	4,492	48	9,412	364,793
Hat manufacture	10,682	5,251	6,336	3,864	2,297	282	16,498	45,210
Hosiery manufacture	.....	17,748	.....	.....	.....	3,076	3,392	24,216
Tailoring	3,207	9,188	54,680	31,150	17,296	.....	35,506	151,027
Coach-making and carriage-building trades	21,505	307	5,188	22,858	6,453	97	9,908	66,316
Engineers and firemen, stationary	3,937	88	1,280	.....	350	457	9,130	15,242
Glass trades	48,470	.....	2,745	15,612	4,248	3,286	7,441	81,752
General labor	49	33,783	29,695	63	13,091	1,119	82,259	160,059
Leather trades	7,446	657	1,192	1,465	243	.....	2,287	13,290
Metal trades:								
Iron and steel smelters	19	18,707	.....	.....	1,402	852	8,282	29,262
Iron and steel workers	.....	4,949	.....	.....	3,027	.....	7,008	14,984
Iron founders	178,999	7,066	38,708	81,470	24,362	122	32,406	363,133
Engine makers	560,626	80,833	249,491	302,696	65,917	457	164,950	1,424,970
Pattern makers	21,019	530	5,523	409	1,883	.....	4,998	34,362
Spindle and flyer makers	6,609	8,867	3,596	1,387	1,148	10	5,631	27,248
Blacksmiths and strikers	11,178	2,394	14,317	1,674	2,147	.....	10,127	41,837
Brass workers	15,534	.....	1,917	2,229	1,256	.....	9,280	30,216
Mining and quarrying:								
Coal mining	318,868	218,433	115,648	.....	38,922	40,523	175,160	907,554
Ironstone mining	905	.....	379	.....	.....	594	2,419	4,297
Quarrying	.....	.....	.....	.....	.....	.....	1,859	1,859
Paper making	1,241	5	.....	.....	122	.....	2,769	4,137
Printing and bookbinding:								
Printing	121,619	8,366	11,066	26,352	17,544	428	40,212	225,587
Bookbinding	20,911	297	2,857	1,557	2,302	.....	5,596	33,520
River navigation, dock, and waterside labor	.....	4,429	219	14	9,314	842	59,508	74,326
Shipbuilding	214,622	30,469	191,468	31,121	31,238	652	176,805	676,370
Textile trades:								
Cotton manufacture	196,217	62,321	146	.....	15,334	42,918	116,022	432,958
Flax manufacture	2,429	4,292	3,976	.....	1,849	156	2,146	14,848
Lace manufacture	16,186	2,569	2,628	.....	5,231	448	6,716	33,778
Woolen manufacture	2,584	5,942	4,000	.....	784	506	5,241	19,057

EXPENDITURES OF 100 PRINCIPAL TRADE UNIONS, 1895—Concluded.

Trade unions.	Unemployed, traveling, and emigration.	Dispute.	Sick.	Superannuation.	Funeral.	Grants to other unions, federation payments, etc.	Working and other expenses, including other benefits.	Total.
Transportation (land):								
General railway workers.	$16,454	$9,820	$4,774	$7,884	$5,027	$1,032	$105,734	$150,725
Engineers and firemen, locomotive	564	.....	15,281	1,791	3,197	.....	14,668	35,501
Street-railway employees, hack drivers, hostlers, teamsters, etc	39	457	8,853	.....	2,983	214	15,096	27,642
Total	2,121,775	926,353	1,157,259	632,231	368,282	103,661	1,505,174	6,814,735

The report further includes statistics of federations of trade unions and trades councils. A "federation" is defined as "an association of separate trade societies or branches of societies connected with kindred trades for certain limited and specific purposes, with limited and defined powers over its constituent societies." It is distinguished from a trade union by the fact that "its constituent members are societies or branches and not individuals," and from a trades council or congress by "the possession of certain powers of direction over its affiliated societies beyond merely consultative functions."

The following summary shows the distribution of federations according to groups of industries so far as returns were furnished for the years 1894 and 1895:

FEDERATIONS OF TRADE UNIONS AND TRADES COUNCILS, 1894 AND 1895.

Groups of industries.	1894.			1895.		
	Federations.	Separate unions or branches.	Members of unions.	Federations.	Separate unions or branches.	Members of unions.
Federations of trade unions:						
Building trades	33	302	94,773	40	410	93,667
Furnishing and woodworking	6	72	10,279	10	125	13,747
Shipbuilding and metal	12	137	180,925	15	175	194,085
Mining and quarrying	12	89	386,928	13	99	330,772
Printing and bookbinding	4	27	25,701	4	24	27,511
Textile	15	181	222,818	16	194	225,015
Seafaring, dock labor, and transportation	2	13	17,300	2	15	22,030
Clothing	1	28	620	1	28	675
Miscellaneous	3	30	13,999	5	51	20,707
Federations of trades councils	1	*a* 16	56,000	2	*a* 28	125,637
Total	89	895	1,009,343	108	1,149	1,053,846

a Trades councils.

The great bulk of the membership of the affiliated unions for both 1894 and 1895 was in the mining and quarrying, textile, shipbuilding, and metal groups of industries, although the building trades reported the largest number of federations. The number of federations for which returns were made increased from 89 in 1894 to 108 in 1895, and the membership of the affiliated unions, branches, and councils from 1,009,343 to 1,053,846 persons.

Documents sur la Question du Chômage. Office du Travail, Ministère du Commerce, de l'Industrie, des Postes et des Télégraphes. 1896. 398 pp.

This report was prepared by the French bureau of labor, at the request of the superior council of labor, in order to facilitate the study of a proposition brought forward in the council looking toward the creation of a system of public works to lessen nonemployment during industrial depressions. The report embraces six distinct parts relating respectively to: (1) State institutions for the insurance of workingmen against lack of employment; (2) out-of-work insurance provided by labor organizations; (3) the provision of work by the Government to those unemployed; (4) the work of private organizations in providing employment to those needing it; (5) statistics of the extent of lack of employment; and (6) the causes for lack of employment.

The first part gives a description of the various institutions organized by several towns of Switzerland for the insurance of workingmen against involuntary idleness (an account of which has already been given in Bulletin No. 9 under the head of Publications of the Musée Social), and brief mention of similar institutions at Bologna and Cologne.

The second part relates to the extent to which labor organizations make provision for out-of-work benefits, and embraces an account of the work of British trade unions as given in the annual reports of the labor department on trade unions; gives a summary account of the work of the German-American Typographia and the International Cigar Makers Union in the United States; and the results of a special investigation made by the labor bureau concerning the extent to which the French labor organizations provide insurance against lack of employment.

On July 1, 1894, there were in France 2,178 labor organizations, including 408,025 members. An examination of their constitutions showed that 487 of them contained provisions looking toward the relief of members when out of employment. One hundred and eighty-four specified the amount of the daily or weekly benefit that would be granted in such circumstances. A schedule of inquiry was sent to each of these 487 unions. Replies were received from 246. Of these,

159 reported that they had either never put into operation the provisions of their constitutions relating to out-of-work benefits or had abandoned giving this sort of relief. The reasons for giving up this system were reported to be because the great number of the unemployed rapidly depleted their funds and because they could not control the causes for nonemployment.

Eighty-seven unions, with 16,250 members, granted regular aid to their unemployed members. Twenty-one had created special funds for this purpose, 15 of which, with 750 members, had not disbursed any benefits during 1894, either because none of their members had been out of employment or because their funds were exhausted, and the other 6, with 899 members, did not commence to grant relief until 1895. The remaining 66 unions, with 14,601 members, distributed out-of-work benefits during 1894 to the amount of 75,440.65 francs ($14,560.05). A detailed table gives for each of the 87 unions which reported that they gave relief to unemployed members the amount expended for this purpose during the year, the number of members aided, and the number of days during which their constitutions permit benefits to be granted.

The first few days of nonemployment are usually not indemnified. Thus 2 unions only grant relief after 15 days' idleness, 2 after 10 days, 20 after 8 days, 4 after 4 days, 3 after 3 days, and 1 after 2 days. The number of days during which relief is granted is limited in a good many cases. Thus 1 union reported giving relief only during 3 days, 3 during 1 week, 6 during 15 days, 8 during 3 weeks, 20 during 1 month, 9 during 6 weeks, 4 during 2 months, 11 during 3 months, and 1 during 15 weeks. In the remaining unions the duration of time that relief was granted was limited only by the resources of the unions.

The third part relates to the extent to which the Government has attempted to provide work for workingmen unable to obtain employment. There is first given a brief historical account of the efforts of Turgot in 1770 and 1771 to found workshops in which the unemployed could find work; of relief work organized during the revolution; of the national workshops of 1848, and, finally, the results of a special investigation made by the bureau concerning the extent to which the communes, having an income of 100,000 francs ($19,300), had provided idle workingmen with employment. The result of this investigation is given for each commune separately, but is not recapitulated in such a way that the general results can be given. An account is also given of relief work organized in Great Britain and in Massachusetts, using for this purpose the report of the British labor department on agencies and methods for dealing with the unemployed, and the report of the Massachusetts board on the subject of the unemployed, 1894.

The fourth part, which relates to the efforts of private societies to provide work for the unemployed, gives an historical account of efforts in France to deal with pauperism by means of furnishing work, a brief recount of the Public Welfare Society of Holland, notices concerning the work of particular societies, and copies of various documents.

The fifth part is an attempt to indicate the extent to which different countries have collected statistics of nonemployment, and to estimate, from the material that is in existence, the extent of lack of employment in the various countries.

The sixth part merely contains a reproduction of the various opinions given by the members of the superior council of labor concerning the causes for lack of employment.

Berufs- und Gewerbezählung vom 14. Juni 1895. Berufsstatistik für das Reich im Ganzen. Erster Theil. Bearbeitet im kaiserlichen statistischen Amt. Statistik des Deutschen Reichs, Neue Folge, Band 102. viii ,153*, 341 pp.

This volume is the first part of a comprehensive presentation of the organization and results of the census of occupations and industries taken June 14, 1895. The introductory part of the report, 161 pages, consists of a description of the method employed in carrying out the work, illustrations and explanations of the schedules of inquiry used and of the tables, an index of occupations, and a quotation of the law authorizing the enumeration. The report proper, 341 pages, consists of statistics of occupations for the Empire as a whole, presented in the form of five series of tables as follows:

(1) Classification of the population by industries and occupations, 130 pages; (2) secondary occupations, 116 pages; (3) persons independently situated either as proprietors or managers, the members of their families, and magnitude of their business, 13 pages; (4) persons having itinerant occupations, 2 pages; (5) statistics of the unemployed, 80 pages. Other statistical presentations on the subject of occupations will appear in future publications.

INTRODUCTION.—The list of occupations is arranged alphabetically and according to industries, and comprises over 10,000 names. In the tabulation of the statistics these occupations are not considered in detail but are grouped under 207 heads, as follows: Agriculture, gardening, forestry, and fisheries, 6; mining, smelting, manufacturing, and building, 161; trade and commerce, 22; domestic service, 2; military, civil, church, and professional service, 8; without occupations and not reported, 8.

CLASSIFICATION OF THE POPULATION BY INDUSTRIES AND OCCUPATIONS AND SECONDARY OCCUPATIONS.—The principal features of these two series of tables have been separately published in another form. A digest of this publication appeared in Bulletin No. 8.

PERSONS INDEPENDENTLY SITUATED AS PROPRIETORS AND MANAGERS.—In this series of tables only such persons are considered as are working on their own account, either as proprietors or managers of establishments, etc. The statistics consist of a presentation by industries, and according to sex, of the heads of families who are independently situated, the members of the families engaged in the business of the heads as principal and as secondary occupations and their relation to the latter, and the members of their families not engaged in gaining a livelihood. The classification is also made according to the magnitude of the business as measured by the area of the farm land in the agricultural industry, and the number of persons employed in the case of the other industries.

The following statement gives a partial summary of the information contained in this series of tables:

PERSONS INDEPENDENTLY SITUATED AS PROPRIETORS AND MANAGERS, BY INDUSTRIES.

	Agriculture, gardening, live stock, and fisheries.	Mining, smelting, manufactures, and building trades.	Trade and commerce. (a)	Total.
Heads of families:				
Males	2,449,786	1,568,137	701,886	4,719,809
Females	347,209	512,759	198,570	1,058,538
Members of families engaged in the business of the heads as their principal occupations:				
Wives	272,756	29,595	63,410	365,761
Sons	847,160	237,979	54,269	1,139,408
Daughters	633,822	30,428	45,343	709,593
Other relatives, male	157,154	25,747	8,281	191,182
Other relatives, female	130,165	11,645	10,357	152,167
Members of families engaged in the business of the heads as their secondary occupations:				
Wives	374,822	45,120	105,989	525,931
Sons	22,410	3,634	3,853	29,897
Daughters	101,682	6,148	19,897	127,727
Other relatives, male	7,738	989	907	9,634
Other relatives, female	28,818	1,930	4,607	35,355
Members of families not engaged in gaining a livelihood:				
Males over 14 years of age	156,594	80,955	54,172	291,721
Females over 14 years of age	1,961,335	1,395,633	578,942	3,935,910
Males under 14 years of age	1,915,887	1,189,005	444,423	3,549,315
Females under 14 years of age	1,913,262	1,198,834	454,970	3,567,066

a Does not include post, telegraph, and railway service.

PERSONS HAVING ITINERANT OCCUPATIONS.—This series of tables deals with persons whose occupations necessitate their going from place to place, and who have no fixed place of business, such as a store or workshop. The following table gives a summary of the information contained in this part of the report:

PERSONS FOLLOWING ITINERANT OCCUPATIONS, BY SEX AND INDUSTRIES.

Sex and industries.	Persons following itinerant occupations on their own account as a—				Assistants accompanying persons following itinerant occupations.		Persons sent out by employers on itinerant occupations and not working on their own account.		Total persons following itinerant occupations.
	Principal vocation.		Secondary vocation.						
	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.	
MALES.									
Gardening and live stock.	67	74.45	13	14.44	10	11.11	.....	.....	90
Mining, manufacturing, and building trades.....	3,570	81.12	334	7.59	412	9.36	85	1.93	4,401
Trade and commerce.....	57,510	81.74	8,555	12.16	4,122	5.86	166	.24	70,353
Sick nursing, medical service, and theatrical professions.....	4,620	71.03	175	2.69	1,689	25.97	20	.31	6,504
Total.....	65,767	80.85	9,077	11.16	6,233	7.66	271	.33	81,348
FEMALES.									
Gardening and live stock.	5	62.50	1	12.50	2	25.00	.....	.....	8
Mining, manufacturing, and building trades.....	310	42.88	21	2.90	318	43.98	74	10.24	723
Trade and commerce.....	33,309	77.17	3,977	9.21	5,733	13.28	148	.34	43,167
Sick nursing, medical service, and theatrical professions.....	845	51.56	17	1.04	774	47.22	3	.18	1,639
Total.....	34,469	75.70	4,016	8.82	6,827	14.99	225	.49	45,537
BOTH SEXES.									
Gardening and live stock.	72	73.47	14	14.29	12	12.24	.....	.....	98
Mining, manufacturing, and building trades	3,880	75.72	355	6.93	730	14.25	159	3.10	5,124
Trade and commerce	90,819	80.00	12,532	11.04	9,855	8.68	314	.28	113,520
Sick nursing, medical service, and theatrical professions	5,465	67.11	192	2.36	2,463	30.25	23	.28	8,143
Total.....	100,236	79.00	13,093	10.32	13,060	10.29	496	.39	126,885

There were in all 126,885 persons enumerated who were following itinerant occupations. Of these 81,348, or 64.11 per cent, were males, and 45,537, or 35.89 per cent, were females. Compared with the total population on June 14, 1895, there were 2.45 persons of itinerant occupations for every 1,000 inhabitants and 6.11 per 1,000 of persons engaged in earning a livelihood. Of the whole number of itinerants enumerated 113,329 were working independently on their own account. Of these 74,844, or 66.04 per cent, were males, and 38,485, or 33.96 per cent, were females. The itinerant work was adopted as a principal occupation by 100,236, or 79 per cent. There were 13,556 persons having itinerant occupations who were in the employ of others. Of these, 13,060 were assistants accompanying others, and 496 were sent out by employers having a fixed place of business.

In the following summary persons of itinerant occupations are classified according to age:

PERSONS FOLLOWING ITINERANT OCCUPATIONS, BY AGE, SEX, AND INDUSTRIES.

Sex and industries.	Under 16 years of age.		16 or under 21 years of age.		21 years of age or over.		Total.
	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.	
MALES.							
Gardening and live stock	.....	.....	5	5.56	85	94.44	90
Mining, manufacturing, and building trades	67	1.52	208	4.73	4,126	93.75	4,401
Trade and commerce	488	.69	2,086	2.97	67,779	96.34	70,353
Sick nursing, medical service, and theatrical professions	221	3.40	851	13.08	5,432	83.52	6,504
Total	776	.96	3,150	3.87	77,422	95.17	81,348
FEMALES.							
Gardening and live stock	.....	.....	1	12.50	7	87.50	8
Mining, manufacturing, and building trades	28	3.87	66	9.13	629	87.00	723
Trade and commerce	357	.83	1,265	2.93	41,545	96.24	43,167
Sick nursing, medical service, and theatrical professions	120	7.32	390	23.80	1,129	68.88	1,639
Total	505	1.11	1,722	3.78	43,310	95.11	45,537
BOTH SEXES.							
Gardening and live stock	.....	.....	6	6.12	92	93.88	98
Mining, manufacturing, and building trades	95	1.85	274	5.35	4,755	92.80	5,124
Trade and commerce	845	.75	3,351	2.95	109,324	96.30	113,520
Sick nursing, medical service, and theatrical professions	341	4.19	1,241	15.24	6,561	80.57	8,143
Total	1,281	1.01	4,872	3.84	120,732	95.15	126,885

Considered by industries, it is found that out of the total number of persons following itinerant occupations 98, or 0.08 per cent, were engaged in the gardening and live stock industries; 5,124, or 4.04 per cent, in mining, manufacturing, and building trades; 113,520, or 89.46 per cent, in trade and commerce; and 8,143, or 6.42 per cent, in professional service.

STATISTICS OF THE UNEMPLOYED.—A preliminary report covering this portion of the enumeration was reviewed in Bulletin No. 11.

Statistica degli Scioperi avvenuti nell'Industria e nell'Agricoltura durante l'anno 1895. Ministero di Agricoltura, Industria e Commercio, Direzione Generale della Statistica. 1897. 66 pp.

This report on strikes in Italy during the year 1895 was prepared by the bureau of statistics of the Italian department of agriculture, industry, and commerce. Digests of Italian strike reports for previous years appeared in Bulletins Nos. 1 and 6.

The report shows a total of 126 strikes in 1895, participated in by 19,307 strikers, or an average of 153 per strike. While the number of strikes was greater than during the preceding year, the number of

participants was considerably smaller, the average number per strike being smaller than for any year since 1882.

The following table shows the number of strikes, the number of strikers, and the average number of strikers per strike during each year from 1879 to 1895:

STRIKES, STRIKERS, AND AVERAGE NUMBER OF STRIKERS PER STRIKE, 1879 TO 1895.

Year.	Strikes.		Strikers.		Year.	Strikes.		Strikers.	
	Total.	For which number of strikers was reported.	Total.	Average per strike.		Total.	For which number of strikers was reported.	Total.	Average per strike.
1879.....	32	28	4,011	143	1888.....	101	99	28,974	293
1880.....	27	26	5,900	227	1889.....	126	125	23,322	187
1881.....	44	39	8,272	212	1890.....	139	133	38,402	289
1882.....	47	45	5,854	130	1891.....	132	128	34,733	271
1883.....	73	67	12,900	193	1892.....	119	117	30,800	263
1884.....	81	81	23,967	296	1893.....	131	127	32,109	253
1885.....	89	86	34,166	397	1894.....	109	104	27,595	265
1886.....	96	96	16,951	177	1895.....	126	126	19,307	153
1887.....	69	68	25,027	368					

The causes of strikes during 1895, and the results by causes, are shown in the two following tables:

CAUSES OF STRIKES, 1895.

Cause or object.	Strikes.		Strikers.	
	Number.	Per cent.	Number.	Per cent.
For increase of wages	45	36	8,513	44
For reduction of hours	9	7	1,239	6
Against reduction of wages	22	17	3,093	16
Other causes	50	40	6,462	34
Total	126	100	19,307	100

RESULTS OF STRIKES, 1895.

Cause or object.	Succeeded.				Succeeded partly.				Failed.			
	Strikes.		Strikers.		Strikes.		Strikers.		Strikes.		Strikers.	
	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.
For increase of wages	13	29	3,107	36	18	40	4,511	53	14	31	895	11
For reduction of hours	5	56	931	75	2	22	206	17	2	22	102	8
Against reduction of wages	4	18	262	9	6	27	901	29	12	55	1,930	62
Other causes	19	38	2,130	33	13	26	2,010	31	18	36	2,322	36
All causes	41	33	6,430	33	39	31	7,628	40	46	36	5,249	27

The prevailing cause of these disturbances appears from the above tables to be the demand for increased wages, 36 per cent of the strikes, involving 44 per cent of all the strikers, being due to this cause. Next in importance were strikes against a reduction of wages, namely, 17 per cent of the strikes, involving 16 per cent of all the strikers. Of the strikes for increase of wages, 31 per cent, and of the strikers

involved, only 11 per cent, failed. In the case of strikes against reduction of wages, 55 per cent, and of persons involved, 62 per cent, were unsuccessful.

The following table shows the percentages of success, partial success, and failures, by strikes and by strikers involved, for the years 1878–1891 to 1895:

RESULTS OF STRIKES, 1878–1891 TO 1895.

