such . . . hospital is located." But this statute does not seem to be broad enough to include the furnishing of medical services except as merely incidental to the hospitalization.

JEROME H. BROOKS

COUNTIES

LIABILITY FOR PERSONAL INJURIES ARISING OUT OF LABOR DISPUTES

Plaintiff instituted an action in the Common Pleas Court of Lucas County against the County Board of Commissioners to recover damages under sections 6278 and 6281 of the General Code for alleged injuries sustained at the hands of a mob. The evidence revealed that the plaintiff answered a knock at the door of his home only to be seized, assaulted, and seriously injured. A strike was in progress at a nearby plant of the Electric Auto-Lite Company and the plaintiff had been mistaken for a strike-breaker by a group of the striking employees. The trial court ordered a juror withdrawn and dismissed the petition, which action was reversed by the court of appeals. The Supreme Court reversed the court of appeals and affirmed the trial court. *Reynolds* v. *Lathrop, et al., Board of Commissioners of Lucas County*, 133 Ohio St. 435, 14 N.E. (2d) 599, 11 Ohio Op. 103 (1938).

Code section 6278, on which plaintiff relied, reads in part: "A collection of people assembled for an unlawful purpose and intending to do damage or injury to anyone, or pretending to exercise correctional power over other persons by violence and without authority of law, shall be deemed a 'mob'. . . . An act of violence by a mob upon the body of any person shall constitute a 'lynching'. . . . " Section 6281 imposes liability on the county in which a person is assaulted and lynched with the maximum recovery set at five thousand dollars.

Statutes imposing liability for acts of mob violence on local governmental subdivisions can be traced back to the time of King Canute (994-1035). Reeves, *History of the English Law*, p. 30; 1 Holdsworth, *History of the English Law*, p. 11; 22 Halsbury's, *Laws of England*, p. 507. At Common Law no liability existed for either injuries to person or property. *Wakely* v. *Douglas County*, 109 Neb. 396, 191 N.W. 337 (1922); *Shake* v. *Board of Comm's of Sullivan County*, 210 Ind. 61, 1 N.E. (2d) 132 (1935); *College of Medicine* v. *Cleveland*, 12 Ohio St. 375 (1861); *Robinson* v. *Greenville*, 42 Ohio St. 625 (1885); *Phillips Sheet Tin Plate Co.* v. *Griffith, Admx.*, 98 Ohio

St. 73 (1918). Modern statutes are intended to punish the inhabitants of towns and counties for permitting riots and induce them to suppress and prevent the same by making it to their financial advantage. *Butler County* v. *Beaty*, 11 Ohio App. 111, 30 Ohio C.A. 391 (1919); *Butte Miners Union* v. *City of Butte*, 58 Mont. 391, 194 Pac. 149, 13 A.L.R. 746 (1920); *Clark Thread Co.* v. *Hudson County*, 54 N.J.L. 265, 23 Atl. 820 (1892).

There is little question but that the state has the power to enact legislation penalizing local divisions of government wherein mob violence occurs. *Hagerstown* v. *Sehner*, 37 Md. 180 (1872); *Champaign County* v. *Church, Admr.*, 62 Ohio St. 318, 57 N.E. 50, 48 L.R.A. 738, 78 Am. St. Rep. 718 (1900); *Ely* v. *Niagara County*, 36 N.Y. 297 (1867); *Palmer* v. *Concord*, 48 N.H. 211 (1868); *Donoghue* v. *Philadelphia*, 2 Pa. St. 230 (1845). Unsuccessful constitutional objections have been raised on such grounds as due process, denial of the right to a jury trial, taking of private property for public use, usurpation of judicial power, impairing the obligation of contract, class legislation, and the police power. *Chicago* v. *Sturgess*, 222 U.S. 33, 32 Sup. Ct. Rep. 92 (1911); *Iola* v. *Birnbaum*, 71 Kan. 600, 81 Pac. 197 (1905); *Champaign County* v. *Church, Admr., supra; Davidson* v. *City of New York*, 27 How. Pr. (N.Y.) 342 (1864); *Re Pennsylvania Hall*, 5 Pa. 204 (1847); *Allegheny County* v. *Gibson*, 90 Pa. St. 397 (1879); *Wakely* v. *Douglas County, supra.* Courts are not in agreement as to whether a strict or liberal interpretation should be given the statute. *Kirkland* v. *Allendale County*, 128 S.C. 541, 123 S.E. 648 (1924); *Febock* v. *Jefferson County*, 219 Wis. 154, 262 N.W. 588 (1935); *Lanham* v. *Buchannon*, 97 W. Va. 339, 125 S.E. 157 (1924); *Yalenezian* v. *Boston*, 238 Mass. 538, 131 N.E. 220 (1921); *Wells, Fargo & Co.* v. *Jersey City*, 207 Fed. 871, aff. 135 C.C.A. 371 (1913). This division of opinion is evident in Ohio. *Butler County* v. *Beaty, supra; Phillips Sheet Tin Plate Co.* v. *Griffith, Admx, supra; Hammett* v. *Cook*, 42 Ohio App. 167, 182 N.E. 36 (1932); *Lexa* v. *Zumnt et al.*, 123 Ohio St. 510, 176 N.E. 82 (1931).

