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Permission to professional students of the university to occupy rooms in certain of the dormitories, which has been taken advantage of this year only to a slight extent, bids fair by another year to be more sought after, as this possibility becomes better known. It is another step towards the realization of the university ideal, the wiping out of certain departmental lines and limitations. To be sure it does not go quite so far as had been hoped, in that academic seniors wishing to spend further time in study cannot in every case retain their campus rooms, thus putting the force of inertia on the side of continued residence. But if men desire this, it ought in time to be conceded also. Extensive occupancy of campus rooms by members of all departments is very unlikely. A sprinkling of professional students, however, amongst academic undergraduates, we believe, would be beneficial to both, conducing to orderliness, to seriousness of purpose, and to unity of university life. In availing themselves of this privilege, men should understand that their occupancy must be stable, for the entire year, subject to good behavior, and that charges must be promptly paid. Otherwise the system will break down. Subject to these conditions there is no reason why an entry, or a floor at least, should not be packed by a congenial set, and the intolerable sense of loneliness, which is such a bar to the return of academic graduates for further study here, be in great measure relieved.

The emphasis laid on the solidarity and unity of the University which is one of the striking features of to-day, is seen in a minor way in a new feature of our smoking room.

Record boards have been set up there, which are inscribed with the names of those members of the Law School who have won distinction in the intellectual or athletic life of the whole university. The winners of the John A. Porter prize, members of university debating teams, captains of university teams, along with our own Townsend prize winners; these are recorded and are to be recorded, to minister to our own *esprit de corps,* and to show the part we play in the university life, and this is well. Loyalty, enthusiasm, the Yale spirit, qualities which we all honor, are not confined to one department or to one locality. We are all members of one family, with no more right to the family name belonging to one than to another. When this simple truth is fully realized by all branches of Yale, and not till then, will Yale be a university indeed.

COMMENT.

THE ORIGIN OF MUNICIPAL INCORPORATION.

At the meeting of the American Bar Association at Saratoga Springs, in August last, Mr. Amasa M. Eaton of Providence, Rhode Island, read a paper on "The Origin of Municipal Incorporation in England and in the United States." The paper is to be published in full in the Proceedings of the Association, and it will deserve a careful reading by all persons who are at all interested in the subject of Municipal Incorporation. In 1722 Thomas Madox, in his Preface to "Firma Burgi" wrote: "Whoso desireth to discourse in a proper manner concerning corporated towns and communities, must take in a great variety of matter and should be allowed a great deal of time and preparation. The subject is extensive and difficult." Mr. Eaton's paper begins very appropriately with this quotation from Madox. While the paper covers some eighty printed pages—a somewhat unusual length for a paper before the Bar Association—it is difficult to see how the author could have compressed satisfactorily his subject matter into much less space. No student of the subject will be inclined to complain about the length of the paper, and no student of the subject can afford not to read it in its entirety. It is an able and learned presentation of an important subject. and a distinct and valuable contribution to the literature of that subject. That Mr. Eaton has spent a great deal of time in his investigation of the matter his paper makes evident.

In the United States two opposing views are held as to the relation of town and State. One is that the State is absolutely paramount; that it created the towns, has absolute power over them and

can destroy them—if it pleases—taking from them at its pleasure the local self-government it has temporarily allowed. The other is that towns and cities are endowed with a certain limited sovereign power over their own local affairs, free from the control or interference of the State. Mr. Eaton declares that the problem which this conflict in theory presents is too difficult and complicated for solution "unless we go back to the beginning of Municipal Incorporation in England and ascertain the principles on which it rests." He accordingly goes back to the beginning. His conclusion of the matter is that the right to local self-government was and remains still a fundamental Anglo-Saxon right, and was brought to this country by the first settlers. "The rights of municipal corporations, therefore, are not subject to the uncontrolled and uncontrollable will of the legislature any more than are other fundamental Anglo-Saxon rights, and local self-government itself cannot be interfered with by the legislature, even if the State constitution be silent on the subject, reserving always to the legislature power over all general legislation and power to mould the exercise of town power when requested by a town itself."