Year.	Per cent of strikes.			Per cent of strikers.		
	Successful.	Partly successful.	Failed.	Successful.	Partly successful.	Failed.
1878–1891	16	43	41	25	47	28
1892	21	29	50	29	19	52
1893	28	38	34	29	44	27
1894	34	28	38	19	24	57
1895	33	31	36	33	40	27

There appears from the above an almost steady increase in the percentages of successful strikes, and a general decrease in the percentages of failures from 1878–1891 to 1895. With regard to the number of strikers this tendency is not so marked, there being a decided fluctuation in the percentages of success and failure from year to year.

The number of strikes, strikers, and working days lost is shown in the following table, according to occupations:

STRIKES, STRIKERS, AND WORKING DAYS LOST, BY OCCUPATIONS, 1895.

Occupations.	Strikes.	Strikers.				Working days lost.
		Adults.		Children 15 years of age or under.	Total.	
		Males.	Females.			
Weavers, spinners, and carders	38	1,683	4,946	1,109	7,738	34,616
Miners and ore diggers	16	2,586	.....	900	3,486	35,902
Mechanics	6	530	.....	.....	530	4,259
Founders	2	40	.....	1	41	395
Day laborers	12	1,839	3	21	1,863	9,398
Masons and stonecutters	9	2,146	7	157	2,310	9,445
Kiln and furnace tenders	4	344	.....	.....	344	5,608
Printers and compositors	9	325	20	9	354	2,472
Tanners	7	459	.....	.....	459	2,321
Dyers	1	375	.....	75	450	12,600
Bakers and pastry cooks	1	66	.....	.....	66	132
Joiners	1	90	.....	.....	90	360
Omnibus drivers and conductors	4	540	.....	.....	540	3,480
Cart drivers	2	120	.....	.....	120	200
Porters and coal carriers	1	11	.....	.....	11	11
Other occupations	13	634	216	55	905	4,269
Total	126	11,788	5,192	2,327	19,307	125,968

The greatest number of strikes was reported in the group of weavers, spinners, and carders, miners and ore diggers, day laborers, masons and stonecutters, and printers and compositors.

Of the 19,307 participants in the 126 strikes, 11,788 were males, 5,192 were females, and 2,327 were children of both sexes 15 years of age or under. There was a total loss of 125,968 working days.

The report concludes with a detailed description of each strike.

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.

CONSTITUTIONALITY OF STATUTE—CLAIMS FOR WAGES PREFERRED—*Hennig et al. v. Staed, Sheriff, 40 Southwestern Reporter, page 95.*—Action was brought in the city court of St. Louis, Mo., by the Continental National Bank against the A. Siegel Gas-Fixture Company by attachment. Jule A. Hennig and others presented claims for labor against the defendant to Patrick M. Staed, sheriff, who was in possession of the attached property, and, on the refusal of the sheriff to pay such claims, interpleaded in the action by motion for an order requiring their payment. From an order so made, and from the overruling of a motion to set it aside, the sheriff appealed the case to the supreme court of the State, which rendered its decision April 3, 1897, affirming the action of the city court of St. Louis in ordering the sheriff to pay the claims, and deciding that section 4911, Revised Statutes, 1889, under which the payment of the claims for labor was sought to be enforced, was constitutional and valid.

The opinion of the supreme court, which was delivered by Judge MacFarlane, reads in part as follows:

The section of the statute under which these claims are made is as follows:

"Hereafter when the property of any company, corporation, firm, or persons shall be seized upon by any process of any court of this State, or when their business shall be suspended by the action of creditors, or be put into the hands of a receiver or trustee, then, in all such cases, the debts owing to laborers or servants, which have accrued by reason of their labor or employment to an amount not exceeding one hundred dollars to each employee, for work or labor performed within six months next preceding the seizure or transfer of such property, shall be considered and treated as preferred debts, and such laborers or 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. Any such laborer or servant desiring to enforce his or her claim for wages under this chapter shall present a statement, under oath, showing the amount due after allowing all just credits and set-offs, the kind of work for which such wages are due, and when performed, to the officer, person, or court charged with such

property, within ten days after the seizure thereof on any execution or writ of attachment, or within thirty days after the same may have been placed in the hands of any receiver or trustee; and thereupon it shall be the duty of the person or court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized: *Provided*, That any person interested may contest any such claim or claims, or any part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property; and thereupon the claimant shall be required to reduce his claim to judgment before some court having jurisdiction thereof before any part thereof shall be paid." (Rev. St., 1889, § 4911.)

The only question discussed by counsel on this appeal is the constitutionality of section 4911, Revised Statutes, 1889, upon which respondents predicate their claim. Appellant insists that it is obnoxious to section 30 of article 2 of the Constitution, which provides "that no person shall be deprived of life, liberty, or property without due process of law," in that it authorizes the court or officer in charge of the property of an insolvent debtor to pay labor claims without notice to parties interested therein, and without giving them a hearing or an opportunity to be heard. Undoubtedly, no one can be deprived of his property without an opportunity to be heard. This principle is fundamental, and the declaration in the Constitution to that effect is a mere authoritative recognition of it. Taking the property of an employer to pay the claims of his employees upon their mere sworn statement, without notice, and without giving him an opportunity to contest their correctness, would certainly be taking his property without due process. It could make no difference that his property was in the hands of the law, to be subjected to the payment of his creditors. He still has rights in it, which are entitled to protection. One of these is that of having it applied to the payment of actual creditors. Yet, in order to secure to the debtor an opportunity to be heard, it is not essential that the proceedings should be according to the course of the common law. It is competent for the legislature to prescribe a summary and inexpensive proceeding for enforcing such claims. In the case of laborers whose services have enhanced the value of the property of their employer, whose demands are small, and who live and support their families upon the wages earned, it is especially just that some manner of proceeding shall be provided by which they can secure their rights promptly and without having to resort to the slow and expensive procedure provided by the general law. By this statute the legislature undertook to accomplish that purpose. The statute "was enacted in the interest of labor, and a sound public policy requires that it be liberally construed." (Winslow *v.* Urquhart, 39 Wis., 268.) The statute gives a preference to laborers only after the property of the employer has gone into the hands of the court, an officer of the court, or a trustee, for the purpose of being subjected or applied to the payment of his debts. The statute impresses upon the property a priority in the nature of a lien in favor of the laborers. The property is in the hands of the court, the officer, or trustee, for administration. The proceeding of the claimant, as provided, is against the property rather than the creditor. After the seizure or transfer of the property, others besides the owner have interests in it. It would in many cases be almost, if not altogether, impracticable to give each interested party personal notice of the claim. In such case a substituted notice to all persons interested may be provided.

The legislature has a large discretion in respect to the manner of giving such notices; and when a kind of notice has been provided by which it is reasonably probable that the party interested will be apprised of what is contemplated, and an opportunity afforded him to defend, courts should not pronounce the proceedings illegal.

Every person interested in the property of the debtor is presumed to know the preferred right of the laborer or servant and the course to be pursued by him in order to enforce his claim. The time within which the statement is to be filed is limited to thirty days. The statement gives full information to all persons interested. The officer or person in charge frequently represents both debtor and creditor. Persons interested would naturally seek information from the files of the court or from the officer or person in charge of the property. It seems to us that a more effectual notice could not have been provided. It is the manner of giving such notice, of all others, which would most probably apprise parties interested of the claims made. It would more probably advise parties of the proceeding than would publication in a newspaper or posting in a public place. We are of the opinion that the law sufficiently provides for giving notice.

It is next objected that the section in question is an amendment to the execution law, and so far as its terms apply to seizures under writs of attachment it is unconstitutional, in that it violates section 28 of article 4 of the constitution of Missouri, which provides that "no bill * * * shall contain more than one subject, which shall be clearly expressed in its title." It appears from the journal of legislative proceedings of the session held in 1889 that what is now section 4911 was passed as a separate bill, entitled "An act for the protection of employees and laborers by making them preferred creditors for certain claims." The act was approved March 6, 1889. This act was incorporated into and made a part of what is now chapter 63, relating to executions. That chapter was passed as a revised bill, and was approved May 28, 1889. The title to the act as originally passed unquestionably meets the requirements of section 28 of article 4 of the constitution. The subject of the bill is very clearly expressed in its title. The legislature is required to revise, digest, and promulgate all general laws at stated intervals, but no limitation is placed upon it in respect of heads under which the various laws shall be grouped. That is a matter left to the discretion of the legislature itself. There can therefore be no constitutional objection to placing this act in the revised law relating to execution. Indeed, we can think of no more appropriate place for it. It deals with the property of debtors, as does also the law relating to executions. It will be found also that other sections of chapter 63 relate to subjects besides that of executions. While the section is wanting in completeness in some particulars, we do not think it unconstitutional. The judgment is affirmed.

CONSTITUTIONALITY OF STATUTE—INJURIES TO RAILROAD EMPLOYEES—APPLICATION OF STATUTE TO RAILROADS IN HANDS OF RECEIVERS—*Peirce v. Van Dusen, 78 Federal Reporter, page 693.*—This action was brought in the United States circuit court for the western division of the northern district of Ohio by Edward Van Dusen against R. B. F. Peirce, the receiver of the Toledo, St. Louis and Kansas

City Railroad Company, to recover damages for an injury incurred by the plaintiff while in the employ of said receiver. The plaintiff claimed that he was so seriously injured while in the discharge of his duty as a yard brakeman in the employ of the receiver that he entirely lost the use of his right hand. He alleged that he was entirely without fault in the matter and that his injury was caused by the carelessness and negligence of one Bartley, a conductor employed by the receiver, under whose control and direction he was placed at the time he received the injury. Judgment was rendered for the plaintiff, and the receiver appealed the case to the United States circuit court of appeals for the sixth circuit, which court rendered its decision February 2, 1897, and sustained the judgment of the court below.

The opinion of the circuit court of appeals was delivered by Mr. Justice Harlan, and the following, quoted therefrom, sufficiently shows the questions raised in the case and the reasons for the decision:

The principal question before us is whether the statute of Ohio passed April 2, 1890 (Laws Ohio, 1890, p. 149), is applicable to cases against the receiver of a railroad corporation, especially one acting under the orders of a Federal court.

The first section of the act provides that—

"It shall be unlawful for any railroad or railway corporation or company owning and operating, or operating, or that may hereafter own or operate a railroad in whole or in part in this State, to * * *."

The third section, which is the one whose scope and meaning is involved in this action, provides that—

"In all actions against the railroad company for personal injury to or death resulting from personal injury of any person while in the employ of such company, arising from the negligence of such company or any of its officers or employees, it shall be held, in addition to the liability now existing by law, that every person in the employ of such company, actually having power or authority to direct or control any other employee of such company, is not the fellow-servant, but superior of such other employee. Also that every person in the employ of such company, having charge or control of employees in any separate branch or department, shall be held to be the superior and not the fellow-servant of employees in any other branch or department who have no power to direct or control in the branch or department in which they are employed."

At the trial below it was contended on behalf of the plaintiff that the conductor and switchmen or yard brakemen, even when engaged together, at the same time and place, in operating the same train of cars, were not to be deemed fellow-servants within the rule exempting an employer from liability to one servant for an injury caused by the negligence of a fellow-servant. The circuit court, held by Judge Hammond, without determining this question as one of general law, decided that the case was governed by the third section of the above act of April 2, 1890, and consequently that Bartley, the conductor, having power to direct and control the work in which Van Dusen was engaged, was the superior, not the fellow-servant of Van Dusen, and was therefore the representative of the receiver.

The contention of the receiver is that that act by its terms applies only to corporations owning or operating railroads in whole or in part

in Ohio by their own officers, and that it can not properly be construed as applying to receivers operating railroads under the orders of a court of chancery.

If the reasoning of the Georgia and Texas courts be applied to the Ohio statute, it can not be held to embrace employees acting under the receiver of a railroad corporation. But in our judgment the statute is applicable to actions against receivers of railroad corporations. To hold otherwise would be to subordinate the reason of the law altogether to its letter. While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and the obvious purpose of the law should not be sacrificed to a literal interpretation of such words. If the Ohio statute is construed as applicable only to actions for personal injuries brought directly against railroad corporations, the result would be that in an action brought in one of the courts of Ohio the employees of a railroad corporation would be accorded rights that would be denied in another action of like kind, perhaps in the same court, to employees of the receiver of a railroad corporation under exactly similar circumstances. Could such a result have been contemplated by the legislature of Ohio? We think not. The avowed object of the statute was the protection and relief of railroad employees. To that end it declared that in the actions mentioned in it every person employed by the railroad company and invested with power or authority to direct or control other employees, should be deemed the superior, not the fellow-servant, of those under his direction and control. The legal effect, as well as the object, of this declaration was, in the cases specified, to make the negligence of the superior the negligence of the company. No violence is done to the ordinary meaning of the words of the statute if it be held that the legislature had in mind actions against receivers of railroad corporations as well as actions directly against such corporations. The appointment of a receiver of a railroad does not change the title to the property nor work a dissolution of the corporation. Although the creature of the court, and acting under its orders, the receiver, for most purposes, stands in the place of the corporation, exercising its general powers, asserting its rights, controlling its property, carrying out the objects for which it was created, discharging the public duties resting upon it, and representing the interests as well of those who own the railroad as of those who have claims against the corporation or its property. The corporation remains in existence notwithstanding a provisional receivership established by an order of court; and for the purpose of effectuating the will of the State, as manifested by the act of 1890, an action against the receiver arising out of his management of the property may be regarded as one against the corporation "in the hands of" or "in the possession of" the receiver.

The Ohio statute is not applicable alone to railroad corporations of Ohio engaged in the domestic commerce of this State. It is equally applicable to railroad corporations doing business in Ohio, and engaged in commerce among the States, although the statute, in its operation, may affect in some degree a subject over which Congress can exert full power. The States may do many things affecting commerce with foreign nations and among the several States until Congress covers the subject by national legislation. Undoubtedly, the whole subject of the liability of interstate railroad companies for the negligence of those in their service may be covered by national legislation enacted by Congress under its power to regulate commerce among the States. But as Congress has not dealt with that subject, it was competent for Ohio to

declare that an employee of any railroad corporation doing business here, including those engaged in commerce among the States, shall be deemed, in respect to his acts within this State, the superior, not the fellow-servant, of other employees placed under his control. If the effect of the Ohio statute be, as undoubtedly it is, to impose upon such corporations, in particular circumstances, a liability for injuries received by some of its employees which would not otherwise rest upon them according to the principles of general law, the fact does not release the Federal court from its obligation to enforce the enactments of the State. Of the validity of such State legislation we entertain no doubt.

But it is contended that the Ohio statute is repugnant to the provision of the constitution of Ohio, declaring that "all laws of a general nature shall have uniform operation throughout the State." (Article 2, § 26.) The argument made in support of this view by the learned counsel for the receiver may be thus summarized:

That the act imposes a liability for damages for the negligence of fellow-servants only as against a railroad company operating a railroad within Ohio; that it confers a right of action only upon employees of such railroad companies; that no other employer is subject to the liability, and no other employee is given the right; that the act selects from the general class of employers railroad companies operating railroads, and imposes upon them a special burden; that the act is special class legislation, not uniform throughout the State, and applies to no person or company engaged in any other occupation employing servants, although the occupation be equally hazardous. Consequently, the act is special in its operation and effect, is confined to particular corporations engaged in a specific business, does not cover the whole subject of the relations of master and servant, and is not, therefore, of a general nature and of uniform operation throughout the State within the meaning of the constitution of Ohio.

We think it clear that the Ohio statute is not obnoxious to the constitutional provision requiring all laws of a general nature to have a uniform operation throughout the State. As it applies to all railroad corporations operating railroads within the State, it is, within the meaning of the State constitution, general in its nature; and as it applies to all of a given class of railroad employees, it operates uniformly throughout the State.

Having considered all the matters presented by the record which in our judgment require consideration, and perceiving no error of law in the record, the judgment is affirmed.

CONSTITUTIONALITY OF STATUTE—LABORERS' LIENS ON THRESHING MACHINES—*Lambert v. Davis et al., 48 Pacific Reporter, page 123.*—Action was brought in the superior court of Fresno County, Cal., by J. W. Lambert against Frank Davis and another, to enforce a lien for wages under an act giving a lien on threshing machines for work or labor performed in connection therewith. Judgment was rendered for the plaintiff, and the defendants appealed the case to the supreme court of the State, which rendered its decision March 16, 1897, and affirmed the decision of the superior court.

The opinion of the supreme court was delivered by Judge Van Fleet, and reads as follows:

An act entitled "An act to secure the wages of persons employed as laborers on threshing machines," approved March 12, 1885 (St., 1885, p. 109), provides: "Section 1. Every person performing work or labor of any kind in, with, about, or upon any threshing machine, the engine, horsepower, wagons, or appurtenances thereof, while engaged in threshing, shall have a lien upon the same to the extent of the value of his services." It also makes provision for the method of enforcing such lien, by sale of the property, etc. The single question presented by the appeal under the facts is whether a laborer performing labor in and about the operation of a threshing machine and outfit, at the employment of one not the actual owner, but lawfully in the possession and operation of the machine under contract with the owner, can have and maintain against the property the lien for his services provided by the act.

Appellant's contention is that to so construe the act, and give to one not employed by the actual owner the benefit of the lien, would render it obnoxious to the constitutional objection of authorizing a deprivation of the property of the owner without due process of law. This precise question was presented and decided by the court in banc in the case of Church *v.* Garrison, 75 Cal., 199; 16 Pac., 885, where it was held that the statute applied to exactly such a case, and that the lien could be constitutionally maintained; "that the actual ownership of the property was an immaterial circumstance," the obvious theory, and, as we deem it, the correct one, being that one lawfully holding from the actual owner the possession and right to operate the machine is to be deemed, for the purposes of the statute, the owner of the property.

Appellant contends that this point was not squarely involved or necessarily decided in Church *v.* Garrison, but that, if it was, that case should be overruled. But, as we read that case, it was the exact and only question in the case, and was necessary to its determination; and we find nothing in the reasoning or authorities presented by appellant which tends to shake our conviction in the correctness of the views there expressed, and, upon the authority of that case, the judgment herein must be affirmed. It is so ordered.

CONSTITUTIONALITY OF STATUTE—MINE REGULATIONS—*State v. Murlin, 38 Southwestern Reporter, page 923.*—An information filed in the circuit court of Macon County, Mo., against W. E. Murlin, for violating the statute regulating the operation of mines, was quashed, and the State appealed to the supreme court of the State. Said court rendered its decision February 2, 1897, and reversed the action of the lower court.

The following, which is quoted from the opinion of the supreme court, delivered by Judge Gantt, sufficiently sets forth the facts in the case and the reasons for the decision:

The act which defendant is charged with violating was approved April 11, 1895. It provides that "in all dry and dusty coal mines discharging light carbonated hydrogen gas, or mines where the coal is

blasted off of the solid, shot-firers must be employed to fire all shots after the employees and other persons have retired from the mine." It is further provided that "any agent, owner, or operator of any coal mine in this State, violating the provisions of the section of which the foregoing provision is a part, shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall be fined not less than fifty or more than two hundred dollars, or by imprisonment in the county jail not less than three nor more than twelve months, or by both such fine and imprisonment."

The manifest purpose of this legislation is the protection of the lives of coal miners who work in mines in which giant or blasting powder is used to dislodge the coal from its natural bed. It is only in mines which are operated by blasting coal off of the solid that the duty is enjoined upon the owner, operator, or agent operating such mine, of employing shot-firers to fire all shots, and requiring that such blasts shall be made by the shot-firers after the other miners and operatives have retired from the mines. Experience has demonstrated the necessity of establishing police regulations for the working of coal mines, in order to protect the health and safety of persons employed therein.

If the legislature can regulate the harmless business of the citizen, on the ground that possible fraud may be perpetrated, surely there can be no hesitation in holding that a regulation requiring mine owners, who operate mines in which the dangerous agency of blasting powder is used, to so use and handle the powder as to protect the lives and insure the safety of their miners, is a fair and reasonable exercise of the police power, and within the well-recognized scope of legislation. One of the great purposes of the people of this Commonwealth, in establishing a legislative department of our State government, was to devise ways and rules to conserve the health and lives of its people. The constitution lays down certain great and fundamental principles, according to which the legislature is to govern, but it commits to the legislature the right and duty of formulating all auxiliary rules to effectuate the principles of the constitution; and it would be hard to conceive of a more necessary and beneficial exercise of its power than it has shown in prescribing rules for that class of laborers whose duties so constantly expose them to great perils. It is in no sense unreasonable or oppressive. As to the subject-matter of this legislation, we can not doubt its constitutionality.

In no sense can it be said that this act deprives the mine owner of his property without due process of law. It simply enjoins upon him that he so use his property as not to injure another, and that time-honored maxim prohibits one from permitting his servants and employees to so demean themselves in his service as to endanger the lives and health of their coemployees and other persons. The statute is wise in its purposes, and it is the duty of the courts to enforce compliance with its plain and obvious provisions. The judgment of the circuit court is reversed and the cause remanded, to be proceeded with in accordance with the views herein expressed.

CONSTITUTIONALITY OF STATUTE—WAGES PREFERRED—*Gleason et al., v. Tacoma Hotel Company et al., 47 Pacific Reporter, page 894.*—An action was brought in the superior court of Pierce County, Wash., by Mary Gleason and others against the Tacoma Hotel Company to enforce their claims for wages. A judgment was rendered in favor of

the plaintiffs, and the defendant appealed the case to the supreme court of the State, which rendered its decision February 5, 1897, and affirmed the judgment of the superior court.