The original enactment in Ohio penalizing counties for acts of mob violence was passed by the legislature in 1896 and was entitled "An Act for the Suppression of Mob Violence." 92 *Ohio Laws* 136. The present phraseology of the law came by an amendment in 1898. 93 *Ohio Laws* 161. Code section 6278 of the General Code is given over to definitions of the words "mob" and "lynching." It should be noted that the first sentence of the section which defines "mob" is composed of two clauses separated by the word "or." In the second clause of the

sentence is found the term "correctional power." In *Gray* v. *Gibson*, 12 Ohio N.P. (N.S.) 673, 22 Ohio Dec. N.P. 326 (1912) it was stated that correctional power is exercised where "there are acts of violence against anyone who has committed a crime, as if to correct him." A gathering of strike sympathizers endeavoring to frighten strike-breakers was held not to constitute a mob exercising correctional power on the ground that the strike-breakers had not and were not doing anything but that which they had a legal right to do. Although the court defined correctional power, no rule was laid down that this power must be present in every case before a "mob" could exist under code section 6278. Shortly thereafter, arising out of somewhat similar facts, came the case of *Butler County* v. *Beaty*, 11 Ohio App. 111, 30 Ohio C.A. 391 (1919) in which it was held that code section 6278 contemplated the existence of two separate types of mobs, in only one of which was the exercise of correctional power necessary. The court in effect read the word "or," which separates the two clauses of the sentence defining "mob," in its disjunctive and non-cumulative sense. By this decision a mob could *either* be a collection of people assembled for an unlawful purpose and intending to do damage or injury to anyone, *or* it could be a collection of people pretending to exercise correctional power over other persons by violence and without authority of law. Recovery was allowed even though the plaintiff could not show himself to have been the recipient of the exercise of correctional power. It is interesting to observe that in this case the Supreme Court overruled a motion to certify the record. 17 *Ohio Law Rep.* 346.

But the view expressed above was not to stand for long. Eight men attempted to leave a restaurant without paying for services rendered. In a scuffle which ensued, the plaintiff an employe of the establishment, was shot in the leg. Action against the county was instituted under code section 6278 and the Supreme Court laid down, in both the opinion and the syllabus of the case, the rule that "to recover under such statute it is not sufficient to show an injury resulting from acts of a collection of people assembled for an unlawful purpose and intending to do damage or injury to anyone, but there must appear also a purpose of exercising correctional power by violence and without authority of law." In arriving at this rule the court said that the word "or" between the two clauses of the statute "must have been intended by the legislature to be used in the sense which serves to relate similar ideas and connect them to each other." *Lexa* v. *Zumnt et al., Board of County Commissioners*, 123 Ohio St. 510, 176 N.E. 82 (1931).

In the principal case the court in a brief opinion rests its decision

squarely on the rule laid down in the *Lexa Case*, which requires the presence of correctional power to sustain a recovery. The court in the principal case then proceeded to define correctional power as "an unlawful attempt by a mob to mete out justice to a real or supposed wrongdoer without awaiting the lawfully constituted authorities." Finding that the strikers who assaulted the plaintiff were acting for their own selfish and personal ends and not in aid of law and order, the court dismissed the case as the needed correctional power was absent.

Returning to the case of *Lexa* v. *Zumnt et al.*, *supra* where the rule applied in the principal case was first enunciated, one finds that its pronouncement was not necessary to a determination of the case. The Court of Appeals had held that plaintiff could not recover as the evidence did not show a collection of people assembled for an unlawful purpose and intending to do damage or injury to anyone, as is required by the first clause of the definition of "mob" as found in code section 6278. The Court of Appeals in turn disposed of the case without having to determine whether correctional power had been exercised. *Zumnt et al.* v. *Lexa*, 37 Ohio App. 479, 175 N.E. 458 (1930). Although the Supreme Court affirmed the Court of Appeals, the court gratuitously added that in such cases it was also necessary that correctional power be exercised on the plaintiff before he would be allowed a recovery. This *dictum* was incorporated into the syllabus of the case from which place it was taken bodily and applied as the rule of law to determine the principal case.