We find no reference in Mr. Eaton's learned paper to the case of *State v. Williams,* 68 Conn. 131. This oversight is noticeable, as he has noted the cases elsewhere decided, which support the same theory as to the right of the legislature to take from the towns their rights and privileges. That case is also noteworthy because of the very able dissenting opinion which the late Chief Justice Andrews delivered and which strongly supports Mr. Eaton's contention. In the course of the opinion of the court, which was written by Judge Baldwin, it is said of the Constitution of Connecticut:

"It secured to these territorial sub-divisions (towns and counties) of the State certain political privileges in perpetuity. * * * It secured them because it granted them; not because they previously existed. Towns have no inherent rights. They have always been the mere creatures of the Colony or the State, with such functions and such only as were conceded or recognized by law."

Mr. Eaton, we think, is somewhat unnecessarily severe in his criticism of the Supreme Court of the United States. He quotes the dictum of that court in *Bloomfield v. Charter Oak Bank,* 121 U. S. 121 (1887), in which the court said:

"Towns in Connecticut, as in the other New England States, differ from trading companies, or even from municipal corporations elsewhere. They are territorial corporations, into which the State is divided by the legislature from time to time, for political purposes and the convenient administration of government; they have those powers only, which have been expressly conferred upon them by statute, or which are necessary for conducting municipal affairs; and all the inhabitants of the town are members of the quasi corporation."

To this Mr. Eaton replies:

"Imagine the amazement of a Rhode Islander upon being told that all the inhabitants of a town are members of it! Of course it is not intended to deny that some towns have originated through action of the legislature—examples are given in the articles referred to. But as a general statement of the origin and powers of towns in New England the opinion is manifestly incorrect, and could only have been written by one either ignorant of the facts, or reasoning incorrectly from them. It is difficult to continue to retain the respect for the Supreme Court of the United States it should always command, when we find it so constantly indulging in dicta, and in incorrect generalities foreign to the case before the court."

While we cannot sympathise with this rebuke of the Supreme Court, we concede that there are strong reasons in support of the theory which Mr. Eaton ably advocates. *H. W. R.*

CONTRACTS LIMITING THE LIABILITY OF CARRIERS FOR NEGLIGENT INJURY TO FREE PASSENGERS.

Recent cases decided in Virginia and in the District of Columbia afford an illustration of the direct conflict of opinion and authority which exists among the courts of the various States in regard to the validity of the well-known stipulation made by carriers of passengers for exemption from liability for the negligence of their servants, as a condition of gratuitous carriage. In *N. & W. R. Co. v. Tanner,* 41 S. E. 721 (Va.), such a stipulation is held to have no validity, even in the case of a strictly "free pass." The Court of Appeals of the District of Columbia, in *Boering v. The Chesapeake Beach Ry. Co.,* decided Nov. 5, 1902, arrives at the opposite conclusion. Each decision is supported by authorities of weight and number, although an examination of them fails to disclose (what both these cases and others, and text writers as well seem to assume), that the Virginia view is that of the majority. It does, indeed, follow the courts of Pennsylvania, Iowa, Minnesota, Mississippi, Texas and Alabama. But on the other side are New York, Massachusetts, Maine, Connecticut, New Jersey, Georgia, Wisconsin, Indiana, Washington and (except for gross negligence) Illinois. Viewed from an international standpoint, the assumption is still less warranted, since England, Canada, Germany, France and Italy allow validity to these agreements. *Quimby v. B. & Me. R. Co.,* 150 Mass. 365, and *Griswold v. N. Y. & N. E. R. Co.,* 53 Conn. 371, may be cited as forcible statements of this view, while *Jacobus v. St. P. & C. R. Co.,* 20 Minn. 125, well illustrates the contrary authorities.