The opinion of the supreme court was delivered by Judge Gordon, and the following, quoted therefrom, shows the facts in the case and the principal question decided by the court:

In March, 1896, the sheriff of Pierce County, under and by virtue of an execution issued out of the superior court of said county upon a judgment rendered therein in favor of the appellant, Wingate, as receiver of the Merchants' National Bank, against the Tacoma Hotel Company, levied upon certain personal property of said company, and advertised the same to be sold on the 27th of March, 1896. Prior to said sale, namely, on March 26, the respondents—being servants, clerks, and laborers having claims against the judgment debtor for labor performed and services rendered—gave separate notices of their respective claims, duly verified, to the said sheriff and to the appellant, pursuant to the provisions of section 3124, 1 Hill's Code (sec. 1974, Code 1881), which section is as follows:

"In cases of executions, attachments, and writs of similar nature, issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks, and laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof, sworn to by the person making the claim, to the auditor and the officer executing either of such writs at any time before the actual sale of property levied on; and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person, out of the proceeds of the sale, the amount each is entitled to receive for services rendered within sixty days next preceding the levy of the writ, not exceeding one hundred dollars. If any or all the claims so presented and claiming preference under this title are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days from [for] the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim, until the determination of such action; and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim, with the same rank as the original claim."

Appellant assigns as error the order of the court in overruling the demurrer to the complaint. He contends that the provisions of section 3124, above set out, are repugnant to the fifth amendment and section 1 of the fourteenth amendment of the Constitution of the United States, and also to section 3 of article 1 of the constitution of the State of Washington, providing that "no person shall be deprived of life, liberty, or property without due process of law." The ground upon which this contention proceeds is that the section in question permits the taking of the debtor's property without notice or process directed to him. The purpose of the statute was to give the persons therein mentioned, who by their labor had contributed to the property of the debtor, a preference over general creditors, and to afford a speedy and inexpensive method by which their claims for such labor might be enforced. By requiring the claimant to establish his claim in court at the instance of either the debtor or creditor, and affording all parties an opportunity

to be heard, the constitutional rights of the parties are preserved, and the act is not open to the objection that it deprives one of his property without due process of law.

Another objection which is urged to this act is that it gives to persons of a particular class a lien upon property which they have not helped to construct, and in this respect is a denial of the equal protection of the laws, and amounts to a deprivation of property without due process of law. No authority has been cited in support of this position. Questions of mere legislative policy do not concern the courts, and we are not satisfied that the act contravenes any constitutional right. Perceiving no error in the record, the judgment and decree will be affirmed.

EMPLOYERS' LIABILITY—CONSTRUCTION OF STATUTE—*Laughran v. Brewer, 21 Southern Reporter, page 415.*—Action was brought by James J. Laughran in the circuit court of Jefferson County, Ala., against William P. Brewer, to recover damages for personal injuries incurred while in the employ of said Brewer. The plaintiff's declaration contained several counts, which alleged that his injury was sustained by reason of the negligence of an engineer employed by the defendant in failing to let an engine stand still after being stopped until he had received the proper signal to start said engine again, as, by the rules and regulations of his employer, he was required to do. The allegations were intended to bring the case under subdivision 4 of section 2590 of the Code of Alabama, which reads as follows:

Section 2590. When a personal injury is received by a servant or employee in the service or business of the master or employer, the master or employer is liable to answer in damages to such servant or employee as if he were a stranger and not engaged in such service or employment, in the cases following:

* * * * * * *

4. When such injury is caused by reason of the act or omission of any person in the service or employment of the master or employer, done or made in obedience to the rules and regulations or by-laws of the master or employer, or in obedience to particular instructions given by any person delegated with the authority of the master or employer in that behalf.

The defendant filed demurrers to the counts above mentioned, on the ground that they did not set out a case which would come under the section above given, and the superior court sustained them and gave judgment for the defendant. The plaintiff then appealed the case to the supreme court of the State, which rendered its decision February 2, 1897, and sustained the judgment of the lower court.

The opinion of the supreme court was delivered by Judge Haralson, and the following, which sets out the reasons for the decision on the point above described, is quoted therefrom:

The fourth, seventh, eighth, and ninth counts of the complaint were framed confessedly under subdivision 4 of said section 2590. At

common law the rule was that for injuries proceeding from the personal fault or negligence of the master he was under the same liability to his servants as to third persons toward whom he sustained no special relations; but he was not liable for injuries caused by the negligence or fault of other servants in the same employment, if the master had not been negligent in the employment of incompetent persons. The risks incident to the common employment each servant was presumed to have contemplated when he entered the service.

The foregoing principle as to the employer's liability still prevails in this State, and he is not and can not be made liable, under the employer's liability act (section 2590 above), unless the case falls within one of the categories named in the five subdivisions of the said act. In each of these counts the negligence complained of was that of a fellow-servant of the plaintiff, and, as we have said, it is admitted and insisted that the said counts are drawn and are good under subdivision 4 of said section of the Code. The provisions of said subdivision are, in substance, that the act or omission of the employee complained of must be done or made in obedience to the rules of the master. In other words, when the master commands or instructs, by rules and regulations and by-laws of himself, or in obedience to particular instructions given by any person delegated by him, with his authority in that behalf, and an employee obeys and carries out such commands or instructions and injury is done thereby to a fellow-employee, the master is liable. The statute has reference, by its terms, to the instructions of the master and makes him responsible for them, and when he commands that an act be done or omitted to be done, and the servant obeys in doing the thing commanded to be done, or in omitting to do what he was ordered not to do, his obedience in either case is the act of the master, and if injury results he is liable; but if the servant disobeys the instructions so given him by doing something else that he was not instructed to do, or omits to obey instructions at all, and injury to his fellow-servant is the result, it is not the act or command of the employer that caused the injury, but the disobedience of the employee, and the master is not liable. He stands in such a case as he stood, and is liable, if at all, at common law, unaffected by the employer's liability act. In each of these counts the averment is, in substance, that the injury was caused by the disobedience of the fellow-servant of the rule of the master, exactly opposite to the requirements of the statute to render him liable thereunder. Neither count states any cause of action under said subdivision 4, section 2590, Code. We find no error in the rulings of the court prejudicial to plaintiff, and its judgment is affirmed.

EMPLOYERS' LIABILITY—NEGLIGENCE—*Borck v. Michigan Bolt and Nut Works, 69 Northwestern Reporter, page 254.*—The plaintiff, Borck, a boy of 12½ years of age, was injured by falling into the cogwheels of a machine used by the defendant company in its shops. Said cogwheels were not guarded. Suit was brought by Borck in the circuit court of Wayne County, Mich., against the Michigan Bolt and Nut Works to recover damages for injuries sustained while in the employ of said company. Judgment was rendered against him, and he brought the case before the supreme court of the State on writ of error.

Said court rendered its decision December 9, 1896, and sustained the judgment of the court below.

The opinion of said court was delivered by Chief Justice Long, and the more important points discussed by him appear below in his language:

It is also contended that the defendant had failed to comply with section 1997, c. 6, 3 How. Ann. St. [sec. 5 of act No. 265, acts of 1889], which provides that "all gearing and belting shall be provided with proper safeguards." It is contended by counsel for defendant that this was no violation of the statute, inasmuch as it is provided by section 1997, c. 7, 3 How. Ann. St. [sec. 6 of act No. 265, acts of 1889], that: "If * * * the belting, shafting, gearing, elevators, and machinery in the shops and factories are located so as to be dangerous to employees and not sufficiently guarded, * * * after due notice of such defect said proprietors or agents shall be deemed guilty of violating the provisions of this act." It is claimed that "after due notice of such defect" means the notice to be given by the inspector mentioned in section 5 of the act [sec. 1997, c. 6, above]. We think this was the notice required. There is no pretense that any such notice was given.

Counsel for plaintiff further contends that the defendant was guilty of negligence in not furnishing the plaintiff a safe place to work; that the plaintiff was too immature in intellect to appreciate the dangers of the place, and in putting him there, and not instructing him in regard to the danger, the defendant was guilty of negligence. The court below was of the opinion that the plaintiff, when he entered the defendant's employ, saw and knew the danger of getting into the cogwheels, and therefore assumed the risks of the employment. In this we think the court was correct. We think the court below properly directed the verdict in favor of defendant. The judgment must be affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—*Canon v. Chicago, Milwaukee and St. Paul Ry. Co., 70 Northwestern Reporter, page 755.*—The plaintiff brought action against the above-named railroad company in the district court of Palo Alto County, Iowa, to recover damages for the death of her intestate, one Canon, caused, as alleged, by the negligence of said railroad company. Said Canon was a car inspector in the employ of the railroad company, and while between two cars, inspecting the same, he was killed as a result of other cars being kicked back upon the cars where he was employed, moving said cars 12 to 16 feet, throwing him down and running over him. After the evidence had been heard in the district court the defendant company made a motion for a verdict in its favor, for the reason, among others, that the case did not come within the provisions of section 1307 of the Code of Iowa. The court sustained the motion, and a verdict was returned for the defendant, upon which judgment was entered. The plaintiff appealed the case to the supreme court of the State, which court rendered its decision April 10, 1897, holding that a car inspector required to go between and under cars is exposed to hazards

peculiar to the operation of a railroad, within section 1307 of the Code, making railroad companies liable to their employees for the negligence of fellow-servants; and that recovery can be had for the death of an inspector killed by the negligent running of cars against the train under which he was working, and reversed the judgment of the district court.

The following is quoted from the opinion of the supreme court, which was delivered by Chief Justice Kinne:

The controlling question in the case is whether the employment of plaintiff's intestate was such as to bring him within the provisions of Code, section 1307. That section provides that "every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corporation, in consequence of the neglect of agents, or by any mismanagement of the engineers or other employees of the corporation, and in consequence of the willful wrongs, whether of commission or omission of such agents, engineers, or other employees, when such wrongs are in any manner connected with the use and operation of any railway, on or about which they shall be employed." Counsel for appellee contend that, in view of the custom as shown by the evidence in this case, the employment of plaintiff's intestate "did not contemplate the hazards of moving cars or trains while he was engaged in the work of inspection," and that, by permitting the cars to be taken from the train before he had finished inspecting the whole train, he thereby waived the safety which the custom and rules afforded, and thus placed himself within reach of hazards not contemplated by his employment, and therefore the protection of the statute is not available in his case. Stated in another way, appellee's theory is that, under the custom of the company, cars were to be inspected when at rest and not moving, and, as his work was to be done under such conditions, he was not exposed to the dangers of moving cars.

Clearly the duty of car inspector, which requires the employee to go under and between cars, exposes him to the hazards peculiar to the business of using and operating railroads. It matters not that it may be contemplated by the custom in force that cars shall remain absolutely at rest while such duty is being performed. He is, nevertheless, exposed to the perils and hazards which may result from a movement of the cars in violation of such custom. His injury in this case was caused by the operation of the road, by the movement of trains or cars thereon, and his work constantly exposed him to just such perils and dangers as are incident to the movement of cars. The claim that he, by permitting the yard master to take out the four cars, voluntarily went outside of his employment, and threw aside the protection which had been placed around him for his safety, is not well founded. The applicability of this section is not to be determined, as counsel seems to think, by the fact, if such it be, that the employment of Canon did not contemplate the hazards of moving trains or cars while he was engaged in his work. It is not a question of contemplation at all, but a question of whether in fact he was, while engaged in his work, exposed to the perils and hazards incident to the movement of cars or trains. That he was so exposed, no matter what the parties might have contemplated, is too plain to admit of argument. The court below erred in sustaining the motion to direct a verdict. Reversed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—*Ean v. Chicago, Milwaukee and St. Paul Ry. Co., 69 Northwestern Reporter, page 997.*—Suit was brought in the superior court of Milwaukee County, Wis., by Alice Ean, executrix of George Ean, deceased, against the railway company above named, to recover damages for the death of the said George Ean, alleged to have been caused by the negligence of the employees of said company while he was in its employ. The plaintiff's complaint stated in substance that when the accident occurred the deceased was at work in the company's freight house as a freight handler. He was ordered to help move a car, and went between the cars, uncoupled the one to be moved, and, with the aid of one of his associates, commenced pushing it to its destination, when, without any warning of any kind, an engine with cars attached came along and struck the string of cars from which he had just uncoupled the car to be pushed away and forced said cars upon and over him, crushing his arm and leg and side, causing injury from which he died five days thereafter. The defendant company demurred to the complaint, alleging that the facts above stated did not constitute a cause of action, and the superior court sustained said demurrer, dismissed the complaint, and entered judgment for the defendant. The plaintiff then appealed the case to the supreme court of the State, which rendered its decision January 12, 1897, and affirmed the decision of the lower court. Said decision was made, however, upon a technicality, based upon the form of the plaintiff's complaint, and in the course of the same the supreme court decided that two particular statutes, the applicability of which to the case was denied by the superior court, did apply.

Chapter 220, acts of 1893, one of the statutes above referred to, in so far as it applies to this case, is quoted below:

SECTION 1. Every railroad or railway company operating any railroad or railway, the line of which shall be in whole or in part within this State, shall be liable for all damages sustained within this State by any employee of such company, without contributory negligence on his part; * * * second, or while any such employee is so engaged in operating, running, riding upon, or switching passenger or freight or other trains, engines, or cars, and while engaged in the performance of his duty as such employee, and which such injury shall have been caused by the carelessness or negligence of any other employee, officer, or agent of such company in the discharge of, or for failure to discharge, his duties as such.

The opinion of the supreme court was delivered by Judge Marshall, and, in the part of the same which is given below, the other statute, above referred to, is quoted. The following is quoted from said opinion:

It does not appear upon what ground the learned judge of the superior court sustained the demurrer, but from the briefs of counsel we assume that his decision was based upon the ground, among others, that the deceased was not an employee entitled to the benefits of chap-

ter 220, Laws of 1893. That act received consideration in Smith *v.* Railway Co., 91 Wis., 503; 65 N. W., 183 [see Bulletin of the Department of Labor, No. 4, p. 436], and no good reason appears to change in any way the conclusion there reached. It was there said, in effect, in regard to that part of the act applicable to this question, that "the legislative idea plainly was to give a right of action to employees engaged in operating and moving trains, engines, and cars while actually so engaged, and the words used to express such idea are too plain to leave room for resort to the rules for judicial construction to determine their meaning." The test in any given case is, Was the person injured employed in one of the branches of the railway service covered by the act at the time of the injury? If so, he is entitled to its benefits, whether such service was the principal kind of work to be performed by him under his contract of employment, or a mere incident to his general duties. As in a case where an employee is injured by the negligence of another whose general employment is that of a vice-principal, and such other is temporarily doing the work of an employee, the right of the injured party is governed by the nature of the service in which such other is engaged at the time of such injury; so here, whether the deceased, had he lived, would have been entitled to the benefits of the act in question depends wholly upon whether he was doing the kind of service specified in the act at the time of the injury. If he was, whether such service required him to assist in running the car a distance of three car lengths or a greater distance, or whether by the power of a locomotive, or by some other means, makes no difference. While actually engaged in moving the car he was within the extraordinary perils which the act was designed to protect employees against. The conclusion of the trial court to the contrary can not be sustained.

It was further held that even if the deceased would have been entitled to recover of the defendant had he lived, section 4255 Rev. Stat., has no application to such a case; hence no cause of action is stated in the complaint in favor of the plaintiff. Clearly, the right of action in favor of the deceased was lost by his death, and as there is no statute giving a right of action to the personal representatives, except section 4255, Rev. Stat., unless that applies the complaint is fatally defective. Such section is as follows: "Whenever the death of a person shall be caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured," etc. It will be observed that the statute says that "in every such case the person who, or the corporation which, would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured." To be sure, the rule of strict construction should apply, as the act is in derogation of the common law, if the language is open to construction; but in our judgment it is not. There is nothing either in the terms or the spirit of the act from which the court can say the legislative idea was to confine its effect to rights of action in favor of injured persons, as the law existed on the subject at the time section 4255 was passed. On the contrary, it is too plain to be open to serious discussion that the legislative intent was to give a right of action to the personal representatives of a deceased person in all cases where such person would be entitled to recover damages for his injury if death had

not ensued. While it is the duty of the courts to resolve reasonable doubts in favor of the restrictive effect of an act that is in derogation of the common law, it would be going beyond judicial functions to put restrictive words into a law by judicial construction. We hold that section 4255 applies to this case, and that the ruling of the trial court to the contrary can not be sustained.

EMPLOYERS' LIABILITY—RETENTION OF INCOMPETENT FOREMAN—*Matthews v. Bull, 47 Pacific Reporter, page 773.*—This suit was brought in the superior court of Humboldt County, Cal., by William H. Matthews against John C. Bull, jr., to recover damages for injuries sustained while he was in the employ of said Bull. The facts in the case were shown by the evidence to be as follows: The plaintiff, Matthews, was employed by Bull as a common laborer to work as one of a pile-driver crew of which one Robert Astleford was foreman. A pile having been put in place to be driven, the foreman directed the plaintiff to go up the driver and put a ring on the top of the pile; plaintiff started to put the ring on the pile and was just pushing it over with his right hand when the foreman, standing where he could not see the plaintiff, and not waiting for the customary signal from the plaintiff, signaled to the engineer to let the hammer fall, which the engineer did. The hammer struck the plaintiff's hand and crushed it so that it had to be amputated. The evidence also showed that the foreman was a careless and negligent man, constantly exposing those under him to danger; that the defendant had knowledge of his carelessness, and, having such knowledge, retained him in his employ; that the injury sustained by the plaintiff was caused by the foreman's carelessness or negligence, and not by the carelessness or negligence of the plaintiff. Upon the above facts a judgment was rendered for the plaintiff, and the defendant appealed the case to the supreme court of the State, which referred it to commissioners for a report. The report of the commissioners was in favor of the plaintiff, Matthews, and the supreme court rendered its decision, based on said report, February 1, 1897, and sustained the judgment of the superior court.

From the report of the commissioners, which was prepared by Commissioner Belcher, and which was adopted by the supreme court as its opinion, the following is quoted:

The duties which an employer owes to his employees are said to be "to furnish suitable machinery and appliances by which the service is to be performed, and to keep them in repair and order; to exercise ordinary care in the selection and retention of sufficient and competent servants to properly conduct the business in which the servant is employed, and to make such provisions for the safety of employees as will reasonably protect them against the dangers incident to their employment. The performance of these duties can not be shifted by it to a servant, so as to avoid responsibility for injury caused to another servant by its omission; nor is their negligent performance one of the

ordinary risks of the service impliedly assumed by the employee by his contract of employment." (Daves *v.* Pacific Co., 98 Cal., 19; 32 Pac., 708.)

The Civil Code provides that "an employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care." (Sec. 1971.) And, speaking of this section, the court, in Gier *v.* Railway Co. (108 Cal., 133; 41 Pac., 23), said: "Such lack of ordinary care may as well be shown by the retention of an unfit employee after knowledge of the fact as by a failure to use due diligence at the time of his selection, and in either case the liability of the employer attaches." And see 7 Am. and Eng. Enc. Law, page 848, where the general rule upon the subject is stated as follows: "Although an employer may have used due care and diligence in selecting his servants, if subsequently he obtains knowledge of a servant's incompetence or unfitness for his position, and retains him in his employment, he is liable to a fellow-servant for any injury resulting from such unfitness," except in cases where the injured servant "knew of such incompetence and made no complaint about it to his employer."

Under the law as thus declared, and the facts as found by the jury, the plaintiff was clearly entitled to recover damages for his injuries.

EMPLOYERS' LIABILITY—VALIDITY OF CONTRACTS MAKING THE ACCEPTANCE OF BENEFITS BY EMPLOYEES FROM RAILWAY RELIEF FUND A WAIVER OF CLAIMS FOR PERSONAL INJURY—*Pittsburg, Cincinnati, Chicago and St. Louis Ry. Co. v. Cox, 45 Northeastern Reporter, page 641.*—Suit was brought in the court of common pleas of Warren County, Ohio, by Charles C. Cox against the above-named railway company to recover damages for personal injuries received while in the employ of said company and due, as alleged, to negligence on its part. The evidence in the case showed the following facts: That the above-named railroad company with two others had each formed relief departments and had associated themselves together under one common organization known as the "Voluntary Relief Department of the Pennsylvania Lines West of Pittsburg;" that the object of said department was the establishment and management of a fund known as the "relief fund" for the payment of definite sums to employees contributing to the same when they should be disabled by accident or sickness, etc.; that said fund was formed by voluntary contributions by employees, and appropriations when necessary to make up any deficiency, by the several railway companies; that the application signed by an employee desiring to become a member of said relief department contained the following stipulations: "And I agree that the acceptance of benefits from said relief fund for injury or death shall operate as a release of all claims for damages against said company [being his employer company], arising from such injury or death, which could be made by or through me, and that I, or my legal representatives, will execute such further instrument as may be necessary formally to evidence such acquittance;" that the plaintiff, Cox, was a

member of said relief department, and that after he was injured he received benefits from the relief fund. This latter fact, together with the stipulation above quoted in his application for membership, was set up as a defense by the railway company as defendant, and a judgment was rendered for said defendant. The plaintiff appealed the case to the circuit court of Warren County, and, as a result of the hearing, the judgment of the court of common pleas was reversed. The defendant then carried the case on writ of error to the supreme court of the State, which court rendered its decision December 15, 1896, reversed the judgment of the circuit court and affirmed that of the court of common pleas.

The opinion of the supreme court was delivered by Judge Spear, and the following is quoted therefrom:

The ruling of the common pleas on the demurrer is assailed on the ground that the contract set up is invalid because (1) it is prohibited by the act of April 2, 1890 (87 Ohio Laws, 149), "for the protection and relief of railroad employees," etc.; (2) because it is against public policy; (3) for want of mutuality; and (4) for want of consideration moving from the company to Cox for the agreement to release claims for damages. In support of the second defense, it is insisted that the act of April 2, 1890, as to the clauses referred to, is unconstitutional, because it strikes down the voluntary right to contract; that the contract is not, in fact, against public policy, whether declared so by the statute or not, and that the mutual beneficial stipulations and averments of fact abundantly show both mutuality and consideration.