clauses of the first sentence of code section 6278 as meaning "and." This is permissible in interpreting a statute only where the context or other provisions of the statute requires it, or when it is necessary to avoid an absurd or impossible consequence and to carry out the evident intent of the legislature. It must be presumed that the language of the statute was chosen with due regard to grammatical propriety. Black, *Interpretation of Laws*, p. 231; *Rice* v. *U. S.*, 53 Fed. 910, 4 C.C.A. 104 (1893); *Ohio Fuel Supply Co.* v. *Paxton*, 11 Fed. (2nd) 740 (1926). The original staute in 1896 was passed as a result of the activities of the "Klu Klux Klan" and similar organizations. *Zumnt et al.* v. *Lexa*, *supra*. The purpose stated in the title of the Act was to suppress mob violence and when this is read in connection with the events which made its passage necessary, it is reasonable to suppose that the legislature intended to give relief to those persons who suffered from acts of mob violence, whether it be acts of lynching, mutilation, whippings, or tarring and feathering. It is also reasonable to suppose that this relief was to be given from the activities of the Klan and similar organizations in cases

where the wrong eminated from an intolerance toward the race, color, creed, or personal habits of the victim, as well as in those cases where the mob acts solely to mete out justice to a real or supposed wrongdoer. It is submitted that by denying relief except in those cases where the mob is attempting to mete out justice to a real or supposed wrongdoer is not only defeating the intent of the legislature to a great extent, but is also going counter to the accepted rule that the word "or" in a statute should not be read as meaning "and" except where it is necessary to carry out the evident intent of the legislature. In this connection it is interesting to observe the court's own statement in *Phillips Sheet Tin Plate Co.* v. *Griffith, Admx.*, 98 Ohio St. 73 (1918) that the statute was remedial and merited a liberal construction. Nor does the *Lexa* case or the principal case make any reference to the decision in *Butler County* v. *Beaty, supra* where it was held that the word "or" was to be read in its disjunctive sense.

Under the definition of correctional power in the principal case as being those instances in which a mob is attempting to mete out justice to a real or supposed wrongdoer without awaiting the lawfully constituted authorities, it would seem that it is necessary for the members of the mob to know or believe that the person being subjected to violence has acted in such fashion as to deserve punishment at the hands of the law. But cases may be easily supposed where an individual may be the object of the wrath of a mob, not because he is a real or supposed wrongdoer in the sense of having violated the law, but because his religious, political, social, industrial, or domestic beliefs and activities conflict with those held by other persons who undertake to effect a change by an appeal to force rather than to reason. In the former instance, following the rule of the principal case recovery would be permitted the injured party and the proceeds would go for the maintenance and education of the plaintiff's dependants. In the latter instances these same dependants would not only be denied recovery, but might also be faced by a loss of the earning power of the head of the family, with the not impossible consequence of being committed to a life of poverty or dependency on the state for the necessaries of life. The court in determining the intent of the legislature should take into consideration those social consequences which might arise from a particular construction of the statute.

The labor field in the past few years has given rise to many instances of mob violence. Persons have been seriously injured and earning capacity impaired through no fault of victim. These persons have turned to the law for redress against lawless bands. This is evidenced by the fact that of the six known cases brought under code section

6278, four have arisen out of strikes. By the decision in the principal case this avenue of redress has been materially narrowed. If the intent of the legislature was to strike at all mob violence, then this intent has been defeated. Gone also is the salutary effect of the law in inducing the inhabitants of counties to refrain from mob violence on penalty of increased taxes to pay verdicts secured against the county wherein the mob acted. It would seem that as the law now stands the only persons entitled to recover under the statute are those persons taken from the hands of the authorities and cases where the mob "beats" the law-enforcing agencies to the scene and vents its wrath on a real or supposed wrongdoer who is thought to have violated the law. Many of these victims would doubtless be guilty of the offense and deserve legal punishment. On the other side of the picture are those persons who are assaulted and lynched by mobs and who are entirely within their legal rights and guilty of no violation of law, and this fact is at that time perfectly recognized by the mob who attacks them. But this group is wholly unprotected. It seems that no distinction should be made to the prejudice of wholly innocent and law abiding citizens. It is to be hoped that the court will see its way clear to modify the construction of the statute so as to include within it those victims of mob violence who are neither real nor supposed wrongdoers in the sense of having violated the law.

VERNON LEE

DIVORCE

MODIFICATION OF THE DECREE — ACTION OF DIVORCE AND ALIMONY

The Court of Common Pleas of Mahoning County in a decree of divorce awarded custody of one child to the plaintiff and alimony of $60.00 per month for the support of herself and the child, which the court, at a subsequent term, modified to $45.00 per month. On motion of the defendant to vacate a judgment for payments in default and to modify the decree, the court reduced the alimony payments to $20.00 per month for the support of the child until 21 years of age and also ordered the defendant to pay $25.00 a month on the judgment for accrued alimony until satisfied. The court of appeals held that the jurisdiction of the court in cases of alimony was continuing and affirmed the judgment.[1]

This note deals with the power of the court to modify decrees of

[1] *Heckert* v. *Heckert*, 57 Ohio App. 421, 14 N.E. (2d) 428 (1936).