The conflict of authority is less extensive than some of the cases would at first seem to indicate. There has often been a failure to limit the decision to the exact facts before the court. Thus many of the cases cited as denying the validity of exemptions in a free pass, involved, in point of fact, passes that were not gratuitous, as in the "Drover's Pass" cases. In others, although the passenger

paid no consideration, he was riding by the carrier's consent or invitation, without any stipulation whatever about liability. These distinctions indicate the limits within which the courts of this country, with fair unanimity, take common ground. 1. If the carriage is for hire, in any sense of that word, no stipulation for exemption from liability for its own or its servants' negligence can avail the carrier. 2. Where, in the absence of any stipulation, the carriage is gratuitous, under circumstances not constituting the person carried a trespasser (e. g., with the consent or by the invitation of the carrier), his position is that of a passenger, and the carrier's liability attaches as of course, just as in the case of other passengers. In both classes of cases the carrier is acting in its capacity as a carrier, and the instances of each are exceedingly numerous. Therefore, both a logical deduction from the ordinary principles governing common carriers of passengers, and the very practical danger which would menace the public if carriers could in any proportionable number of cases protect themselves from responsibility for their negligence or that of their servants, unite in demanding that in these cases attempted exemptions be held of no effect.

But to the case of a free passenger who has made an express agreement relieving the carrier of liability, a discussion of the rights and liabilities of a public carrier does not apply, nor does any practical possibility of less vigilant management as a result of exemption endanger the public safety, and so violate public policy. For a common carrier of passengers is one who carries for hire, and who is obliged to carry whoever presents himself, under reasonable regulations, and for a reasonable compensation. It is true that where the carriage is for hire the duty to carry safely (which we have seen cannot be abdicated), does not arise from mere privity of contract. But it must be remembered that it does rest upon a duty to carry, whereas there is no duty at all to carry gratuitously. The carrier is not dictating harsh and unreasonable terms as a condition of doing what it is legally bound to do on reasonable terms. A railroad company does not solicit persons to make gratuitous use of its conveyances; the solicitation is wholly from the other side. And when it yields to the importunity of one who would be carried free, it puts off its character of public carrier, and with it the liability of public carriers. It should be free to impose what conditions it will, before consenting to do that which it is under no obligation, legal or moral, to do at all.

In considering the relation of public policy to the class of contracts under discussion, it is admitted that whatever has an obvious tendency to encourage negligence in the performance of the carrier's public duties cannot be tolerated. But that these contracts have any such tendency is denied. Looking at the matter in a practical way (for the law is a practical science), it is a fair conclusion from the fact that carriers do business for gain and not from altruistic considerations, that the proportion of strictly free passengers to the whole number carried on any given train or other means of conveyance, may be expected to be exceedingly small. And this con-

clusion the facts support. It would be absurd to suppose that railroad officials would be so eager to enjoy their exemption as to one or two or a dozen free passengers, that they would consciously incur a vastly heavier liability in the case of the hundred or hundreds who pay. Here, too, experience has shown no relaxation of vigilance where the exemption has been upheld. When, therefore, as a condition of gratuitous carriage, one contracts with a passenger carrier to take upon one's self all risks, the consideration of public policy affords no true ground for refusing to enforce the contract. Indeed, a sound public policy would rather hold to their agreement parties who contract upon terms of perfect equality, and would maintain, as a vital principle of modern business life, freedom of contract.

EXPRESS PACKAGES OF LIQUORS, C. O. D., AND THE ORIGINAL PACKAGE DOCTRINE.

The rapidly developing practice of ordering intoxicating liquors sent C. O. D. through express companies, amounting to an abuse of the right of a consumer to purchase commodities in a foreign State and to receive same in the original package, has received a decisive check in the Supreme Court of Iowa.

In the late case of *State v. American Express Co. et al.*, 92 N. W. 66, the court held that C. O. D. shipments were not protected by the commerce clause of the federal constitution; that the express company was the agent of the liquor seller for the transfer of title to the goods; that its act in making collection of bill therefor was unlawful under the prohibitory law; that in collecting the purchase price for vendors the transportation company was in fact selling liquors at retail, and that the "Original Package" doctrine in such cases does not apply.