1. It would be a needless waste of effort to discuss the constitutional question propounded, unless, upon an examination of the contract and the statute, it shall be found that such a contract is among those forbidden. First, therefore, we give attention to that inquiry. The part of the statute to which attention is directed is the following: "And no railroad company, insurance society, or other person shall demand, accept, require, or enter into any contract, agreement, stipulation with any person about to enter, or in the employ of any railroad company whereby such person stipulates or agrees to surrender or waive any right to damages against any railroad company, thereafter arising for personal injury or death, or whereby he agrees to surrender or waive in case he asserts the same, any other right whatsoever." To what sort of a contract does this language apply? It is to be assumed that the legislature intended to confine its action in forbidding the making of contracts upon subjects in themselves lawful, by persons *sui juris*, to such contracts as are inimical to the State—that is, against public policy; for the right to contract is one not given by legislation, but inherent, necessarily involved in the ownership of property, and as a primary prerogative of freedom, and we should not construe the words of an act so as to restrain this right where the conflict with public policy is not clear, unless the language will bear no other construction. As to the first clause, perhaps it is sufficient to say that it clearly appears the contract does not come within the terms of the inhibition, for the reason that the employee does not therein agree to waive a right to damages thereafter arising for personal injury or death. He simply agrees that he will elect, after the injury is incurred, which form of recompense he will demand. In what essential does the second clause differ from the

first? It is the same, in effect, as though it should be worded, "or whereby, in case he asserts his right to sue the company for personal injury or death, he agrees to surrender or waive any other right whatsoever." He may not stipulate that in case he sues the company for damages for personal injury he will surrender any other right. What here is meant by the term "right?" Does it mean any fanciful claim which an ingenious person may invent, or does it mean a tangible legal right, one resting on contract or in tort, which would be recognized and enforced by law? Common sense would say, it seems to us, that it means the latter. This leads to an inquiry as to the character of the right which is secured to an employee who becomes a member of the "voluntary relief department" and entitled to the benefits of the "relief fund." If the contract be valid it gives to the member a right, in case of disability on account of hurt or sickness, to receive certain payments from the relief fund so long as the disability continues; but, as a condition of the exercise of this right, and as a modification of it, the member must disclaim any right to sue the company in whose employ he is for damages arising from the injury; that is, the right to the benefits is not, by the terms of the contract, an absolute right. It is at best a contingent right; and, if this be so, then it is not, unless the stipulation is to be overthrown as against public policy, a legal right, after the party has elected to sue the company, which the law recognizes and will enforce, for the law will not enforce as an ultimate right a claim which rests upon a condition which is repudiated by the party making the claim. Perhaps the point would be clearer if the party had, without accepting benefits, recovered against the company and then sought to recover also the benefits against the fund. No one could possibly suppose, in such case, that his right to recover was absolute, or could in any aspect have a legal existence or become the subject of a waiver, if the party's own contract is to be observed. This for the reason that he has no other right to surrender or waive, because the moment he asserts the right to sue the company the other, which is but a right inchoate, by the very terms of the contract which gave it existence, disappears. And if the right is not an absolute one in the one case, how can it be in the other? Putting the conclusion in a sentence, the second inhibition is not essentially different from the first; it is but an extension of it. That applies only to waiver of a right to damages arising from personal injuries or death; this extends to all rights whatsoever. But in any case the law contemplates a legal right. Taking the statute as a whole, the contract inhibited is a contract which, by its terms, waives the right of action on the part of the employee, while the contract in question does not seek to waive a right of action, but expressly reserves it, and only gives to his election of remedies, made after the injury, the effect of a waiver of the other remedy. To deny such a right would be to deny the right to settle controversies. The law favors the exercise of this right; it does not disapprove it. We think the contract set up in the answer is not fairly within the inhibitory terms of the act when reasonably construed; and this conclusion makes it unnecessary to consider the question of the unconstitutionality of the statute.

2. Is the contract itself against public policy? To be so it must in some manner contravene public right or the public welfare. It must be shown to have a mischievous tendency as regards the public. And this should clearly appear. The ground urged is that it tends to make the company less careful in the operation of its road; in other words, it encourages negligence. And if it be of that character, then it would contravene public policy and be void, in that it would have a tendency

to induce the employment of men less prudent and careful, which would tend to endanger the property and lives of travelers as well as of its employees. But this claim arises, we think, from a misconception of the contract in assuming that by the contract the employee releases some future right of action against the company. On a previous page we have undertaken to show that such is not the case; that there is no waiver of any cause of action which the employee may become entitled to, and that it is not the signing of the contract, but the acceptance of benefits after the accident, that constitutes the release. When that occurs he is not stipulating for the future; he is but settling for the past. He accepts compensation for injury already received. If he is injured and the company is not liable (a condition which follows in much the larger proportion of the accidents to employees on railroads) he may accept the benefits; if the company is liable he may decline benefits and sue. How can this injuriously affect the public? We fail to perceive how the contract in question contravenes any interest of the public.

3. Nor is the contract void for want of mutuality, nor for lack of consideration. Moved thereto by the stipulations of the employee members, the company assumes the obligation to take charge in part of the administration of the association, to pay all the operating expenses, to take care of its funds, pay interest thereon and be responsible for their safe-keeping, and to make appropriations to supply any deficiencies. The promises are both concurrent and obligatory on both. Both promise and both pay in consideration of promises and payment by the other, and the fact that third persons are interested does not impair the force of the obligation. If these stipulations do not supply consideration, it would be difficult to frame such as would; and, there being express assent to the terms of the contract by both parties, the element of mutuality is not wanting.

Our conclusion is that the contract set up is not interdicted by the statute, and that it is neither against public policy nor void for want of mutuality or consideration. Judgment of the circuit court reversed and that of the common pleas affirmed.

EXEMPTION FROM GARNISHMENT—WAGES—*Adcock et al. v. Smith, 37 Southwestern Reporter, page 91.*—This was a garnishment proceeding by O. P. and J. S. Adcock against William Smith, defendant, and the Knoxville Iron Company, garnishee. From a judgment rendered in the circuit court of Knox County, Tenn., holding that the money sought to be reached was exempt from garnishment, the plaintiffs appealed the case to the supreme court of the State. The evidence showed that Smith worked for the Knoxville Iron Company, boiling or puddling iron; that he was paid $3 per ton; that he was required to go to work at a certain hour and quit at a certain hour, and unless he had complied with the hours he would have been discharged; that he worked for the company for $3 per ton and upon no other terms; that the company did not hire puddlers by the day or month, but by the ton alone, and that the company at the time it was garnisheed owed him $10.

Section 2931 of the Code of Tennessee, in effect, exempts from attachment, seizure, or execution $30 of the wages of every mechanic or other

laborer, and the decision of the circuit court above referred to was based upon this statute.

The supreme court rendered its decision October 3, 1896, and affirmed the decision of the lower court. Its opinion in the case was delivered by Judge Wilkes, who, in the course of the same, used the following language:

It is insisted, on the one hand, that Smith simply has a contract to puddle iron, and that he stands in the same attitude as would a man who contracts to build a house for $500, or any other amount. On the other hand, attention is called to the fact that Smith received his pay monthly, on the 20th of each month; that he was compelled to begin and quit work at a certain hour. And these features, it is insisted, make him a laborer for wages. We have no decision of this court directly adjudicating the question involved. We have made search among the authorities for the holdings in other States. "Wages" are defined to be the compensation paid by the day, week, month, etc., for the services of laborers or other subordinate or menial employees. "Wages," in the sense of the exempting statutes, are held to be such as are earned by the hands and labor of the individual himself, and his family under his direction, and do not extend to what he earns as superintendent or master of other laborers (2 Shinn Attachm., sec. 558). Perhaps this holding will not be questioned, but the point presented is, does the term "wages" embrace compensation to be paid by the job or by the amount performed, or is it limited to cases where the compensation is fixed by the length of time engaged? In Shinn on Attachment and Garnishment it is held that the wages of a miner who himself works in a coal mine at so much per ton comes within the exemption, citing Coal Co. *v.* Costello, 33 Pa. St., 241. In Ford *v.* Railway Co., 54 Iowa, 728; 7 N. W., 128, the court, among other things, said: "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 piece of 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, but it may also be determined by the work done. 'Wages' means compensation estimated in either way."

Our own decisions hold that the statutes creating exemptions are to be liberally construed in favor of the debtor class. We are unable to see why a laborer should be deprived of this exemption because his labor is compensated by the job or by the amount of work or number of articles finished, instead of by the number of hours he is employed. He is no more an independent contractor when he agrees to puddle iron at so much per ton than he would be if he were to receive so much per day. In either case he is laboring with his own hands for an employer, and under his direction and control and superintendence, and he is in no sense an independent contractor, working when and how he may choose. Our farmers employ laborers to pick cotton for them at a certain rate per 100 pounds, or to cut wood at a certain rate per cord, and the manufacturer employs laborers to weave cloth at so much per yard, and the mine owner employs laborers to mine coal by the ton, and so on through the various industries; and certainly in such cases the persons employed are "laborers" working for "wages," the amount of which is fixed, not by the time engaged but by the results achieved, and the law applies in the one case as well as in the other. There is no error in the judgment of the circuit court, and it is affirmed.

FELLOW-SERVANT ACT OF ARKANSAS—*Kansas City, Fort Scott and Memphis Ry. Co. v. Becker, 39 Southwestern Reporter, page 358.*—Action was brought by William Becker against the above-named railway company in the circuit court of Craighead County, Ark., to recover damages for personal injuries sustained by him while in the employ of said company, and, as he alleged, due to the negligence of George Bennett, the engineer of the locomotive of which Becker was the fireman. A judgment was given for the plaintiff and the defendant company appealed the case to the supreme court of the State, which rendered its decision February 20, 1897, and reversed the judgment of the lower court.

The principal point of the decision is shown in the following, which is quoted from the opinion of the supreme court, as delivered by Judge Battle:

And the court refused to instruct the jury, at the request of the defendant, as follows:

"(16) That, without proof of facts that would take Bennett and Becker out of the rule, they were in law fellow-servants; and the burden of proving they were in different departments, or that one had the superintendency or control of the other, or were of different grades, is on the plaintiff, Becker; and, unless he has so shown, the defendant would not be liable for the negligence of Bennett in failing to inspect the step at Memphis."

"(17) The court instructs the jury that if you find from the evidence that the engineer Bennett, who had charge of engine 30 on the trip on which Becker was injured, was provided with the necessary tools to tighten the step in case it got loose, and that it was his duty to so tighten it, and to examine the engine to see if it was safe, and failed to do so, then this neglect was that of a fellow-servant, for whose negligence the defendant would not be liable."

The court erred in refusing instruction numbered 16, which was asked for by the defendant. Upon the plaintiff devolved the burden of proving his cause of action. The fireman and engineer were in the common service of the defendant, working together to a common purpose, in the same department, as shown by the evidence. The presumption is they were fellow-servants, and it devolved on the plaintiff to show that they were not in order to make the defendant liable to him for the damages he suffered from the negligence of the engineer. This court can not take judicial notice of the supremacy or subordination of one to the other, if any exist.

The instruction numbered 17, which was asked for by the defendant, does not accurately state the conditions upon which the defendant was or was not liable to a fireman for damages occasioned by the negligence of the engineer. If they were fellow-servants, it was not. The question is, Were they fellow-servants? The decision of this question involves to some extent the construction of the second section of an act entitled "An act to define who are fellow-servants and who are not fellow-servants," approved February 28, 1893, which provides that "all persons who are engaged in the common service of such railway corporations, and who, while so engaged, are working together to a common purpose, of same grade, neither of such persons being intrusted 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 or service of such corporation. Employees who do not come within the provisions of this section shall not be considered fellow-servants."

As the fireman and engineer in the case before us were unquestionably engaged in the common service of the defendant, in the same department, and working together to a common purpose, they were fellow-servants, if they were of the same grade. The question, then, for us to decide is, what do the words "of same grade" mean as used in the second section of the act of February 28, 1893? We are relieved of every difficulty in the decision of this question by the act itself. Immediately following these words are the following: "Neither of such persons being intrusted by such corporations with any superintendence or control over their fellow-employees." It seems to us the latter words can serve no purpose unless it be to explain the words "of same grade," which precede them. If this was not their purpose they were entirely useless and without a purpose, for the idea conveyed by them is already expressed in the words "of same grade." The words "of same grade," without qualification, may be of broader signification and difficult to explain. But we think that the words following were intended to, and do, explain what is meant by them. In that way we can only give to all these words some effect, as they were doubtless intended to have.

If, therefore, neither the fireman nor the engineer had superintendence or control of the other, they were fellow-servants; otherwise they were not; and if fellow-servants the defendant is liable to neither for damages caused by the negligence of the other in the performance of his duties. For the errors indicated the judgment of the circuit court is reversed and the cause is remanded for a new trial.

SEAMEN—ALLOWANCE OF WAGES UPON DISCHARGE BEFORE BEGINNING OF VOYAGE—*Clark et al. v. The St. Paul, 77 Federal Reporter, page 998.*—This was a libel by Henry Clark and others against the steamer *St. Paul*, brought in the United States district court for the southern district of New York, to recover seamen's wages. Said court rendered its decision January 28, 1897, and issued a decree in favor of the libelants for the amount claimed.

The facts in the case as well as the reasons for the decision are fully set forth in the opinion of the court, which was delivered by District Judge Brown, from which the following is quoted:

On the 14th of December, 1895, the libelants were shipped by the master of the steamship *St. Paul* as firemen for a voyage from New York to Southampton and back, at various rates of wages. Shipping articles were signed by all. In accordance with the provisions of the articles the libelants, on the 18th of December, presented themselves at the dock where the ship lay, prepared to enter upon their work. A break, however, had occurred in the main steam pipe leading to the port engine of the steamship, rendering that engine useless, but not interfering with the working of the starboard engine, under which the steamship might have made the voyage, though much more slowly than her customary passage. On the 18th the libelants were notified of the accident to the

steam pipe and that they were not then wanted, but were told to present themselves again on the 19th, which they did, and were then told to present themselves again on the following day. Coming again on the 20th they were told that the steamship could not be repaired in time to make her voyage, and they were thereupon discharged from the service of the vessel and told to apply to the shipping commissioner for their wages. Through the shipping commissioner they received three days' wages, protesting, however, that they were entitled to wages for the voyage, and that the receipt of three days' wages should not prejudice any of their rights or remedies.

I think the discharge of the libelants under the circumstances was reasonable and justifiable, and, except for the statute, probably no further wages or compensation could have been recovered by them. Section 4527 of the Revised Statutes, however, provides as follows:

"Any seaman who has signed an agreement and is thereafter discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying his discharge and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case of having been improperly discharged, recover such compensation as if it were wages duly earned."

The claim presented is not according to the letter of the statute, i. e., for a month's compensation, but only for fifteen days, the residue of eighteen days, which is the ordinary period of the voyage of the *St. Paul* out and back.

Several objections have been raised to a recovery under the above statute. Upon consideration, however, I must overrule them, upon what I think was the clear intent of the statute, to make provision for seamen who are certain to suffer loss through a discharge without their fault. The statute provides expressly for this very case, viz, a discharge "before the commencement of the voyage," after an agreement has been signed. The seamen in this case had bound themselves from the 14th of December. They had to maintain themselves from that time until the 20th, and then, after discharge, they must suffer some additional delay before other employment could be got by a shipment for some other voyage.

The shipping articles made a binding contract between the seamen and the ship. Upon three different days, in performance of the contract, the seamen presented themselves at the ship to enter upon the voyage. This was not only a part performance of the contract on their part, but they were under the direction and control of the master or other representative of the ship upon those three different occasions, and acted under and in conformity with their orders.

In the case of *The Ira Chaffee* (2 Fed., 401), Mr. Justice Brown, then district judge, says:

"It must now be considered as settled that if the ship enters upon the performance of its work or any step has been taken toward such performance, the ship becomes pledged to the complete execution of the contract and may be proceeded against in rem for a nonperformance."

The repair of the men to the dock on three different days after the shipping articles were signed, and the exercise of control over them by the master or other representative of the ship, brings them within this rule. Decree for the libelants for the amounts claimed, with costs.

DECISIONS UNDER COMMON LAW.

EMPLOYERS' LIABILITY—ASSUMPTION OF RISK—*Young v. Miller, 45 Northeastern Reporter, page 628.*—The plaintiff, Young, was employed by the defendant, Miller, as a general workman, a part of his duty being to make the tools for the other workmen. While defendant's engineer was at work in the building he left a trapdoor open, and the plaintiff fell through it and was injured. The plaintiff brought suit in the superior court of Plymouth County, Mass., to recover damages, and from a ruling of said court in favor of the defendant the plaintiff brought the case, on exceptions, before the supreme court of the State. Said court rendered its decision January 5, 1897, and overruled the exceptions and sustained the action of the lower court.

The opinion of the supreme court was delivered by Judge Holmes, and reads as follows:

The plaintiff knew the permanent elements of the danger to which he was exposed. He knew that the trapdoors were where they were, and that they were likely to be opened from time to time. The doors of themselves were not a defect, and he took the risk of them. The only thing he did not know was the precise moment when the doors would be raised, but that he could find out if he looked. They were raised, and the accident happened during the noon hour, at which time the plaintiff was not called on to work. A majority of the court are of the opinion, although I share the doubts of the minority, that the defendant's duty did not extend to giving notice or warning that the doors were open to one who knew that they were liable to be so at any time. Exceptions overruled.

EMPLOYERS' LIABILITY—ASSUMPTION OF RISK—*Reese v. Wheeling and Elm Grove R. R. Co., 26 Southeastern Reporter, page 204.*—Action was brought in the circuit court of Ohio County, W. Va., by William L. Reese against the railroad company above named to recover damages for injuries received while in the employ of said company. The evidence showed that at the time of the accident the plaintiff was riding in a standing position on a truck which was being pushed forward by an engine and that the truck, through some defect either in itself or in the track, was derailed and the plaintiff was injured; that the plaintiff had knowledge of the defect in the track, and also that the plaintiff had been warned of the danger of riding on said truck in a standing position. A judgment was rendered in the circuit court in favor of the plaintiff, and the defendant company carried the case on writ of error to the supreme court of appeals of the State. Said court rendered its decision November 18, 1896, and reversed the judgment of the circuit court. Its opinion was delivered by Judge English, and from

the syllabus of the same, which was prepared by the court, the following is quoted:

1. When a servant enters into the employment of a master, he assumes all the ordinary hazards incident to the employment, whether the employment be dangerous or otherwise.

2. When a servant willfully encounters dangers which are known to him, the master is not responsible for an injury occasioned thereby.

3. An employer does not impliedly guarantee the absolute safety of his employees. In accepting an employment, the latter is assumed to have notice of all patent risks incidental thereto, or of which he is informed, or of which it is his duty to inform himself; and he is also assumed to undertake to run such risks.

4. Where an employee of a railroad company is being carried on a construction train to his home from his work by the railroad company, without any agreement or compensation therefor, and voluntarily takes a position standing on a small truck which is being pushed forward by the engine, contrary to repeated warnings of those in charge of the train as to the danger of so doing, and he is injured by reason of the derailment of the truck, if his riding in that position is the proximate cause of his injury, the railroad company is not responsible for his injuries thereby occasioned.

EMPLOYERS' LIABILITY—DUTIES OF THE MASTER—*Comben v. Belleville Stone Company of New Jersey, 36 Atlantic Reporter, page 473.*—Suit was brought in the circuit court of Essex County, N. J., by Ann Comben, administratrix of Robert Comben, deceased, against the above-named company, to recover damages for the death of the said Comben, caused, as alleged, by the negligence of said company while the deceased was in its employ. Judgment was rendered for the defendant company, and the plaintiff carried the case on writ of error to the court of errors and appeals of the State, which court rendered its decision January 22, 1897, and reversed the judgment of the lower court.

The opinion of said court was delivered by Judge Lippincott, and in the course of the same certain duties which a master owes his employee under the common law were defined. The syllabus of the opinion was prepared by the court, and the following is quoted therefrom:

1. The duty of a master toward a servant in his employment is to exercise reasonable care and skill to provide safe machinery and appliances for carrying on the business for which he employs the servant, and in keeping such machinery and appliances in a safe condition for such use, including the duty of making inspection and tests at proper intervals while the work progresses, to ascertain if it remains in such safe condition. The master is also bound to exercise reasonable care to provide a safe place for his servant to perform his work, and to the exercise of reasonable care to keep and maintain the place safe; and such duty as to machinery, appliances, and place continues when his servant is changed from place to place upon the work in which he is engaged for his master, when the danger of such change is not obvious, and the servant is without knowledge of it, and can not observe and acquire the knowledge in the exercise of ordinary care in the employment.

EMPLOYERS' LIABILITY—ELECTRIC RAILWAY COMPANIES—DUTIES OF THE MASTER—*Denver Tramway Co. v. Crumbaugh, 48 Pacific Reporter, page 503.*—Action was brought in the district court of Arapahoe County, Colo., by Jennie Crumbaugh against the above-named tramway company to recover damages for the death of her husband, Thomas Crumbaugh, a conductor in the employ of said company, who was killed by an accident on the 25th day of November, 1892. Judgment was rendered for the plaintiff, and the defendant company appealed the case to the supreme court of the State, which rendered its decision January 4, 1897, and sustained the judgment of the lower court.

The following, quoted from the opinion of the supreme court, which was delivered by Chief Justice Hayt, shows the facts in the case and the principal reasons for the decision:

From the evidence, as resolved by the jury, it appears that the accident occurred as follows: On the evening of the 25th day of November, 1892, Crumbaugh returned from his regular run to the end of the line. At the time in question the car of which Crumbaugh was conductor was standing upon the track, and he was engaged in switching the trolley in position to reverse the car for the return trip. He was at the time on the ground, and had walked around the side of the car to the end, and, at the instant of the accident, was placing the trolley upon the wire overhead. At this instant car No. 110, operated by the same company, was standing upon the track, preparatory to starting in the opposite direction from the route upon which Crumbaugh's car was to return, the cars being then about eight feet apart. At the very instant when Crumbaugh's attention was directed to placing the trolley on the line overhead the conductor on car No. 110 gave the signal of two bells, which indicated to the motoneer to go ahead. In response to this signal the motoneer applied the electrical switch in the customary way to propel the car forward, when, by reason of the switch being out of repair, the electricity operated in a reverse direction, causing the car to back down upon Crumbaugh as he was in the act of putting the trolley on the wire overhead, and crushing him to death between the bumpers of the two cars. The evidence further shows that the electrical reverse switch on car No. 110 had been out of repair for sometime previous; that on the night of the 24th of November, 1892, the car was left at the repair shops of the company, and the persons then in charge notified that both the brake of this car and also the electric reverse switch were out of repair. Upon the following morning, to wit, the day of the accident, the car was turned out of these shops with the statement by the witness, Truitt, that it had been fully repaired, Truitt being at that time in the employ of the company as car repairer. The appellant presents a lengthy argument to show that Truitt, who had charge of these repairs, was a coemployee with Crumbaugh in the service of the appellant company, and that for this reason the company is not liable for his neglect to properly repair the electrical appliances of this car, which neglect caused the injury complained of. The law is now well settled in this jurisdiction that the duty of the company to furnish reasonably safe machinery, and keep the same in reasonable repair, is a duty imposed by law upon the company, the performance of which it can not delegate to another so as to relieve itself from responsibility. In the case of Wells *v.* Coe (9 Colo., 159; 11 Pac., 50) it is said: "Agents charged with the duty of procuring safe

machinery, or agents charged with the duty of inspecting and keeping machinery and appliances in suitable repair, are not to be regarded as fellow-servants with those employed to labor in the business wherein such machinery or appliances are used, or in some cases even with those engaged to operate the same. The master is liable for injuries resulting, without contributory negligence, to other servants, through the ordinary negligence of his employee or agent thus charged with the duty of procuring or repairing, whether such negligence be in originally failing to purchase safe machinery or appliances or in failing to keep the same in proper condition for use." There is no contention in this case that Crumbaugh knew of the defects in the electrical appliances on car No. 110, and there is not the slightest evidence of facts or circumstances which would indicate that he had such knowledge. When this car was run into the repair shop on the night of the 24th of November the duty to properly repair it was a duty resting upon the company and a duty that it could not delegate to others. The law required at the hands of the company reasonable diligence in making the necessary repairs and to see to it that the car did not leave the shops for service until such repairs were actually made.

Evidence was properly received as to the defective condition of the car prior to the day of the accident. Such evidence was competent for the purpose of showing knowledge on the part of the company of the condition of the car. Finding no error in the record, the judgment of the district court will be affirmed.

EMPLOYERS' LIABILITY—FELLOW-SERVANT ACT OF TEXAS—*Missouri, Kansas and Texas Ry. Co. of Texas v. Hines, 40 Southwestern Reporter, page 152.*—Action was brought in the district court of Galveston County, Tex., by Olive Hines against the above-named railroad company to recover damages for the death of her husband, an employee of said company. Judgment was rendered for the plaintiff, and the defendant company appealed the case to the court of civil appeals of Texas, which court rendered its decision March 24, 1897, and reversed the judgment of the lower court. An interesting point decided was that the plaintiff's husband, R. J. Hines, was not a fellow-servant of members of a bridge gang within the provisions of section 2 of "The fellow-servant act of Texas," chapter 91 of the acts of 1893, which reads in part as follows:

Section 2. All persons who are engaged in the common service of such railway corporation, receiver, manager, or person in control thereof, and who, while so employed, are in the same grade of employment and are working together at the same time and place and to a common purpose, neither of such persons being intrusted by such corporation, receiver, manager, or person in control thereof, with any superintendence or control over their fellow-employees, or with the authority to direct any other employee in the performance of any duty of such employee, are fellow-servants with each other. * * * Employees who do not come within the provisions of this section shall not be considered fellow-servants.

The opinion of the court of civil appeals was delivered by Chief Justice James, and the following, quoted therefrom, sufficiently states the facts in the case and the reasons for the decision above noted:

Appellee is the widow of R. J. Hines, a conductor in appellant's service, who was killed on April 11, 1894, in the yards at Houston. The train on which he was conductor was used in connection with a bridge gang then engaged in driving piles for bridges and loading and unloading from the train material for bridges. The bridge outfit consisted of eight men, under control of Foreman Frank McNeely. The crew of the train consisted of an engineer and two brakemen and a fireman, in charge of the conductor, Hines. The bridge gang had nothing to do with the operation of the train, and the trainmen had nothing to do with the service for which the bridge gang were employed. The latter had loaded the cars with pine piling of such length that they required two flat cars, and were brought thus to the yards at Houston and placed where they were to be unloaded. The bridge gang then proceeded to unload them and it was necessary, in order to do this, to remove the stakes that had been placed along the entire length of the cars to keep the piles in place, and also to remove a brake which was in the way on the side of one of the flat cars. The injury to Hines occurred in this manner: One of the bridge men, named Ferguson, was about to knock off the brake with a big hammer, instead of taking it off in the usual and proper way. The course he was about to pursue was improper and injurious to the property, and Hines, who was present, stopped him and saw that he went about removing it in the proper manner, and stood there, instructing him how to do it. While this was going on the piles began to roll off the car, from some cause, throwing Ferguson to the ground, and one of them striking Hines injured him so that he died. The cause may have been the unstaking of the car, or the placing of a skid up against the car, or it may have resulted from the effort to remove the brake, or some or all of these causes combined. The answer denied that Hines at the time was acting in the scope of his duty; denied that there was negligence on the part of defendant; alleged that the injury was due to contributory negligence, and that if there was negligence of defendant, causing the injury, it was the act of plaintiff's fellow-servants. The charge of the court was very brief, and the charges asked by the defendant, fifty-three in all, were refused.

The forty-fifth and forty-sixth assignments [of error] proceed upon the idea that the question of fellow-servants should have been left to the jury on the evidence. There is also an assignment that the court should have directed a verdict for the defendant because they appeared to have been fellow-servants. The court, on the contrary, assumed that they were not, and we think correctly. The evidence in this record is that the men under McNeely constituted a bridge gang, and were engaged in bridge building. The train was used for the purpose of transporting the bridge men and material from one point to another as their work demanded. The bridge gang lived in one of the cars. The conductor, Hines, had exclusive charge of the train while in transit, and he and his crew had nothing whatever to do with the loading and unloading of the cars or with the work of building bridges. McNeely and his men had nothing to do with the operation of the train, except so far as it was necessary to give the conductor notice of where he wanted the train, so that it would be properly placed for transporting the men and material. The evidence also shows that Hines, at the time that he was injured, was not engaged in the work then being done, namely,

the unloading of the car. His duties were confined to the operation of the cars while in transit, but it was his duty, as conductor of that train, to prevent injury to the cars. When Ferguson was about to knock the brake off with the hammer it was his duty, as the evidence shows, to stop him, and to see that he did it without injury to the property, and that is what he was engaged in doing when injured. Hines had nothing to do with the work for which the bridge men were employed or engaged, neither had they anything to do with the work Hines had to perform. When the cars were placed in the yards where McNeely desired, the conductor's work was done and the work of the bridge gang began. He was not engaged in the work of unloading the cars. What he did was to arrest the destruction of the brake by one of the gang, and to see that while it was being removed it was not injured, which was in the line of his duty. We are of opinion, therefore, that they were not working together in the meaning of the fellow-servants act, and that the court, on the evidence as here developed, was correct in assuming that they were not fellow-servants.

EMPLOYERS' LIABILITY—FELLOW-SERVANTS—*Maher v. Thropp, 35 Atlantic Reporter, page 1057.*—Action was brought in the supreme court of New Jersey by James Maher against William R. Thropp to recover damages for injuries sustained in the employ of said Thropp. A nonsuit was directed by the court, and the plaintiff brought the case on writ of error before the court of errors and appeals of the State. Said court rendered its decision November 23, 1896, and affirmed the action of the lower court.

The opinion of the court of errors and appeals, which was delivered by Judge Van Syckel, contains a clear statement of the facts in the case, and the following is quoted therefrom:

This is an action by a servant against his master to recover damages for personal injuries sustained in the master's employment. He was an ordinary workman, who assisted in the boiler-making shops, and at the time of the injury was engaged in striking with a sledge hammer upon the boiler. It is admitted that he was furnished with proper implements to do his work, but by the direction of the foreman of the boiler makers he undertook to do his work with other tools, in consequence of which he received the injury complained of. It is not open to controversy in this State that the boss or foreman of other men who work under his direction is the fellow-servant of those men. Notwithstanding this relation which exists between the co-employees, there are certain duties which the master owes to his servant, and for the due performance of which he is responsible, although he entrusts the execution of them to a co-employee with such servant. This case will be solved, therefore, by determining whether the act which caused the injury to the plaintiff was one which the master himself was bound to perform, or the act of the foreman in the execution of his duty merely as foreman and co-employee of the plaintiff.

If the master occupies the former position, he must respond for the negligence of the foreman; if the latter, the action can not be maintained.

The master was charged with the duty to furnish to the plaintiff

proper implements with which to do the work in which he engaged. If he intrusted the discharge of that obligation to the foreman, he is undoubtedly responsible for the failure of the foreman to exercise due care in that respect. The injury to the plaintiff is in no way chargeable to the failure of the master to furnish proper tools. On the contrary, the accident is attributable wholly to the fact that the plaintiff, under the advice of the foreman, laid aside the safe tool, and used in its place a chisel and a pair of tongs. In doing this the foreman did not act as the vice principal, standing in the place of the master, but acted as a fellow-servant, performing, with the assistance of the plaintiff, the work in which both were engaged and for which the master had provided the necessary implements with due care. The trial judge properly directed a nonsuit, and the judgment below should be affirmed.

EMPLOYERS' LIABILITY—FELLOW-SERVANTS—*Coulson v. Leonard et al., 77 Federal Reporter, page 538.*—This suit was brought in the United States circuit court for the eastern district of Pennsylvania to recover damages for injuries sustained by the plaintiff, Coulson, while in the employ of the defendants, Leonard and others. The court rendered its decision December 14, 1896, and gave judgment for the defendants.

The opinion of the court was delivered by District Judge Butler, and the following, which contains a statement of the facts in the case, is quoted therefrom:

The defendants were general contractors, engaged in doing work of various kinds, some of it similar to that which they were doing for the Baldwin Locomotive Company when the plaintiff was injured. To each separate piece of work or job a gang of workmen was assigned, with a foreman, who had charge of the work and men, whom he assisted in its performance. Having contracted to erect the ironwork of a building for the Baldwin Locomotive Company, the plaintiff with several other men was assigned to the job with J. D. Fagely at their head as foreman. They worked under his directions and control, he being subject to the supervision of a member of the defendant company, who frequently visited the building. In the course of the work, iron was hoisted by means of a steam engine. It was usual for the foreman to signal the engineer for starting and stopping the engine during the process of hoisting, although occasionally he assigned this duty to one of the men under him. On the occasion in question it is charged that the foreman, who was then signaling, carelessly gave an improper signal, in consequence of which the plaintiff was injured; and the jury has found this charge to be true. At the close of the testimony the defendants requested the court to charge that Fagely was a fellow-workman with the plaintiff, and that the plaintiff could not therefore recover. This point was reserved. The jury having found for the plaintiff, the court is now asked to enter judgment for the defendants notwithstanding the verdict.

The question raised is an embarrassing one. An employer is responsible to his employees for injuries arising from his carelessness, but not for those arising from carelessness of co-employees. There are some duties to employees which he can not delegate, so as to escape the consequences of failure in discharging them—such as the provision of a

safe place to work and safe instruments and appliances to work with. Where he employs a representative who stands in his place as respects others, the acts and omissions of such representative are his, and he is responsible accordingly. Who is to be considered such a representative and not a co-workman, however, is generally a question of great difficulty. The courts have so disagreed respecting the rule applicable in such cases, that the subject, as is said in Railroad Co. *v.* Baugh, 149 U. S. 368 [13 Sup. Ct. 914], is in great confusion. To enter upon a general discussion of it here would be folly—a very thorough discussion may be found in the case just cited.

It is unnecessary to look beyond the decisions of the Supreme Court; they are conclusive here. The rule announced by these decisions is very plain; where one is employed to superintend the entire business of the employer, or a distinct department thereof, and given control over other employees working therein, he represents the employer; while one employed as a foreman to direct and manage the performance of some part of the general business, even with authority over his co-employees working therein, is not such a representative, and the employer is, consequently, not responsible for his carelessness. All the decisions of that court are harmonious to that extent. They are not harmonious, however, as respects the application of the rule to the facts of particular cases. Where the individual whose carelessness has resulted injuriously to other employees was in charge of the entire business of the employer, there has not, of course, been any disagreement in the decisions, or difficulty in applying the rule; but where his authority extended to but part of the general business, great difficulty has arisen in determining whether his authority covered a distinct department; in other words, in determining what constitutes such a department of the general business. In repeated instances, however, as in Railroad Co. *v.* Baugh, id., and other subsequent cases, the court has held that the individual whose carelessness caused the injury complained of was not the superintendent of a distinct department, but simply a foreman over employees engaged in particular work.

The court at this point cites a number of cases decided by the United States Supreme Court, and states the gists of the decisions in the same, and then continues as follows:

Turning now to the facts of our case as before stated, it seems plain that in the light of Railroad Co. *v.* Baugh, and the other cases above cited, Fagely, whose carelessness caused the injury here complained of, must be regarded as a co-workman with the plaintiff—the head of a gang engaged in transacting a particular part of the defendants' general business—the execution of one of their many similar contracts for work. In principle the case can not, I think, be distinguished from these cases.

Judgment must therefore be entered for the defendants on the point reserved.

EMPLOYERS' LIABILITY—FELLOW-SERVANTS—*McMahon v. Ida Mining Company, 70 Northwestern Reporter, page 478.*—Suit was brought in the circuit court of Lafayette County, Wis., by Hugh McMahon against the above-named mining company to recover damages for injuries sustained while he was in the employ of said company. The evidence in the case showed that the plaintiff was set to work by a shift boss in a certain part of the mine where there were concealed

unexploded blasts, known to the shift boss, but not known to the plaintiff; and that the plaintiff, in ignorance of the danger, while drilling and preparing for a blast was injured by the explosion of one of the concealed blasts. Plaintiff was nonsuited, judgment was rendered for the defendant company, and the plaintiff appealed the case to the supreme court of the State, which rendered its decision February 23, 1897, and reversed the judgment of the lower court.

The opinion of the supreme court was delivered by Judge Winslow, and reads as follows:

The nonsuit is attempted to be justified on the ground that the shift boss was a coemployee, and that thus the plaintiff's injury resulted from the negligence of a coemployee. There is little or no dispute as to the principles of law on the subject, but the difficulty is in the application of the law. In Cadden *v.* Barge Co., 88 Wis. 409, 60 N. W. 800, it is correctly said: "In Dwyer *v.* Express Co., 82 Wis. 307, 52 N. W. 304, it was held that the question whether different employees of the same master are to be regarded as fellow-servants in a common employment depends upon the nature of the act in the performance of which the injury was inflicted, without regard to the rank of the negligent servant, and that the master is not liable unless the negligent act pertained to a matter in respect to which he owed a direct duty to the servant injured."

So the question here is simply whether the shift boss, Cadden, in sending the plaintiff to work in a new part of the mine, where there was a concealed danger of which he (the shift boss) knew, but the plaintiff did not, was performing a duty of the master. A master is bound to furnish the servant a reasonably safe place in which to work, considering the nature of the work. He is not to set a man at work among latent and extraordinary dangers, of which the employee knows nothing, and can not ascertain by experience or observation. In taking the plaintiff from one part of the mine in which he had been at work, and setting him at work in a different place, the shift boss was plainly and palpably acting in the capacity of master. The evidence tends to show that he knew of a concealed and terrible danger in the place, of which he did not inform the plaintiff, and that the plaintiff could not, in the exercise of ordinary care, ascertain the existence of that danger. We entertain no doubt of the sufficiency of this evidence to take the case to the jury. Further evidence may perhaps show that the risk was a common and ordinary one in a mine of this character, and so was assumed by the plaintiff, or that the plaintiff should have known from the appearance of the hole that it contained the unexploded blast, but neither of these facts now appears so clearly that the court is justified in taking the case from the jury. Judgment reversed, and action remanded for a new trial.

EMPLOYERS' LIABILITY — FELLOW-SERVANTS — PRINCIPAL AND AGENT—SCOPE OF AUTHORITY—*Gowen v. Bush, 76 Federal Reporter, page 349.*—Action was brought by William N. Bush against Francis Gowen, sole receiver of the Choctaw Coal and Railway Company, in the United States court for the Indian Territory, to recover damages for personal injuries sustained by reason of an explosion in a coal mine located at Hartshorne, in the Indian Territory, which was operated by

Gowen in his capacity as receiver. Judgment was rendered for Bush, and the defendant appealed the case to the United States circuit court of appeals for the eighth circuit, which court rendered its decision October 5, 1896, and affirmed the judgment of the lower court.

The opinion of the circuit court of appeals was delivered by Circuit Judge Thayer, and the following, which sufficiently states the facts in the case, is quoted therefrom:

The first error that has been assigned for our consideration is that the trial court erred in failing to direct a verdict for the defendant below. The argument in support of this assignment is founded upon the claim that there was no evidence before the jury tending to show that the defendant had been guilty of any violation of duty, or that he was in any respect negligent. We think, however, that this point is untenable, and should be overruled. The record discloses that there was evidence before the jury which tended to show that the plaintiff was a miner of some 10 years' experience, who had always been accustomed to work in mines that did not generate gas in explosive quantities; that he had been induced by an agent of the receiver, by the name of Gabe Gideon, to come from Calhoun, Mo., where he resided, to Hartshorne, in the Indian Territory, for the purpose of taking service in a new mine at that place which had recently been opened by the receiver, and was being worked both by night and by day, and that he had only arrived at said mine and taken service therein about three days before the explosion occurred; that representations were made to him at his home in Missouri, by the receiver's agent, for the purpose of inducing him to come to Hartshorne, to the effect that the mine at that place was free from gas and was perfectly safe, and that similar representations were made to him by the assistant superintendent of the mine after his arrival at Hartshorne, before he went to work. There was further evidence tending to show that the mine in question did generate explosive gas in considerable quantities; that this fact was known to the agents of the receiver who had immediate charge and supervision of the mine; and that the plaintiff was seriously injured by an explosion of gas in the mine, which took place about the middle of the third night that he worked therein, before he had become acquainted with its condition and the dangers incident thereto. As there was testimony before the jury tending to establish these facts, it is manifest that the court would have erred in withdrawing them from the consideration of the jury on the theory that they constituted no proof of culpable negligence. The doctrine is well settled and elementary that it is a master's duty to notify his servant of any hidden defect in the place where the latter is expected to work which increases the ordinary risks of the employment, and to advise him of any latent danger which may attend the doing of any work which the servant is called upon to perform, provided the defect or the danger in question is known to the master and is unknown to the servant. A master violates his duty and is guilty of culpable negligence whenever, without warning, he exposes his servant to a risk of injury which is not obvious and was not known to the servant, provided the master himself was either acquainted with the risk or in the exercise of ordinary care ought to have been acquainted with it. In the present case there was evidence which at least tended to show that the defendant not only failed to warn the plaintiff of the known presence of gas in the mine in such quantities as might cause an explosion, but that the plaintiff was thrown off his guard and not led to expect the presence of gas in dangerous quantities by the assurance of

those who employed him that the mine was safe and free from gas. We think, therefore, that the evidence above referred to made a case which entitled the jury to decide whether the defendant was in fact negligent, and whether his negligence was the proximate cause of the plaintiff's injuries.

In this connection it will be as well to notice another error which is assigned to the action of the trial court in admitting testimony concerning the representations that were made to the plaintiff at his home in Calhoun, Mo., by Gabe Gideon, the receiver's agent, to the effect that the mine where the plaintiff and his associates were expected to work was safe and free from gas. It is claimed by the plaintiff in error that the proof of these representations was inadmissible for the reason that Gabe Gideon had no authority to make them. It is not denied that he was authorized by the receiver to go to Calhoun, Mo., and solicit the plaintiff and some other miners to come to Hartshorne for the purpose of obtaining employment; neither is it denied that his expenses for making that trip were paid by the receiver. The objection to the testimony is that he was not authorized to make a hiring contract, nor to make representations as to the condition of the mine in which the men would be expected to work. We think that this objection to the testimony is untenable. It being conceded that Gabe Gideon was authorized by the receiver to induce or solicit the plaintiff and other miners to go to Hartshorne for the purpose of obtaining work, and that his expenses in making the trip were paid by the receiver, it follows, we think, that it was within the apparent scope of the agent's authority to make representations touching the condition of the mine. Laborers who were thus solicited to go some distance from their place of residence into an adjoining State, in pursuit of a job, would naturally desire to know something about the character of the work at that place, the wages that they would probably earn, and, if they were to work in a mine, they would doubtless desire to know something about the condition of the mine and the risks that they would be likely to incur in working in it. They would naturally assume that the agent of the employer was authorized to give information with reference to such matters. We think, therefore, that the representations made by the agent touching the condition of the mine, as a means of inducing the plaintiff and others to go to Hartshorne, were within the apparent scope of the agent's authority, and that they were admissible against the employer, even though he had not expressly authorized the agent to make them. It is a well-known rule that a principal is always bound by the acts of his agent that are within the apparent scope of the agent's powers, although such apparent powers may have been limited by secret instructions of the principal that were not communicated to those with whom the agent dealt.