On the doctrine thus laid down the court also in the case of *Latta v. U. S. Express Co.*, 92 N. W. 68, ordered the abatement as a nuisance of the building wherein the express company conducted C. O. D. business in intoxicating liquors.

A point raised was "whether a C. O. D. transaction should be deemed an absolute sale on the part of the vendor, with a provision for withholding delivery until actual payment, so as to preserve a lien for the price, or as an executory contract of sale which is not completed until actual delivery to the buyer." The court relied on the parallel case of *State v. U. S. Express Co.*, 70 Iowa 271, wherein it was held that liquors so transported were the property of the consignors, and that the company was the agent of the shipper; and upon *O'Neil v. Vermont*, 144 U. S. 323, a similar case wherein a judgment of conviction against an agent connected with the sale was affirmed. The decision of *Rhodes v. Iowa*, 170 U. S. 412, the court said, did not militate against the conclusion. *Rhodes v. Iowa* is a leading case, which arose under the Wilson Original Package Act (26 Stat. L. 313), wherein the United States Supreme Court held that a box of liquors while in transit within the State from a

point without, before arrival and delivery, is protected against the State's power to condemn it, being interstate commerce.

The Iowa mulct liquor law and anti-cigarette acts (see *Iowa v. McGregor*, 76 Fed. 956, and *McGregor v. Cone*, 104 Iowa 465; also *Lawrie v. Tennessee*, 82 Fed. 615, and *Austin v. State*, 101 Tenn. 563), being the parents of the Original Package cases, it would seem that the effect of these Express Company cases would be far reaching and practically final.

It was also lately decided in Iowa, *State v. Hanaphy*, 90 N. W. 601, that the law prohibiting a traveling salesman from soliciting or accepting orders to be filled by a foreign liquor house, the goods to be shipped C. O. D., was not within the scope of the Wilson Act and unconstitutional as infringing upon interstate commerce.

The lines are thus gradually being re-established in 'prohibition' States after the upheaval a few years ago caused by the Original Package decisions.

STATE ANTI-TRUST LEGISLATION.

The States are experiencing not a little difficulty with their anti-trust laws. While they unquestionably can, under their police power, pass laws against combinations for the purpose of monopoly and restraint of competition, still they have found it troublesome to determine just where to stop. On the one hand they can not make their laws so broad as to be oppressive and in violation of the freedom of contract guaranteed by the Constitution; on the other, they can not make them so narrow that they operate upon certain classes and exclude from their operation certain others, thus becoming discriminatory in violation of the Fourteenth Amendment. The tendency on the part of most of the State anti-trust laws thus far passed, is to exempt from their operation certain lines of trade and commerce peculiar to the particular locality. This tendency has proved fatal to the anti-trust laws of Texas, Nebraska and Illinois, which have all been declared unconstitutional substantially on the ground that they were discriminatory. Texas made an exemption in favor of the original producer or raiser of agricultural products or live stock; Nebraska undertook to exempt assemblies or associations of laboring men; and Illinois made its law not to apply to agricultural products and live stock in the hands of the raiser. *In re Grice*, 79 Fed. 627; *Ins. Co. v. Cornell*, 110 Fed. 816; *Connolly v. Union Sewer Pipe Co.*, 22 Sup. Ct. 431.

The Supreme Court of Kansas has lately, by a divided court, decided the anti-trust law of Kansas, passed in 1897, to be constitutional. This law is different from the three mentioned above, in that it makes no exception in favor of any specific kind of commerce. Hence the question as to whether it is constitutional or not depends upon whether or not it is too broad. In other words—whether or no it does not itself unreasonably restrain trade and violate freedom of contract. In deciding this the court had no starting point save that it is unquestionably within the power of

the State to prohibit the restriction of trade and competition. For, although the U. S. Supreme Court had occasion recently to pass upon the constitutionality of the Illinois anti-trust law in *Connelly v. Sewer Pipe Co.,* 22 Sup. Ct. 431, they failed to leave any guiding principle for such cases as this, being content to rest their decision solely upon the ground that the law was of a discriminatory character.