It is further assigned as error that the trial court refused to give two instructions which were asked by the receiver, which instructions were to this effect: That two of the receiver's employees, to wit, John Murphy and James Scarratt, were fellow-servants of the plaintiff; and, if the explosion was occasioned by the negligence of either of these men in failing to discover the presence of gas in portions of the mine other than the place where plaintiff was at work, then the defendant was not liable to the plaintiff for such neglect on the part of these men. A sufficient reason why neither of these instructions should have been given in the form in which they were asked is found in the fact that, in so far as the duty was devolved upon these men of going through the mine from time to time and inspecting it, and seeing whether it was free from

gas, they were discharging a personal duty of the master which he owed to all the miners who were at work in the mine, and while discharging such personal duty of the master, these men were not fellow-servants of the plaintiff, no matter what relation they may have occupied toward him when they were engaged in the performance of other and different duties. An obligation rests upon the master to exercise ordinary care in providing a reasonably safe place for the servant to work, and also to use ordinary diligence in keeping it thereafter in a reasonably safe condition. This is a personal duty of the master, which he can not devolve upon another in such a way as to relieve himself from liability in case the duty is not performed or is discharged in a negligent manner.

It results from what has been said that we find no material error in the proceedings of the trial court, and the judgment of that court is accordingly affirmed.

EMPLOYERS' LIABILITY—NEGLIGENCE—*Haggerty v. Hallowell Granite Company, 35 Atlantic Reporter, page 1029.*—Suit was brought in the supreme judicial court held in Androscoggin County, Me., by Hannah Haggerty, administratrix of Timothy P. Haggerty, deceased, against the above-named granite company, to recover damages for the death of said Haggerty. A verdict was rendered for the plaintiff, and the defendant company brought the case before the general term of the supreme judicial court on a motion to set the verdict aside. Said court rendered its decision April 8, 1896, and overruled the motion.

The opinion of said court was delivered by Judge Wiswell, and the following, which sufficiently shows the facts in the case, is taken therefrom:

At the time of the accident, on the 6th of September, 1893, the deceased was in the employ of the defendant as a quarryman in its quarry at Hallowell. While he was at work as one of a crew of men in removing stone which had been blasted, a detached rock, weighing about 800 pounds, suddenly and without warning fell from a shelf in the quarry about 12 feet above the place where the deceased was at work, struck the deceased, and killed him instantly.

About two years and a half before, this rock had fallen from still farther above in the quarry, and had remained during all of that time in the place where it was just prior to the accident. It was claimed by the plaintiff that the rock was within two or three inches of one of the guys supporting a derrick, and so near that it was struck by a guy when the use of the derrick caused it to sway.

It is the duty of an employer, implied from the contract of employment, to exercise ordinary care, in view of the circumstances of the situation, in providing and maintaining a proper place where his servant may perform his work with safety, subject only to such risks as are necessarily incident to the business, and unexposed to any dangers that may be prevented by the exercise of such care. If the employer fails in this duty, it is negligence for which he is liable to a servant who has been injured in consequence of such failure, without fault on his part, and without having voluntarily assumed the risk of the consequence of the employer's negligence, and with a full knowledge and appreciation of the dangers to which he is exposed.

The question of negligence, where the facts are in dispute, or even where they are undisputed, but intelligent and fair-minded men may reasonably arrive at different conclusions, is for the jury.

Here the testimony was conflicting, and the parties differ very materially as to the inferences and conclusions that should properly be drawn from the facts as testified to upon the one side and the other. The plaintiff claims that it was negligence to leave this detached rock in a place from whence it might fall and injure those working below; that it was especially negligent upon the part of the employer in leaving it where it could be struck by the fall of the derrick guy; while the defendant says that, so far as a careful examination would disclose, the rock was in a safe place,—so embedded in dirt and small rocks that it could not be moved by hand,—and that there was no reason to anticipate that it would ever fall.

But from the fact that it was left in a place from whence it did fall, without anything unusual occurring to cause its fall, the jury were authorized to draw some inference of negligence. A careful examination of all the evidence in the case fails to satisfy us that the verdict was so clearly wrong as to justify its disturbance.

Motion overruled.

EMPLOYERS' LIABILITY—NEGLIGENCE, ETC.—*Taylor et al. v. Felsing, 45 Northeastern Reporter, page 161.*—Henry Felsing brought suit against Procter Taylor and others to recover damages for injuries received while in their employ. He recovered a judgment, and the case was appealed to the appellate court, third division, of Illinois, which court affirmed the judgment of the lower court. The defendants then appealed the case to the supreme court of the State, which rendered its decision November 10, 1896, and affirmed the decision of the appellate court. The evidence showed that Felsing, while employed in the flouring mill of the defendants, went up into a passageway between a gearing of cogwheels and a wall, in the performance of his duty, and while coming down and walking along a bridge tree, 4 feet above the floor, accidentally slipped and fell into the cogwheels and his right arm was cut off; that there had been a clutch pulley attached to the main shaft which turned the gearing of the cogwheels, and by this means they could be thrown out of gear at the pleasure of the plaintiff and all danger averted; that a few weeks before the accident said pulley got out of repair and was removed and a stiff pulley temporarily put on, so that the cogwheels could not be thrown out of gear; that the plaintiff repeatedly, and shortly before the accident, objected to the absence of the clutch and the use of the stiff pulley, and requested defendants to have the clutch pulley replaced; that they promised plaintiff to have it replaced, and he, relying on said promise, continued in the service and in the performance of his duties. In the opinion of the supreme court, delivered by Judge Cartwright, the following language is used:

It is claimed that the court erred in refusing to give instructions Nos. 19, 20 and 27, as requested by the defendants. The nineteenth stated that, if there was any safer method of performing the work than the one adopted by the plaintiff, he could not recover. The fact that

there might have been another method, which a very timid or cautious person might have adopted as safer, would not be conclusive of negligence.

The twentieth was of the same nature as the nineteenth.

The twenty-seventh was designed to inform the jury that, if plaintiff's foot accidentally slipped, and he was thereby thrown into the dangerous machinery, they must ascribe the injury to a mere accident, and the defendants were not liable. It was wrong in excluding the element of negligence on the part of defendants. The fact that the slipping was accidental would not relieve them, if they were guilty of negligence in respect to the machinery, and plaintiff exercised due care.

The plaintiff's claim was that the undertaking was not free from danger, and the fact that he knew the wheels to be uncovered would not exempt defendants from liability when they had promised to remove the cause of danger. The jury did not find the plaintiff had voluntarily incurred any known and immediate danger, where injury was reasonably certain to occur, so that no prudent person would undertake to perform the service. His knowledge of some danger was not conclusive evidence of a want of ordinary care on his part under the promise of defendants. The judgment of the appellate court will be affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—*Louisville, New Albany and Chicago Ry. Co. v. Bates, 45 Northeastern Reporter, page 108.*—Action was brought in the circuit court of White County, Ind., by Alonzo G. Bates, administrator, to recover damages from the above-named railroad company for the death of his intestate. Judgment was rendered for him, and the railroad company appealed the case to the supreme court of the State, which rendered its decision November 11, 1896, and reversed the judgment of the circuit court.

The opinion of the court was delivered by Chief Justice Monks, and in the same he laid down certain legal principles which are quoted below:

Appellee's intestate, while in appellant's service as brakeman, was killed when in the act of coupling cars upon appellant's road, and this action was brought to recover damages therefor, upon the ground that his death was caused by appellant's negligence. After issue was joined, the cause was tried by a jury and a special verdict rendered.

The special verdict shows that appellant received a car from another company at Frankfort, Ind., for transportation over its lines, and that appellee [appellee's intestate] was injured while attempting to couple the same to a locomotive on appellant's road. The first question presented is as to the liability of railroad companies to employees for injuries occasioned by a defect in foreign cars received only for transportation over its lines. It is the duty of a railroad company to exercise ordinary care in furnishing reasonably safe cars and other appliances, and also to exercise ordinary care by inspection and repair to keep them in reasonably safe condition so as not to unreasonably expose its employees to unknown and extraordinary hazards. The railroad company is not required to furnish cars or appliances that are absolutely safe or to maintain them in that condition. The company is not an insurer of the safety of the employee against injury. The company is not liable for injuries caused by hidden defects of which it had no knowledge

and of which it could not have known by the exercise of ordinary care. The master is only charged with the knowledge of that which by the exercise of ordinary care he would have discovered. He is not required to resort to tests that are impracticable or unreasonable and oppressive, or which would be incompatible with the proper furtherance of business, and which are only required to insure absolute safety. If the duty of inspection has been performed with ordinary care, and a defect is found afterwards to exist, but not discovered at the time, the master is not liable for an injury caused thereby, unless he had knowledge of such defect. The duty of a railroad company as to foreign cars received in regular course of business for transportation over its lines is that of exercising ordinary care in inspecting the same to see if they are in reasonably safe condition of repair, and, if found to be out of repair, to put them in a reasonably safe condition of repair, or notify its employees of the condition of such cars. Appellant, therefore, owed its employees the duty of making the proper inspection of the car in question, and either repairing or giving notice of its defects, if any were found. The inspection which a company is required to make of such a car is not merely a formal one, but should be made with ordinary care; that is, the inspection should be such as the time, place, means, and opportunity, and the requirements and exigencies of commerce will permit. If the company has used ordinary care to secure competent inspectors, and inspection is made with ordinary care, under the circumstances, taking into consideration the time, place, means, and opportunity for inspection, and the defects, if any are discovered, are repaired or due notice thereof given to the employee, the duty resting upon the company is discharged. It is not liable for injuries caused by hidden defects, which could not be discovered by such inspection as the exigencies of the traffic will permit. The company receiving such foreign car is not bound to repeat the tests which are proper to be used in the original construction of the car, but may assume that all parts of the car which appear upon ordinary examination to be in good condition are in such condition. It would seem that if such car were old, dilapidated, or obviously defective ordinary care would require a more careful inspection than if there was nothing unusual in its appearance. A railroad company is not negligent in receiving and passing over its lines cars different in construction from those owned and used by itself, if the same are not so out of repair or in such a defective condition as can be discovered by ordinary care.

In making an inspection it is the duty of the inspector to use the usual and ordinary tests, and such tools as persons of ordinary prudence use, if any, under like circumstances. No man is held to a higher degree of skill or care than a fair average of his trade or profession, and the standard of due care is the conduct of the average prudent man. If the inspection is made in the usual and ordinary way—the way commonly adopted by those in like business—it can not be said that it was done negligently.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—*Pennsylvania R. R. Co. v. Snyder, 45 Northeastern Reporter, page 559.*—The original action was brought by Jesse Snyder against the Pennsylvania Railroad Company and the Lake Shore and Michigan Southern Railway Company in the court of common pleas of Lucas County, Ohio, to

recover damages for injuries received while in the employ of the last-named company as a switchman. The injury was caused by a defective car owned by the Pennsylvania Railroad Company and delivered by said company to the Lake Shore and Michigan Southern Railway Company to be transported on its line to Detroit or some other point. Snyder attempted to climb onto the car, under direction of the conductor of the train of which it was a part, while said train was in motion, and, owing to the defective condition of said car and the ladder on the end thereof, he was unable to retain his hold and was violently thrown onto the track and severely injured. During the trial of the case the plaintiff, Snyder, dismissed the action against the Lake Shore Company, and the cause proceeded upon the issues between him and the Pennsylvania Company. The trial resulted in a verdict and judgment for the plaintiff, which judgment was affirmed by the circuit court of Lucas County, to which the case was appealed by the railroad company. The railroad company then carried the case on writ of error to the supreme court of the State, which rendered its decision December 1, 1896, and affirmed the judgments of the lower courts.

The opinion of the supreme court was delivered by Chief Justice Williams, and the syllabus of the same, which was prepared by the court, is given below:

1. Where companies controlling connecting lines of railway transport over their respective lines loaded freight cars of the other under a traffic arrangement by which they share the earnings, and one company delivers to the other, to be transported over its line, a car that is so defective in its equipments as to be dangerous to handle, which should have been inspected and repaired before being so delivered, and in consequence of such defective condition of the car an employee of the latter company receives an injury while handling it in the course of his employment, the negligence of the former company in delivering the car for transportation without proper inspection and repair is the proximate cause of the injury, although the employer company should also have made an inspection of the car when it was received, and was negligent in that duty. The negligence of the latter company, while contributing to produce the injury, is not an independent cause, breaking the casual connection between the injury and original negligence of the company furnishing the car for transportation, and either company, or both, may be held responsible, at the election of the party injured.

2. The company delivering the car to the other company should anticipate that employees of the latter would go upon and handle the car, and thereby be exposed to the danger of receiving injury, as a natural and probable consequence of its defective condition, and owes to such employees the duty of using reasonable care to discover and remove its dangerous defects before it is so delivered. The services of such employees being necessary to accomplish the transportation intended, the delivery of the car for that purpose amounts to an invitation to them to go upon and handle the car in the course of their employment, and an assurance that they could safely do so.

3. When a person, without his fault, is placed in a situation of danger, he is not to be held to the exercise of the same care and circumspection

that prudent persons would exercise where no danger is present; nor can it be said that, as a matter of law, he is guilty of contributory negligence because he fails to make the most judicious choice between hazards presented, or would have escaped injury if he had chosen differently. The question in such case is, not what a careful person would do under ordinary circumstances, but what would he be likely to do, or might reasonably be expected to do, in the presence of such existing peril, and is one of fact for the jury.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—DISOBEDIENCE OF RULES—CONTRIBUTORY NEGLIGENCE—*Atchison, Topeka and Santa Fé R. R. Co. v. Slattery, 46 Pacific Reporter, page 941.*—Suit was brought in the district court of Sedgwick County, Kans., by M. Frank Slattery against the railroad company above named, to recover damages for injuries sustained while in the employ of said company. He was employed as a yard clerk, and when injured was riding on a switch engine from one part of the yard to another, said engine colliding with a push car, which was upon the side of the track, and a portion of said push car caught his foot and so injured it that amputation of a part was necessary. Judgment was rendered for the plaintiff, Slattery, and the defendant company carried the case on writ of error to the supreme court of the State, which rendered its decision December 5, 1896, and affirmed the judgment of the district court.

The opinion of the supreme court was delivered by Judge Johnson, and the following, showing the decision of the court upon one particularly interesting point, is quoted therefrom:

It is further contended that Slattery assumed an obviously dangerous position on the footboard of the switch engine, and that he was riding there in violation of one of the rules of the company. The rule is: "No person will be permitted to ride on an engine excepting the engineman, fireman, and other designated employees in the discharge of their duty, without a written order from the proper authority." While he appears to have no written authority to ride, he, doubtless, was warranted in doing so by the well-established custom of the yards, and by the sanction and approval of those in charge of them. In fact, in the present instance, he was directed by the foreman to step upon the engine and ride down to the end of the yards for the purpose of finding and marking certain cars. For several years he had ridden back and forth upon the engine, and the yardmaster, his superior officer, had directed him to go upon the engine whenever it would take him to his work faster than he could get there by walking. He had ridden on the engine in the presence of the superintendent, and apparently with his sanction and approval. Ordinarily the willful disobedience of a rule should be held to constitute negligence; but where the rule is habitually disregarded, and a different course has long been pursued by employees, with the knowledge and approval of the managing officers of the company, the rule must be regarded as inoperative. We can not hold, as a matter of law, from the testimony, that Slattery was guilty of contributory negligence.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—DUTIES OF THE MASTER—ASSUMPTION OF RISKS BY EMPLOYEES—*Oliver v. Ohio River R. R. Co., 26 Southeastern Reporter, page 444.*—Suit was brought in the circuit court of Wood County, W. Va., by Clifton Oliver against the above-named railroad company to recover damages for personal injuries received while in the employ of said company. Judgment was rendered for the plaintiff, and the defendant carried the case, on writ of error, to the supreme court of appeals of the State, which court rendered its decision December 9, 1896, and reversed the decision of the lower court.

The opinion of the supreme court of appeals was delivered by Judge English. The syllabus of the same was prepared by the court, and contains a clear statement of the different points of the decision, and for the understanding of the same a statement of the facts in the case is not necessary. The following is quoted from the syllabus:

1. The measure of a master's duty to his servant is reasonable care, having relation to the parties, the business in which they are engaged, and the exigencies which require vigilance and attention. He is not a guarantor of the safety of his servant.

2. The master's duty is to make and promulgate proper rules. It is not required that the master should see to it, personally, that notice comes to the knowledge of all those to be governed thereby. If there is due care and diligence in choosing competent servants to receive and transmit the necessary orders, the negligence by them in performing it is a risk of the employment that the coemployee takes when he enters the service.

3. Where an employee of a railroad company has knowledge of any danger connected with his employment which may be avoided by the use of ordinary care, and appreciates the danger to which he exposes himself if he continues in such employment after such knowledge without protest or complaint on his part, or promise on the part of such railroad company that such danger shall be removed, he will be held to have assumed the risk of such danger, and to have waived all claims for damages in case of injury.

4. When a servant enters into the employment of a master he assumes all the ordinary risks incident to his employment, whether the employment is dangerous or otherwise; and if a servant willfully encounters dangers which are known to him or are notorious, the master is not responsible for any injury occasioned thereby.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FELLOW-SERVANTS—*Jackson v. Norfolk and Western R. R. Co., 27 Southeastern Reporter, page 278.*—Action was brought in the circuit court of Mercer County, W. Va., by Murray T. Jackson against the above-named railroad company to recover damages for injuries received while in the employ of said company as a brakeman. The evidence showed that Jackson was on a freight train with one Gilbert as conductor; that a train was being backed so as to couple it to some cars; that Gilbert

was standing on top of the rear car of the train that was backing, and an unsuccessful effort was made to couple the cars, and the train was drawn forward preparatory to a second attempt, and Gilbert waived the engineer to back up to the car; that Jackson, seeing this, attempted to jump back, and that in so doing his arm was caught between the bumpers and crushed, rendering its amputation necessary. This case involved the question whether Gilbert, the conductor, and Jackson, the brakeman, were fellow-servants, so as to exempt the company from liability for the alleged negligent act of the conductor in improperly calling the train back when he did. A judgment was rendered by the circuit court for the plaintiff, thus deciding in effect that Gilbert and Jackson were not fellow-servants. The defendant railroad company carried the case on writ of error to the supreme court of appeals of the State, which court rendered its decision April 21, 1897, and reversed the judgment of the circuit court. The opinion of the supreme court of appeals was delivered by Judge Brannon, and the syllabus of the same, prepared by the court, reads as follows:

1. The test whether a master is liable to one servant for the negligence of another servant is the character of the negligent act. If it be in the doing of an act incumbent on a master as a duty of the master to the servant, the master is liable; otherwise not.
2. A master's liability to one servant for the negligence of another is not dependent on the grade of the servants, nor on the fact that one has authority over the other, but on the character of the negligent act.
3. A conductor is a fellow-servant with a brakeman and other servants on a train, not a vice-principal.
4. All servants engaged in the common service of the same master in conducting and carrying on the same general business in which the usual instrumentalities are employed, are fellow-servants. A proper test of this rule is whether the negligence of the one is likely to occur and inflict injury on the other.
5. If a vice-principal, in the particular act in which his negligence occurs, is not in the line of his duty, but performing an act in the line of one who would be a fellow-servant with the injured servant, the master is not liable for the negligence of the vice-principal, as he is, as to this act, a fellow-servant with the injured one.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—NEGLIGENCE OF THE MASTER—ASSUMPTION OF RISKS BY EMPLOYEES—*Erslew et ux. v. New Orleans and Northeastern R. R. Co., 21 Southern Reporter, page 153.*—Action was brought in the civil district court of the parish of Orleans, La., by William Erslew and wife against the above-named railroad company to recover damages for the death of their son, an employee of said company. Judgment was rendered for the plaintiffs and the defendant company appealed the case to the supreme court of the State, which rendered its decision December 14, 1896, and sustained the judgment of the lower court. The evidence showed that an electric

street-car company had put up a guy wire which crossed over the track of the railroad company; that when the accident occurred the plaintiffs' son, who was a brakeman in the service of the railroad company, was on a freight car which was being propelled rapidly along the street, and, just as he arose from his brake, his head struck the guy wire above mentioned and he was knocked off the car and so injured that he soon after died.

The opinion of the supreme court was delivered by Judge Watkins, and the syllabus of the same, which was prepared by the court, contains the following language:

1. It is negligence on the part of an electric street-car company, in the construction and establishment of its plant, to so place one of its guy wires over the track of a steam railway company as not to afford sufficient space for the latter's trains to easily and conveniently pass without risk of danger and injury to its servants and employees.
2. It is negligence on the part of the steam railway company to permit an electric street-car company to so construct and maintain over its tracks a guy wire that it will endanger the lives of its servants and employees.
3. If an employee of the steam railway company knew, or ought reasonably to have known, the precise danger to him of the guy wire of the electric street-car company, in the course of his employment, and saw fit, notwithstanding, to continue in it, he might be held to have assumed the extraordinary risk as well as the ordinary risks of his service. But this consequence must rest upon positive knowledge or reasonable means of positive knowledge of the precise danger assumed.

NEGLIGENCE OF EMPLOYEES—LIABILITY TO FELLOW-SERVANT—*Atkins v. Field, 36 Atlantic Reporter, page 375.*—This was an action on the case brought in the superior court of Cumberland County, Me., by James R. Atkins against Edwin L. Field to recover damages for personal injuries received by the plaintiff while in the employ of the United States Government in the construction of fortification work at Cape Elizabeth, Me., and caused by the fall of a derrick, due, as alleged, to the negligence of his coemployee, Field. The evidence showed that the plaintiff, Atkins, was employed as a laborer and the defendant, Field, as general overseer of the work; that Field, in the line of his employment as overseer, personally assumed charge of the work of rigging the derrick and setting it up; that he personally selected all the material to be used—wire rope for guys, bolts, etc.; that he personally selected the places for anchoring the guys, and, in fact, took full charge of everything connected with the putting up of the derrick; that in this he acted entirely upon his own judgment in the first instance, though he afterwards called the attention of the engineer officer in charge to what he was doing and obtained his ratification; that after the derrick had been set up the defendant, as overseer, undertook to change the location of the mast of the derrick, and while having the

same done a bolt at the foot of one of the guys broke and the derrick suddenly fell; that the plaintiff was at work near the foot of the mast, under the direction of the defendant, and that, without fault on his part, he was injured by the falling mast. A judgment was rendered for the plaintiff, and the defendant carried the case to the supreme judicial court of the State on exception to an order of the superior court refusing a new trial. The supreme court rendered its decision June 8, 1896, and sustained the judgment of the lower court.

The opinion of the supreme court was delivered by Judge Emery, and from the syllabus of the same, which was prepared by the court, the following, giving the gist of the decision, is quoted:

1. An employee is responsible to a coemployee for injuries caused by his negligence in the line of his duty to the common employer.
2. When the common employer approves the conduct of an employee without directing it, that does not free the latter from his responsibility to a coemployee, if he was in fact negligent.
3. When an employee personally selects the means and directs the mode of setting up apparatus furnished by the common employer, he becomes personally responsible to coemployees for injuries caused by his negligence in so doing; and the fact that the work was satisfactory to the common employer does not excuse the employee from the consequences of his negligence to others.
4. The foregoing rule does not apply where the common employer or his agent directs and controls the means and modes of setting up the apparatus. There is responsibility only where there is freedom of action.

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

ALABAMA.

ACTS OF 1896–97.

ACT NO. 486.—*Coal mine regulations and inspection.*

SECTION 1. There shall be appointed by the governor of Alabama three inspectors of coal mines within ten days from the first day of May, 1897, one of whom shall be designated as chief mining inspector, and the other two shall be designated as associate mining inspectors. The chief mining inspector shall hold his office for three years from said date, one of the associate mining inspectors shall hold his office for two years, and the other associate mining inspector shall hold his office one year from said date; *Provided, however,* That at the expiration of said term of office, as above provided, the successors of said inspectors, respectively shall hold office for [the] term of three years. The salary of the chief inspector shall be $1,500 per annum, and the salaries of each of the associate inspectors shall be $1,000 per annum.

SEC. 2. The chief mining inspector shall be a practical miner of at least five years' experience, and his two associates, who shall be practical miners of at least five years' experience. No one shall be appointed mine inspector who, or the wife of whom, owns or operates, in whole or in any part mining property.

SEC. 3. The chief inspector of mines, who shall be chairman of the board, together with two practical miners, and two operators of mines (a majority of whom may act) shall constitute a board of examiners, to examine and give certificates of fitness to persons as mine bosses in any coal mine in this State. A fee of five dollars shall be paid to the chief inspector of mines, by each person examined, to be used as an examiners' fund before the examination is begun. Out of the examiners' fund there shall be paid to each member of the board, except the chief inspector of mines, who shall serve without extra pay, four dollars per day. Said board shall meet every six months at the office of the chief inspector, and remain in session not longer than three days. The said members of board, except the chief inspector of mines, shall hold office for two years from the first day of May, 1897, and shall be appointed by the governor.

SEC. 4. All coal mined in this State contracted for payment by the ton or weight, shall be weighed, and the full weight thereof, shall be credited to the miner of such coal, and two thousand pounds of coal shall constitute a ton.

SEC. 5. The owner or operator of each coal mine at which the miners are paid by weight, shall provide such mines with suitable scales, of standard make, for the weighing of all coal, when contracted for to be weighed.

SEC. 6. In all mines the miners employed and working therein may furnish a check weighman, who shall at proper times have full access and examination of such scales and seeing all measures and weights, and accounts kept of the same; *Provided,* That not more than one person shall have such right of access, examination and inspection of scales, measures and accounts at the same time.

SEC. 7. The chief mine inspector shall procure from the State, at the State's expense, a full and complete set of standards, balance and other means of adjustment such as are necessary in the comparison and adjustment of scales, beams and other necessary apparatus to be used for a just weighing of coal and other materials at the mines according to the State standard of weights; it shall be the duty of said inspector to examine, test, and adjust as often as occasion demands, all scales and other apparatus used in weighing at mines.

SEC. 8. The operator or superintendent of every coal mine, whether shaft, slope, or drift, shall provide and hereafter maintain, ample means of ventilation for the circulation of air through the main entries and all other working places to an extent that will dilute, carry off, and render harmless the noxious gases generated in the mines; *Provided,* It shall be the special duty of the inspector and his assistants to

carry out the provisions of this section; and it shall also be the duty of each and every mine operator and mine boss to assist the inspector and his assistants in carrying into effect said provisions.

If at any time the inspector or his assistants are notified that the ventilation in any coal mine within this State is insufficient, the said chief inspector, or one of his assistants shall proceed within five days to investigate said complaint or complaints by personal inspection of any mine or mines in which the quality or quantity of air is complained of, and if on investigation he finds that the air in any mine is insufficient, he shall direct the operator or operators of this mine to adopt such measures for the proper ventilation of such mine, as he deems necessary. In the event that the inspector or one of his assistants fails, without sufficient cause, or refuses to make the investigation herein provided for, in addition to the penalty hereinafter provided for in section 37, he may be removed from office by the governor.

SEC. 9. The chief mine inspector shall be furnished by the State all necessary instruments for measurement of air in mines, and whatever chemical instruments the said inspector may recommend from time to time.

SEC. 10. It shall be the duty of the operator, agent or superintendent of each mine to keep at the mouth of the mine, or at any such other place about the mine as shall be designated by the chief mine inspector, a stretcher, properly constructed, and a woolen and waterproof blanket in good condition for use in carrying away any person who may be injured at the mines; *Provided*, That where more than two hundred men are employed, two stretchers and two woolen and waterproof blankets shall be kept in mines generating fire damp. A sufficient quantity of linseed or olive oil bandages and linen shall be kept in the store at the mines for use in emergencies and bandages shall be kept at all mines.

SEC. 11. It shall be the duty of the chief mine inspector to require the proper break-throughs to be made in all room pillars, at such distances apart, as, in the judgment of the mine inspectors may be deemed requisite; said break-throughs to be made and paid for according to the contract existing between the said owners and operators of the mine and the miners, at the time the said break-throughs are ordered to be made.

SEC. 12. The owners, agents and operators of any coal mine shall keep a sufficient supply of props and other timber used in the mines, so that the workmen may at all times be able to prop their working places, and the owner, agent or operator shall afford the miners working in their mines proper facilities for the delivery of props and other timber needed by them in their respective working places.

SEC. 13. All safety lamps used for examining mines, or for working therein, shall be the property of the operator, and shall be in the care of the mine foreman, his assistant or fire boss, or other competent persons, who shall fill, trim and examine and deliver the same locked in a safe condition to the men when entering the mines before each shift, for which service a charge not exceeding cost of labor and material may be made by the operator. A sufficient quantity of safety lamps, but not less than twenty-five per centum of those in use, shall be kept at each mine where gas has at any time been generated in sufficient quantities to be detected by ordinary safety lamps for use in case of emergency. It shall be the duty of every person who knows his safety lamp to be injured or defective to promptly report such fact to the party authorized herein to receive and care for said lamps, and it shall be the duty of that person to promptly report such fact to the mine foreman.

SEC. 14. Whenever required by the chief mine inspector it shall be the duty of the owner, operator or manager of all coal mines to have and maintain at least two available openings to the surface from each seam or stratum of the coal worked in such mine, one of said openings to be known as a manway or escapeway in case of accident. Said manway or escapeway shall be kept in good condition and shall be at all times reasonably safe for entering and leaving the mines, reasonable time, however, shall be given to the said operator, owner or general manager to prepare the second opening, in no case exceeding one year, from the time such order is made, unless in the opinion of the chief mine inspector a longer time is required, in which case they shall allow the additional time necessary and so ordered.

SEC. 15. Not more than twenty men shall be allowed to work in any new mine hereafter to be opened until an escapeway is provided for.

SEC. 16. Applicants for first and second class mine foreman's certificates shall be at least twenty-three (23) years of age, and shall have at least five (5) years practical experience after having attained to the age of fifteen (15) years as miners, superintendents at or inside of any coal mine, and shall be citizens of this State and men of good moral character, and men of known temperate habits. The said board shall be entitled to grant certificates of competency of two grades, namely: Certificates of the first class to persons who have had experience in mines generating gases, and who shall have the necessary qualifications to fulfill the duties of mine

foreman in such mines; and certificates of the second class to persons who give satisfactory evidence of their ability to act as mine foreman in mines not generating explosive gases.

SEC. 17. No person shall act as foreman in any coal mine in this State generating explosive gases unless he is in possession of a first class certificate of competency. But ninety days will be given to those now acting as mine foremen to perfect themselves for examination. The fee for examination and issuing a first class certificate shall be five dollars, and for a second class certificate three dollars.

SEC. 18. On or before the twenty-fifth day of January in each year the operator or superintendent of every coal mine shall send to the chief inspector of mines a correct report if required, specifying with respect to the year ending the 31st day of December, preceding, the name of the operator and location of office of the mine, and the quality of coal mined. The report shall be in such form and give such information regarding such mine as may be from time to time required and prescribed by the chief inspector of mines. Blank forms for such report shall be furnished by the chief inspector of mines.

SEC. 19. The owner, agent or operator of all underground mines in this State shall make or cause to be made by a competent engineer, an accurate and exact map of such mine, showing the exact position of mine in reference to the section lines which shall be connected with some known boundary corner of the section, or sub-division of the section. Said map shall show accurately the position of any branches, creeks or river under which said mine may extend; also as near as possible the position of any old mine near by, and said map shall be sworn to by the engineer making same. The new work inside of mines must be added to said map or a new map filed at least in every twelve months. Said map shall be filed in the office of the chief inspector of mines who shall provide a suitable and safe place for keeping it. The chief inspector of mines, with the approval of the board of examiners, may refuse to receive maps made by persons claiming to be mining engineers, who are not known to be such and of good standing and character in their profession. The mine boss in charge of such mine shall certify to the correctness of said map. The map shall be made on a uniform scale of not less than two hundred feet to the inch; any person may secure a copy of any map on file in the inspector's office—by paying reasonable charges for making such map—and such copy, when certified by the inspector, shall be evidence in any court in this State.

SEC. 20. The chief inspector of mines shall give directions to the mine operators, owners and general managers as to the method and manner of working gaseous mines, and the manner of working and propping the roof in any and all mines, and shall examine the machinery and appliances used in working the same. All such directions shall be given in writing, subject, however, to the approval of the board of examiners, as herein provided.

SEC. 21. The doors used in a system used in ventilating or regulating the ventilation of mines [shall] be so hung and adjusted that they will close themselves, or by supplying them with springs and pulley so that they cannot be left standing open.

SEC. 22. Approved safety catches shall be attached to the cage used for the purpose of hoisting and lowering persons into and out of the mines. An adequate brake shall be attached to every brake, drum or machine for lowering and hoisting persons into and out of the mines, and also props and indicators which shall show to the person who works the machine the position or [of the?] load in the shaft or on the roadway.

SEC. 23. When a place is likely to obtain a dangerous accumulation of gases or water, works, when approaching such places shall not exceed eight feet in width, and there shall be constantly kept at a sufficient distance ahead, not less than three yards in advance, one bore hole near the center of the working, and sufficient flank bore holes on each side, six feet apart and six feet in depth.

SEC. 24. The owner, agent or operator, or agent of any coal mine shall place in charge of any engine used for conveying into and hoisting out of said mine, none but an experienced, competent and sober engineer. No engineer in charge of such an engine, or machinery, shall allow any person except such as may be deputed for that purpose, by the owner, agent, or operator to interfere with it, and no person shall interfere with or intimidate the engineer in the discharge of his duty.

SEC. 25. The mine inspector, miners employed in the mines, and the owner of the land or persons interested in the rental and royalty of such mines, shall at all proper times have full right of access to scales used at said mines, including bank book in which the weight of coal is kept, to examine the amount of coal mined for the purpose of testing the accuracy thereof.

SEC. 26. When gas is known to exist, the owner, agent or operator of any coal mine shall employ a competent fire boss, whose duties it shall be to examine every place in the mine before the men are permitted to enter for work. Said fire boss

shall be at some convenient place each day to inform every man as to the state and condition of his working place before entering. Said work shall be carefully examined every morning with a safety lamp by the fire boss before the workmen are allowed to enter therein.

SEC. 27. No women shall be employed to work or labor in or about the mines in this State, or any boy under the age of twelve years be so employed.

SEC. 28. The governor may discharge a mine inspector at any time, upon the filing of a written complaint substantiated by sufficient proof for unfairness, unfitness, incompetency or malfeasance, and appoint his successor for the unexpired term.

SEC. 29. When by reason of any explosion or accident in any mine in this State, or the machinery connected therewith, loss of life or serious personal injury shall occur, it shall be the duty of the person having charge of such mine to give notice thereof forthwith to the chief inspector of mines or any inspector, and it shall be the duty of the chief mine inspector or any inspector upon being notified of any fatal accident, as herein provided, to immediately repair to the scene of the accident and make such suggestions as may appear necessary to secure the safety of any persons who may be endangered. The said mine inspector shall keep on file a list of all fatal accidents, and to enable them to make the investigation, he shall have the power to compel the attendance of persons to testify.

SEC. 30. The person or persons, whosoever, who shall intentionally or carelessly injure any shaft, safety lamp, instrument, air course or brattice, or obstruct, or throw open air ways, or take matches for any purpose, or pipes or other smokers' articles beyond any station inside of which safety lamps are used, or injure any part of the machinery, or open a door in the mine and not close it again immediately, or open any door which opening is forbidden, or use any oil in lamps not known to be the best miner's oil, or disobey any orders given in carrying out the provisions of this act, or do any other act whatsoever whereby the lives or health of persons, or the security of the mines or machinery is endangered, shall be deemed guilty of a misdemeanor and may be punished in the manner provided for in this act.

SEC. 31. The inspectors of mines shall biennially, prior to the assemblying of the general assembly, make a written report to the governor, stating the condition of the mining interests in this State, with such suggestions and information as may be of interest to the mining industry, and said report to be printed on the order of the governor.

SEC. 32. For the purpose of making known the rules and provisions of this act to all persons employed in or about the mines to which this act applies, an abstract of the act and rules shall be posted up in legible characters in some conspicuous place or places at or near the mines where they may be conveniently read by the persons employed, and so often as they become obliterated or destroyed, the owner, operator or superintendent shall cause them to be renewed with all reasonable dispatch. Any person who pulls down, injures or defaces such abstract of the acts or rules when up in pursuance of the provision of this act shall be guilty of an offense against this act.

SEC. 33. No unauthorized person shall enter the mine without permission from the superintendent or mine foreman.

RULE 2. All employees shall inform the mine foreman or his assistant of the unsafe condition of any working place, hauling roads or traveling ways, or of damages to doors, brattices or stoppings, or of obstructions in the air passages when known to him.

RULE 3. Every workman employed in the mine shall examine the working place before commencing work, and after any stoppage of work during the shift he shall repeat the examination.

SEC. 34. No contract heretofore made and now existing between the owners or operators of mines (that is, employers) shall be affected, changed or violated by [any] provision of this act.

SEC. 35. [For] the purpose of defraying the expenses of the inspector as provided under this act, the sum of nine hundred dollars shall be, and the same is hereby appropriated out of any money in the State treasury; said appropriation shall be paid to the chief inspector of mines on his application, showing to the State auditor the amounts necessary to be expended for the actual expenses of the board of inspectors, quarterly.

SEC. 36. The mine inspectors shall give their whole time and attention to the duties of their offices. It shall be the duty of mine inspectors to examine all the mines in this State at least every three months, to see that all the requirements of this act are strictly observed and carried out; inspectors shall particularly examine the works and machinery belonging to any mine, examine into the state of the mines as to ventilation, circulation and condition of air, drainage and general security; they shall make a record of all examinations of mines, showing the date when made, the

condition in which the mines are found, the extent to which the laws relating to mines and mining are observed, or violated; the progress made in the improvements and security of life and health sought to be secured by the provisions of this act, number of accidents, injuries received or deaths in and about the mines, the number of persons employed in or by each mine, together with all such other facts and information of public interest concerning the condition of mines, development and progress of mining in this State, as he may think useful and proper, and so much thereof as may be of public interest, to be included in his biennial report.

SEC. 37. In case of any controversy or disagreement between inspectors and the owner or operator of any mines, or the persons working therein, or in case of conditions of emergency requiring counsel, the chief mine operator [inspector?] may call on the board of examiners for such assistance and counsel as may be necessary. Should the mine inspector find any of the provisions of this act violated or not complied with by the owner or lessee or agent in charge of any mines, he shall immediately notify such owner, lessee or agent in charge of such neglect or violation, unless the same is within a reasonable time rectified, or the provisions of this act are fully complied with, he shall institute a prosecution. The inspector shall exercise a sound discretion in enforcement of provisions of this act, and if in any respect (which is not provided against by) or may result from any rigid enforcement of any expressed provisions of this act the inspector finds any matter, things or practice in or connected with any such mines to be dangerous or defective, so as to, in his opinion, threaten or tend to the bodily injury of any person, the inspector may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in such notice the particulars in which he considers such mine or any part thereof, or any matter, things or practice, to be dangerous or defective and require the same to be remedied, giving a reasonable time to have the same done. For the purpose of making the inspection and examination provided for in this section the mine inspector and board of examiners shall have the right to enter any mine at a reasonable time by day or night, but in such manner as shall not unnecessarily obstruct the workings of the mine, and the owner or agent of such mine is hereby required to furnish the means of such inquiry and inspection if within their power.

SEC. 38. Whenever any agent or operator of any mines shall refuse or fail to comply with any order or direction of the chief mine inspector after the expiration of a reasonable time, it shall be the duty of the mine inspector to refer the matter to the judge of probate of the county in which the mine is located. Upon such reference the judge of probate shall set a day for the hearing of the same, and issue citation to the owner or operator of the mine to appear and contest the same if he sees proper. Said citation to be served by the sheriff of the county at least ten days before the day of trial. Upon the application of either party the judge of probate must issue subpœna for witnesses, to be served by the sheriff as in other cases. After hearing the case the probate judge must render such decision as he may deem just and equitable, from which decision either party may appeal to the circuit court within sixty days. From the decision of the circuit court either party may appeal to the supreme court of Alabama. If no appeal is taken the decision shall be final and binding on said operator or mine owner, and any mine owner or operator who refuses to carry out the final order or determination of the case after a reasonable time shall be guilty of a misdemeanor, and must on conviction be fined not more than one thousand dollars.

SEC. 39. Any person who is charged with any duty under this act and fails or refuses to discharge said duty shall be guilty of a misdemeanor, and upon conviction must be fined not more than three hundred dollars, and in case of a natural person may be punished by hard labor for the county in addition to the fine above prescribed, unless hereinbefore otherwise specifically provided for.

SEC. 40. All laws and parts of laws in conflict with, or inconsistent with this act, are hereby expressly repealed.

Approved February 16, 1897.

CALIFORNIA.

ACTS OF 1897.

CHAPTER 140.—*Contractor's bond—Security for wages of employees on public work, etc.*

SECTION 1.—Every contractor, person, company, or corporation, to whom is awarded a contract for the execution or performance of any building, excavating, or other mechanical work, for this State, or by any county, city and county, city, town, or district therein, shall, before entering upon the performance of such work, file with the commissioners, managers, trustees, officers, board of supervisors, board

of trustees, common council, or other body by whom such contract was awarded, a good and sufficient bond, to be approved by such contracting body, officers, or board, in a sum not less than one-half of the total amount payable by the terms of the contract; such bond shall be executed by the contractor, and at least two sureties, in an amount not less than the sum specified in the bond, and must provide that if the contractor, person, company, or corporation, fails to pay for any materials or supplies furnished for the performance of the work contracted to be done, or for any work or labor done thereon of any kind, that the sureties will pay the same, in an amount not exceeding the sum specified in the bond; *Provided*, That such claims shall be filed as hereafter required.

SEC. 2. Any materialman, person, company, or corporation, furnishing materials or supplies used in the performance of the work contracted to be executed or performed, or any person who performed work or labor upon the same, or any person who supplies both work and materials, and whose claim has not been paid by the contractor, company, or corporation, to whom the contract has been awarded, shall, within thirty days from the time such work is completed, file with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom such contract was awarded, a verified statement of such claims, together with a statement that the same has not been paid. At any time within ninety days after the filing of such claim, the person, company, or corporation filing the same may commence an action against the sureties on the bond, specified and required by section one hereof.

SEC. 3. This act shall take effect immediately.

Approved March 27, 1897.

CHAPTER 170.—*Payment of wages, etc.*

SECTION 1. Every corporation doing business in this State shall pay, at least once a month, each and every employee employed by such corporation, in transacting or carrying on its business, or in the performance of labor for it, the wages earned by such employee during the preceding month; *Provided, however*, That if at the time of payment any employee shall be absent, or not engaged in his usual employment, he shall be entitled to said payment at any time thereafter upon demand.

SEC. 2. A violation of any of the provisions of section one of this act shall entitle each of said employees to a lien on all the property of said corporation for the amount of their wages, which lien shall take preference over all other liens, except duly recorded mortgages or deeds of trust; and in any action to recover the amount of such wages, or to enforce said lien, the plaintiff shall be entitled to a reasonable attorney's fee, to be fixed by the court, and which shall form part of the judgment in said action, and shall also be entitled to an attachment against said property. An unrecorded deed shall be no defense to such actions.

SEC. 3. On the trial of any action against such corporation for a violation of the provisions of this act, such corporation shall not be allowed to set up any defense for a failure to pay monthly any employee engaged in transacting or carrying on its business the wages earned by such employee during the preceding month, other than the fact that such wages were not earned, except a valid assignment of such wages, a set-off or counter claim against the same, or the absence of such employee from his usual employment at the time of the payment of the wages so earned by him.

SEC. 4. No assignment of future wages, payable monthly under the provisions of this act, shall be made to the corporation from which such wages are or may become due, to any person, on behalf of such corporation, for the purpose of evading the provisions of this act, and all such assignments are hereby declared to be invalid.

SEC. 5. No corporation shall require, and no employee of such corporation shall make, any agreement to accept wages at longer periods than as provided in this act as a condition of employment.