The law in question, after defining a trust, in the first section, to be "a combination of capital, skill or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes," makes substantially these specifications: First—The creation or operation of any restraint of commerce or trade, or any aids to commerce or trade. Second—A manipulation of prices of commodities, or control of rates or cost of insurance. Third—The prevention of competition either in trade, manufacture, transportation, or aids to commerce. Fourth—The control or increase of the price of commodities intended for public consumption. Fifth —The making or entering into any contract for any of these purposes, or in restraint of trade or competition generally. The second section of the act denies the right of any person to be interested directly or indirectly, either as principal, agent, representative, consignee, or otherwise, in a trust as defined in the first section. And subsequent sections make such interest criminal and prescribe penalties.

A careful examination of the court's opinion gives the impression that aside from its contention that the act should be limited in its operation according to the intention of the legislature, which was that it should not extend beyond constitutional bounds, and that objection to the constitutionality of a law can only be made by one to whom it applies, the court itself was not entirely satisfied that the act could be upheld. In fact, without this questionable rule of construction, it is difficult to see how the law could be sustained. It is too broad and sweeping in its effect. So much so that we think it would be open to the objections made in the Illinois case, *supra.* There, the court, to show that the statute was so broad as to be unreasonable and oppressive, said that under it, if valid, two village grocers doing business at a loss could not unite in a partnership to save themselves from ruin; two farmers could not, each having a half car-load of potatoes, join together to ship in one car to get a reduced rate, etc. These illustrations seem within dangerous proximity to the language of the Kansas statute. For instance: by the fifth specification of section one, a combination "by two or more persons," among other things, "to keep the price of such articles, commodities or transportation, at a fixed or graded figure; or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or between themselves and others, to preclude a free and unrestricted competition," etc., is prohibited. And if the Illinois case is good law, the Kansas statute is manifestly unconstitutional unless the

court's theory in construing the statute to be constitutional by limiting its operation, in spite of its language, to only those objects intended by the legislature, is correct.

It is a cardinal principle of construction that where part of a statute is constitutional and part unconstitutional, if separable, that which is constitutional will be upheld, provided enough is left to make the law enforceable. *State v. Copeland,* 3 R. I. 33; *Commonwealth v. Hitchings,* 5 Gray 485. But it may be well questioned as to how far a court may go in the application of this principle where the language and meaning of the statute are clear. Limitation of the operation of a law so that it will not extend beyond its constitutional bounds, can not properly be said to be separation. And an attempt at limitation in such a case is likely to result in the substitution of the judicial department of the government for the legislative. This point is discussed fully in *U. S. v. Reese,* 92 U. S. 214.

WHO IS A "TRADER" UNDER THE BANKRUPTCY ACT.

Who is a trader and what constitutes a trading has been the subject of much legal discussion during the past hundred and fifty years. These questions have arisen under the various English and United States bankruptcy acts, and have resulted in numerous decisions, which indicate their application to the various lines of industry.

To constitute a trading under the old English bankruptcy acts there must have been a buying and selling with a view to profit, with an intent to seek a living. Selling what you already possess or produce is not sufficient, nor is a single act of buying and selling enough, unless there is an intention to continue it. *Ex parte Moole,* 14 Ves. Jun. 603; *Parker v. Wells,* 1 T. R. 34; *Heannay v. Birch,* 3 Camp. 233; *Cooke,* 48, 73. A more modern and commercial definition of a trader is one who makes it his business to buy merchandise or things ordinarily the subject of commerce and traffic, and to sell the same for the purpose of making a profit. *In re Cowles,* 1 B. R. 42.