SEC. 6. All wages earned by any employee engaged in the service of any corporation in this State shall be paid in lawful moneys of the United States, or in checks negotiable at face value on demand.

SEC. 7. Any corporation violating any of the provisions of this act shall be subject to a fine not exceeding one hundred dollars, or less than fifty dollars, for each violation, the same to be imposed by any court in this State having jurisdiction of offenses in which the penalty does not exceed a fine of one hundred dollars; said fine to be paid, by the judge or magistrate before whom a recovery may be had under the provisions of this act, into the general fund of the treasury of the county in which said conviction may be had.

SEC. 8. This act shall take effect and be in force from and after the first day of April, eighteen hundred and ninety-seven.

Approved March 29, 1897.

IDAHO.

ACTS OF 1897.

Employment of aliens.

(Page 5.)

SECTION 1. It shall hereafter be unlawful for any county government or municipal or private corporation organized under the laws of this State, or organized under the laws of another State or Territory or in a foreign country and doing business in this State, to give employment in any way to any alien who has failed, neglected, or refused, prior to the time such employment is given, to become naturalized or declare his intention to become a citizen of the United States.

SEC. 2. Whenever employment has been innocently given to any alien by any county government, municipal or private corporation mentioned in section 1 of this act, and complaint shall be made in writing by any person to the officers of the county government, or municipal corporation, or general manager, superintendent, foreman, or other agent of the private corporation, having charge or superintendency of the labor of such alien employee, that such employee is an alien he shall forthwith discharge such employee from employment unless said employee shall produce his declaration to become a citizen, or his certificate of naturalization, or a duly certified copy thereof.

SEC. 3. Any public officer or any county government, or municipal corporation, or any general manager, superintendent, foreman, or other agent of any private corporation, or any contractor or agent of any company engaged in public work, who shall violate any of the provisions mentioned in this act, who shall knowingly give employment to any alien or who having innocently given such employment shall on complaint being made to him by any person fail or refuse to discharge any such employee forthwith on the failure or refusal of such employee to produce for his inspection and the inspection of the complainant his declaration of intentions to become a citizen, or certificate of naturalization as provided in section 2 of this act, shall be deemed guilty of a misdemeanor.

SEC. 4. Whereas an emergency exists this act shall take effect and be in force from and after its passage.

Approved February 18, 1897.

Trade marks of trade unions, etc.

(Page 123.)

SECTION 1. Whenever any person, or any association or union of workingmen, has heretofore adopted or used, or shall hereafter adopt or use any label, trade mark, term, design, device or form of advertisement, for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other products of labor, as having been made, manufactured, produced, prepared, packed or put on sale, by such person, or association, or union of working-men or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trade mark, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit, or imitation of any such label, trade mark, term, design, device or form of advertisement.

SEC. 2. Whoever counterfeits or imitates any such label, trade mark, term, design, device or form of advertisement, or sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such label, trade mark, term, design, device or form of advertisement; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed; or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package, to which or on which, any such counterfeit, or imitation is attached, affixed, printed, painted, stamped or impressed; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be guilty of a misdemeanor and be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than three months.

SEC. 3. Every such person, association or union, that has heretofore adopted or used, or shall hereafter, adopt or use, a label, trade mark, term, design, device or form of

advertisement, as provided in section 1 of this act, may file the same for record in the office of the secretary of state, by leaving two copies, counterparts or facsimiles thereof, with said secretary and by filing therewith, a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade mark, term, design, device or form of advertisement shall be filed; the class of merchandise and a description of the goods to which it has been or is intended to be, appropriated, stating that the party so filing or on whose behalf such label, trade mark, term, design, device, or form, of advertisement shall be filed, has the right to the use of the same; that no other person, firm, association, union or corporation, has a right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimile or counterparts filed therewith are true and correct. There shall be paid for such filing and recording a fee of one dollar. Said secretary shall deliver to such person, association, or union, so filing or causing to be filed any such label, trade mark, term, design, device or form of advertisement, so many duly attested certificates of the recording of the same as such person, association, or union may apply for, for each of which certificates said secretary shall receive a fee of one dollar. Any such certificates of record shall, in all suits and prosecutions under this act be sufficient proof of the adoption of such label, trade mark, term, design, device or form of advertisement. Said secretary of state shall not record for any person, union, or association, any label, trade mark, term, design, device or form of advertisement that would probably be mistaken for any label, trade mark, term, design, device, or form of advertisement theretofore filed by, or on behalf of any other person, union, or association.

SEC. 4. Any person who shall for himself or on behalf of any other person, association or union procure the filing of any label, trade mark, term, design or form of advertisement in the office of the secretary of state under the provisions of this act, by making any false or fraudulent representations or declarations, verbally or in writing or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by, or on behalf of the party injured thereby, in any court having jurisdiction and shall be guilty of a misdemeanor, and be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

SEC. 5. Every such person, association or union adopting or using a label, trade mark, term, design, device or form of advertisement as aforesaid may proceed by suit, to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture and may award the complainant in any such suit, damages resulting from such manufacture, use, sale or display, as may be by the said court deemed just and reasonable, and shall require the defendants to pay to such persons, association, or union, all profits derived from such wrongful manufacture, use, display or sale; and such court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainant to be destroyed.

SEC. 6. Every person who shall use or display the genuine label, trade mark, term, design, device or form of advertisement of any such person, association or union, in any manner, not being authorized so to do by such person, union or association, shall be deemed guilty of a misdemeanor and shall be punished by imprisonment for not more than three months or by a fine of not more than one hundred dollars ($100). In all cases where such association or union is not incorporated, suits under this act may be commenced, and prosecuted by an officer or member of such association or union on behalf of, and for the use of such association or union.

SEC. 7. Any person or persons who shall in any way use the name or seal of any such person, association, or union or officer thereof in, and about the sale of goods or otherwise not being authorized to so use the same, shall be guilty of a misdemeanor, and shall be punishable by imprisonment for not more than three months, or by a fine of not more than one hundred dollars.

SEC. 8. Whereas an emergency exists, therefore, this act shall be in force from and after its passage and approval.

Approved March 12, 1897.

State board of arbitration.

(Page 141.)

SECTION 1. The governor, with the advice and consent of the Senate, shall, on or before the fourth day of March, eighteen hundred and ninety-seven, appoint three competent persons to serve as a State board of arbitration and conciliation in the manner hereinafter provided. One of them shall be an employer or selected from some association representing employers of labor; one of them shall be selected

from some labor organization and not an employer of labor; the third shall be appointed upon the recommendation of the other two; *Provided, however*, That if the two appointed do not agree on the third man at the expiration of thirty days, he shall then be appointed by the governor. On or before the fourth day of March, eighteen hundred and ninety-seven, the governor, with the advice and consent of the Senate, shall appoint three members of said board in the manner above provided; one to serve for six years; one for four years; and one for two years; or until their respective successors are appointed; and on or before the fourth day of March of each year during which the legislature of this State is in its regular biennial session thereafter, the governor shall in the same manner appoint one member of said board to succeed the member whose term then expires and to serve for the term of six years or until his successor is appointed. If a vacancy occurs at any time, the governor shall in the same manner appoint some one to serve out the unexpired term; and he may in like manner remove any member of said board. Each member of said board shall, before entering upon the duties of his office, be sworn to a faithful discharge thereof. They shall at once organize by the choice of one of their members as chairman. Said board shall choose one of its members as secretary and may also appoint and remove a clerk of the board, who shall receive pay only for time during which his services are actually required and that at a rate of not more than four dollars per day during such time as he may be employed.

SEC. 2. The board shall, as soon as possible after its organization, establish such rules of procedure as shall be approved by the governor and Senate.

SEC. 3. Whenever any controversy or difference, not involving questions which may be the subject of a suit at law or bill in equity, exists between an employer, whether an individual, co-partnership or corporation, and his employees if at the time he employs not less than twenty-five persons in the same general line of business in any city or town or village or county in this State, the board shall upon application as hereinafter provided, and as soon as practicable thereafter, visit the locality of the dispute and make careful inquiry into the cause thereof, hear all persons interested therein who may come before them, advise the respective parties what, if anything, ought to be done or submitted to by either or both to adjust said dispute, and make a written decision thereof. This decision shall at once be made public, shall be recorded upon proper books of record to be kept by the secretary of said board, and a short statement thereof published in the annual report hereinafter provided for, and the said board shall cause a copy thereof to be filed with the county recorder of the county where such business is carried on.

SEC. 4. Said application shall be signed by said employer or by a majority of his employees in the department of the business in which the controversy or difference exists, or their duly authorized agent or by both parties and shall contain a concise statement of the grievance complained of, and a promise to continue in the business or at work without any lockout or strike until the decision of said board if it shall be made in three weeks of [from] the date of filing said application, when an application is signed by an agent claiming to represent a majority of such employees, the board shall satisfy itself that such agent is duly authorized in writing to represent such employees, but the names of the employees giving such authority shall be kept secret by said board. As soon as may be after the receipt of said application, the secretary of said board shall cause public notice to be given of the time and place for the hearing thereof; but public notice need not be given when both parties to the controversy join in the application and present therewith a written request that no public notice be given. When such request be made, notice shall be given to the parties interested in such manner as the board may order and the board may, at any stage of the proceedings, cause public notice to be given, notwithstanding such request. Should the petitioner or petitioners fail to perform the promise made in said application, the board shall proceed no further thereupon without the written consent of the adverse party. The board shall have the power to summons as witness any operative in the departments of business affected, and any person, who keeps the records of wages earned in those departments and to examine them under oath and to require the production of books containing the record of wages paid. Summons may be signed and oaths administered by any member of the board.

SEC. 5. Upon the receipt of such application and after such notice, the board shall proceed as before provided and render a written decision which shall be open to public inspection shall be recorded upon the records of the board and published at the discretion of the same, in an annual report to be made to the governor of the State on or before the first day of February of each year.

SEC. 6. Said decision shall be binding upon the parties who join in said application for six months, or until either party has given the other notice in writing of his intention not to be bound by the same at the expiration of sixty days therefrom. Said notice may be given to said employees by posting the same in three conspicuous places in the shop or factory, mill or at the mine where they work or are employed.

SEC. 7. The parties to any controversy or difference as described in section 3 of this act may submit the matters in dispute, in writing to a local board of arbitration and conciliation, such board may either be mutually agreed upon, or the employer may designate one of the arbitrators, the employees or their duly authorized agent, another, and the two arbitrators so designated may choose a third who shall be chairman of the board.

Such board shall in respect to the matters referred to it, have and exercise all the powers which the State board might have and exercise, and its decision shall have whatever binding effect may be agreed by the parties to the controversy in the written submission.

The jurisdiction of such board shall be exclusive in respect to the matters submitted to it, but it may ask and receive the advice and assistance of the State board. The decision of such board shall be rendered within ten days of the close of any hearing held by it; such decision shall at once be filed with the recorder of the county in which the controversy or difference arose, and a copy thereof shall be forwarded to the State board. Each of such arbitrators shall be entitled to receive from the treasury of the county in which the controversy or difference that is the subject of the arbitration exists, if such payment is approved in writing by the board of commissioners of such county, the sum of three dollars for each day of actual service, not exceeding ten days for any one arbitration, whenever it is made to appear to the mayor of a city or the board of commissioners of a county that a strike or lockout, such as described in section 8 of this act is seriously threatened or actually occurs, the mayor of such city or the board of commissioners of such county shall at once notify the State board of the facts.

SEC. 8. Whenever it shall come to the knowledge of the State board, either by notice from the mayor of a city or the board of commissioners of a county, as provided in the preceding section or otherwise, that a strike or lockout is seriously threatened or has actually occurred in any county or town of the State involving an employer and his present or past employees, if at the time he is employing, or up to the occurrence of the strike or lockout was employing not less than twenty-five persons in the same general line of business in any county or town in the State, it shall be the duty of the State board to put itself in communication as soon as may be with such employer, and employees, and endeavor by mediation to effect an amicable settlement between them, or to endeavor to persuade them; *Provided*, That a strike or lockout has not actually occurred or is not then continuing, to submit the matters in dispute to a local board of arbitration and conciliation, as above provided, or to the State board; and said State board may, if it deems it advisable, investigate the cause or causes, of such controversy and ascertain which party thereto is mainly responsible or blameworthy for the existence or continuance of the same, and may make and publish a report finding such cause or causes and assigning such responsibility or blame. The board shall have the same powers for the foregoing purposes as are given it by section 3 of this act.

SEC. 9. Witnesses summoned by the State board shall be allowed the sum of fifty cents for each attendance, and the sum of twenty-five cents, for each hour of attendance in excess of two hours and shall be allowed five cents a mile for travel each way from their respective places of employment or business to the place where the board is in session. Each witness shall certify in writing the amount of his travel and attendance, and the amount due him shall be paid forthwith by the board, and for such purpose the board shall be entitled to draw from the treasury of the State for the payment thereof any of the unappropriated moneys of the State.

SEC. 10. The members of said board shall be paid six dollars per day for each day that they are actually engaged in the performance of their duties, to be paid out of the treasury of the State, and they shall be allowed their necessary traveling and other expenses, which shall be paid out of the treasury of the State.

[This bill having remained with the governor to exceed ten (10) days (Sundays excepted) after the Legislature adjourned becomes a law this twentieth (20th) day of March, A. D. 1897.]

GEORGE J. LEWIS, *Secretary of State.*

MAINE.

ACTS OF 1897.

CHAPTER 204.—*Laborers' liens on leather.*

Whoever performs labor in any tannery where leather of any kind is manufactured completely or partially, whether such labor is performed directly on the hides and skins or in any capacity in or about the establishment, has a lien for his wages on all leather so manufactured in such tannery for labor performed by him or his

co-laborers, for thirty days after such leather is made and manufactured, and until such leather is shipped on board a vessel or taken in a car, which lien may be enforced by attachment within that time.

Approved March 2, 1897.

CHAPTER 209.—*Laborers' liens on spool timber and bars.*

SECTION 1. Whoever labors at cutting, hauling or sawing of spool timber or in the manufacture of spool timber into spool bars and the piling of such bars or at cooking for persons engaged in such labor, has a lien thereon for the amount due for his personal services and the services performed by his team, which takes precedence of all other claims, and continues for sixty days after such timber or spool bars arrive at the place of destination for sale or manufacture, and may be enforced by attachment. The court may allow and apportion costs as in equity.

SEC. 2. Section forty-two of chapter ninety-one of the Revised Statutes is hereby made applicable to suits brought to enforce the foregoing lien.

SEC. 3. This act shall take effect when approved.

Approved March 3, 1897.

CHAPTER 236.—*Payment of wages.*

Chapter fifty-five of the public laws of one thousand eight hundred and ninety-five, entitled "An act to amend section two of chapter one hundred and thirty-four of the public laws of one thousand eight hundred and eighty-seven, relating to the fortnightly payment of wages," is hereby repealed.

Approved March 17, 1897.

CHAPTER 301.—*Assignment of wages not valid unless recorded.*

Section six of chapter one hundred and eleven of the Revised Statutes, as amended by chapter seventy-three of the public laws of eighteen hundred and ninety-one, is hereby amended * * * so that said section, as amended, shall read as follows:

SECTION 6. No assignment of wages is valid against any other person than the parties thereto unless such assignment is recorded by the clerk of the city, town or plantation organized for any purpose in which the assignor is commorant while earning such wages; and if said assignor is commorant in an unorganized place while earning such wages said assignment shall not be valid against any other person than the parties thereto unless said assignment is recorded by the clerk of the oldest adjoining town, provided there be an incorporated town adjoining such unincorporated place, and if there be no such adjoining town such assignment shall be recorded in the office of the register of deeds for the registry district in which said unincorporated place is located, and the clerk's fee shall be twenty-five cents, and no such assignment of wages shall be valid against the employer unless he has actual notice thereof.

Approved March 26, 1897.

OKLAHOMA.

ACTS OF 1897.

CHAPTER 13, ARTICLE 4.—*Blacklisting.*

SECTION 1. No company, corporation or individual shall blacklist or require a letter of relinquishment, or publish, or cause to be published, or blacklisted, any employee, mechanic or laborer, discharged from or voluntarily leaving the service of such company, corporation or individual, with intent and for the purpose of preventing such employee, mechanic or laborer, from engaging in or securing similar or other employment from any other corporation, company or individual.

SEC. 2. Any person or persons, company or corporation violating this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined in any sum of not less than one hundred dollars, nor more than five hundred dollars, and any person so blacklisted shall have the right of action to recover damages.

SEC. 3. This act shall take effect and be in force from and after its passage and approval.

Approved March 11, 1897.

CHAPTER 40.—*Trade marks of trade unions, etc.*

SECTION 1. Whenever any person or any association or union of workingmen has heretofore adopted or used or shall hereafter adopt or use any label, trade mark, term, design, device or form of advertisement for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other product of labor, as having been made, manufactured, produced, prepared, packed or put on sale by such person or association or union of workingmen, or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trade mark, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade mark, term, design, device or form of advertisement.

SEC. 2. Whoever counterfeits or imitates any such label, trade mark, term, design, device or form of advertisement, or sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such label, trade mark, term, design, device or form of advertisement, or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which, or on which, any such counterfeit or imitation is printed, painted, stamped or impressed, or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package to which, or on which, any such counterfeit or imitation is printed, painted, stamped or impressed, or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package, to which or on which, any such counterfeit or imitation is attached, affixed, printed or painted, stamped or impressed, or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be punished by a fine of not more than a hundred dollars or by imprisonment for not more than three months.

SEC. 3. Every such person, association or union that has heretofore adopted or used, or shall hereafter adopt or use, a label, trade mark, term, design, device or form of advertisement as provided in section 1 of this act, may file the same for record in the office of the secretary of the Territory of Oklahoma by leaving two copies, counterparts or facsimiles thereof with said secretary, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade mark, term, design, device or form of advertisement shall be filed; the class of merchandise and a description of the goods to which it has been or is intended to be appropriated, stating that the party so filing, or on whose behalf such label, trade mark, term, design, device or form of advertisement shall be filed, has the right to the use of the same; that no other person, firm, association, union or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimile or counterparts filed therewith are true and correct. There shall be paid for such filing and recording a fee of one dollar. Said secretary shall deliver to such person, association or union so filing or causing to be filed any such label, trade mark, term, design, device or form of advertisement, so many duly attested certificates of the recording of the same as such person, association or union may apply for, for each of which certificates said secretary shall receive a fee of one dollar. Any such certificate of record shall, in all suits and prosecutions under this act, be sufficient proof of the adoption of such label, trade mark, term, design, device or form of advertisement. Said secretary of the Territory shall not record for any person, union or association any label, trade mark, term, design, device or form of advertisement that would probably be mistaken for any label, trade mark, term, design, device or form of advertisement.

SEC. 4. Any person who shall for himself, or on behalf of any other person, association or union, procure the filing of any label, trade mark, term, design or form of advertisement in the office of the secretary of the Territory under the provisions of this act, by making any false or fraudulent representations or declaration, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by, or on behalf of the party injured thereby, in any court having jurisdiction, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not to exceed three months.

SEC. 5. Every such person, association or union adopting or using a label, trade mark, term, device or form of advertisement as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and may award the complainant in any such suit, damages resulting from such manufacture, use, sale or display, as may be by the

said court deemed just and reasonable, and shall require the defendants to pay to such persons, associations or union, all profits derived from such wrongful manufacture, use, display or sale, and such court shall also order that all counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainant, to be destroyed.

SEC. 6. Every person who shall use or display the genuine label, trade mark, term, design, device or form of advertisement of any such person, association or union, in any manner not being authorized so to do by such person, union or association, shall be deemed guilty of a misdemeanor and shall be punished by imprisonment for not more than three months or by a fine of not more than one hundred dollars. In all cases where such association or union is not incorporated, suits under this act may be commenced and prosecuted by an officer or member of such association or union on behalf of, and for the use of, such association or union.

SEC. 7. Any person or persons who shall in any way use the name or seal of any such person, association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than three months, or by a fine of not more than one hundred dollars.

SEC. 8. This act shall take effect and be in force from and after its passage and approval.

Approved March 11, 1897.

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:

MILWAUKEE, WIS.—July 19, 1897. Contract with F. P. Gleason & Son, Chicago, Ill., for plumbing and gas piping, including marble work, plastering, etc., in toilet rooms in post-office, court-house, and custom-house, $27,603.36. Work to be completed within two hundred and twenty-six days.

FORT WORTH, TEX.—July 23, 1897. Contract with Smith & Bardon for fitting up toilet room in basement, additional rooms in attic, etc., of post-office, $4,219. Work to be completed within ninety days.

SAN FRANCISCO, CAL.—July 26, 1897. Contract with San Francisco Bridge Company for excavation, sewer, and temporary drainage, and concrete and steel foundations of post-office, court-house, etc., $36,830. Work to be completed within four months.

MILWAUKEE, WIS.—July 28, 1897. Contract with Hennessy & Cox, St. Paul, Minn., for interior finish, mosaic tiling, etc., in post-office, court-house, and custom-house, $263,975. Work to be completed within twelve months.

OMAHA, NEBR.—July 28, 1897. Contract with B. J. Jabst for approaches to post-office, court-house, and custom-house, $19,000. Work to be completed within three months.

OMAHA, NEBR.—July 31, 1897. Contract with Oby & Co., Canton, Ohio, for boiler plant, low pressure and exhaust steam heating and mechanical ventilating apparatus for post-office, court-house, and custom-house, $35,645. Work to be completed within one hundred and fifty days.

CLARKSVILLE, TENN.—Aug. 10, 1897. Contract with Chas. A. Moses, Chicago, Ill., for erection and completion, except heating apparatus, of post-office, $32,363.50. Work to be completed within ten months.

PATERSON, N. J.—Aug. 18, 1897. Contract with Chas. A. Moses, Chicago, Ill., for erection and completion, except heating apparatus, vault doors, and tower clock, of post-office, $100,887. Work to be completed within eighteen months.