Some difficulty has arisen in defining "trading" and "mercantile pursuits" in section 4b of the 1898 bankruptcy act, and in applying that definition to determine its applicability to the business of buying and selling bonds, stocks and other securities. The recent case of *In re Surety and Guarantee Trust Co.,* Central Law Jour., Vol. 55, No. 18 (Oct. 31), decides that "trader" and "mercantile pursuits" are to be construed in their technical sense, and that the buying and selling of stocks is not a "trading pursuit" within the meaning of the act.

Among those who have been held to be "traders" within the meaning of the bankruptcy acts of 1841 and 1867 are the following: a baker, who buys flour, which he makes into bread, and sells the bread daily to his customers *(In re Cocks,* 3 Ben. 260); a man who boards horses *(In re Odell,* 9 Ben. 209); a saloonkeeper *(In re*

Sherwood, 9 Ben. 66); a butcher (*In re Garrison*, 5 Ben. 430); a livery stable keeper (*Hall v. Cooley*, Fed. Cas. No. 5928): not within the act are a railroad contractor (*In re Smith*, 2 Lowell, 69); one engaged in farming and trading live stock (*In re Ragsdale*, 7 Biss. 154); nor are those within the act who buy and sell merely as incidental to their main occupation. *In re Chapman*, 9 Ben. 311; *In re Kimball*, 7 Fed. 461; *In re Duff*, 4 Fed. 519.

Under the 1898 act the courts seem to restrict the meaning of "trading and mercantile pursuits." They see that in its broadest sense mercantile pursuits would include almost every business. They hold that Congress, as it named specifically a few businesses only and left the rest unmentioned, meant that "trading and mercantile pursuits" should have a restrictive meaning and not be broadened to cover the whole field of commerce. *In re Phila. & Lanes Transp. Co.*, 114 Fed. 403. In conformity with such a view have been almost all the decisions under the recent bankruptcy act. Thus, mining companies are held not to be traders (*In re Park Mining Co.*, 101 Fed. 422); (*In re Tetopa Mining Co.*, 110 Fed. 120); nor insurance companies (*In re Cameron Company*, 96 Fed. 756); nor a water company (*In re New York Water Co.*, 98 Fed. 711); nor the keeper of a saloon and a restaurant (*In re Chesapeake Fish Co.*, 112 Fed. 960); etc. There are, however, two cases which seem to more or less conflict with the great majority of decisions under the 1898 act, following the more liberal interpretation of the word "trader" as seen in the old English decisions and those under our own previous bankruptcy acts. These two cases are *In re Gabriel Sanitarium*, 95 Fed. 271, and *In re Morton Boarding Stables*, 108 Fed. 791, which hold respectively that a corporation maintaining a private hospital for consumptives and a corporation conducting boarding stables are traders.

As to whether the buying and selling of stocks and bonds is a trading or mercantile pursuit there are exceedingly few decisions. Under the bankruptcy law of England it is said to have been held that dealing in shares in joint stock companies was not trading within the meaning of the act; *In re Cleland*, L. R. 2 Ch. App. 466; but in this case the dealing in stock was only incidental to the main business; the appellant there did not act as broker or factor, nor did he buy and sell for a profit, but merely to oblige his friends. Analagous to the English case is that of *In re Marston*, 5 Ben. 313, in which the buying and selling of stock by the bankrupt was casual. Later in *In re Woodward*, 8 Ben. 563, it was squarely decided that the business of buying and selling stock was not a trading pursuit. This case is not discussed at length and would not seem to conform to many of the other decisions under the 1867 act.

The present case is in harmony with most of the decisions under the 1898 act, which as said above, tend to restrict the meaning of "trader" and mercantile pursuits to the technical sense in which they are known to the law, and is important as excluding one more occupation from the operation of the bankruptcy law.

EXPERT TESTIMONY AS TO HANDWRITING.

Caligraphic experts have for years asserted the possibility of investigating handwriting upon scientific principles, and the courts have consequently admitted such persons to testify in cases of disputed handwriting. It is claimed that experiments and observation have disclosed the fact that there are certain general principles which may be relied upon in questions pertaining to the genuineness of handwriting. *Rogers, Expert Testimony*, 2nd ed sec. 124. But testimony of experts as to handwriting will be zealously scrutinized, they being generally selected by the party in whose behalf it is given, and there being no standard, as in case of medical or chemical experts, whereby to test the soundness of the opinions advanced. *Sarvent v. Hesdra,* 5 Redf. Surr. 47. To such an extent has the testimony of this kind sought to be admitted that in many of the States statutes have been enacted regulating and determining the admissibility of such evidence. The law as it exists in the different States, however, is by no means uniform. *Rogers, Expert Testimony,* sec. 190. The extent of this class of expert evidence is clearly seen when it appears that a noted handwriting expert of New York City, in qualifying as an expert in a recent case, stated that he had given expert evidence in some eight hundred cases. It is only within the last few years that the greatest latitude has been allowed in introducing this class of evidence. The *nisi prius* decisions of the English courts, although not in entire harmony *(Allesbrook v. Roach,* 1 Esp. 35), and much criticised by text writers, were generally hostile to the admission of comparisons by experts until the act of Parliament in 1854 (17 and 18 Vict. c. 125, secs. 27, 103; 28 and 29 Vic. c. 18, secs. 1, 8); while in *Doe v. Suckermore,* 5 Ad. and El. 703, the court evenly divided whether an expert in handwriting could testify as to the genuineness of a signature in comparison with other genuine signatures. But such evidence is now always admissible in this country.

The consequences of the admission of expert testimony as to handwriting was notably presented in the celebrated Molineux trial in New York. The court there held that the New York statute admitting such evidence was intended to enlarge the rule established at common law, which was too inelastic, as it frequently excluded from the consideration of the court testimony which common experience proved to be helpful. *People v. Molineux,* 168 N. Y. 264. In the very recent case, *In re Hopkins' Will,* 65 N. E. 173 (Nov., 1902), the New York Court of Appeals, reversing all the lower courts, has placed a wise restriction upon the value to be given evidence of this character. Here it was attempted to prove by the testimony of an expert that fourteen perpendicular marks dawn through the signature to a will were made by a person other than the signer of the will. While one may perhaps have a strong opinion that mere marks can be identified, yet it is apparent that such evidence is entirely too circumstantial to admit of value as evidence; and furthermore mere marks cannot be considered as

handwriting. *Bouvier, Law Dictionary.* There is no difference between this and the opinion of experts as to the authorship of a mark made for a signature. The courts have very generally held that a mere mark cannot be identified. *Shinkle v. Crock,* 17 Pa. St. 159; *Gilliam v. Parkinson,* 4 Rand (Va.) 325; *Jones v. Hough,* 77 Ala. 437; *Watts v. Kilburn,* 7 Ga. 316; *Travers v. Schneider,* 38 Ill. App. 382; *Jackson v. Van Dusen,* 5 Johns. 154; *State v. Byrd,* 93 N. C. 626; *Tageas Co. v. Mahnoris Huns,* 5 La. 324; 2 *Benth. Jud. Er.* 461. In *Collins v. Crocker,* 15 Ill. App. 107, a line in ink was drawn through the words "if not paid at maturity," and the court very properly held that the identity of this mark was not a question for expert testimony. This is very similar to the evidence sought to be admitted in *In re Hopkins' Will, supra,* and it certainly seems the common sense and practical rule. Although testimony may be admissible to prove whether an alteration was made before or after the date of the instrument, by an expert's knowledge of the effect and duration of chemicals; *Ross v. Sebastian,* 160 Ill. 602, 43 N. E. 708; *Dubois v. Baker,* 30 N. Y. 355; yet it would be carrying the principle too far, to admit opinions of experts that mere marks were made by some person other than one with whose signature they are compared. In many cases the evidence might be strong, but it is too unsatisfactory and misleading to be admitted, and so properly should be excluded. The New York Court of Appeals is to be commended for the check it has placed on the admission of expert testimony as to handwriting.