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### Recent Decisions

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## RECENT DECISIONS

**AUTOMOBILES—NEGLIGENCE—ABILITY TO STOP WITHIN RANGE OF HEADLIGHTS AS NEGLIGENCE *Per Se*.**—In a recent Illinois case, *Skamenca v. Reeser*, 13 N. E. (2d) 668 (1938), the plaintiff, David Skamenca, brought a suit against the defendant, H. C. Reeser, to recover damages for personal injuries received in an automobile collision. The case was tried with a jury, resulting in a verdict for the defendant. On the plaintiff's motion, the court set the verdict aside and granted a new trial. The record shows that the court stated the only reason for granting a new trial was error in the instruction given at the request of the defendant. The evidence shows that plaintiff was driving his automobile in a northerly direction on U. S. Highway No. 66 about 2 A. M., January 20, 1935, he testified that he was driving on his right-hand side of the center pavement, that he was traveling 28 to 30 miles per hour, that it was foggy and damp, that he was driving with his dim lights on, that with the dim lights he could see in the fog 50 to 60 feet ahead, that under normal atmospheric conditions he could have seen 150 to 200 feet in the direction he was driving. The evidence shows that the defendant was driving in a southerly direction and he testified that it was very foggy, that he was driving about 25 miles per hour on his right hand side of the road with his bright lights deflected, and that he could see ahead 50 to 75 feet and in normal atmospheric conditions he could have seen 200 feet. Instruction No. 5 given at the request of the defendant told the jury that "the law of this State at the time of the collision required every motor vehicle when driven upon any public highway in this State during the period for one hour after sunset to sunrise, to carry two lighted lamps showing white lights, enabling the driver to see objects at least 200 feet in the direction toward which such motor vehicle is proceeding, and if they believed from the evidence that plaintiff was driving without such lights and that his failure in that regard proximately caused or contributed to the collision, then they should find the defendant not guilty." The instruction in effect directed a verdict for the defendant if they found that plaintiff's failure to have lights as described was the proximate cause of the injury for the evidence was conclusive that plaintiff's lights would not penetrate the fog and enable him to see 200 feet ahead. The court said: "Owing to the density of the fog, the circumstances mentioned and the conflict in the evidence we are satisfied that all reasonable minds would not agree that the failure of the plaintiff to have lights of sufficient brilliancy to penetrate the fog and enable him to see 200 feet ahead constituted negligence. Defendant's instruction No. 6 told the jury that the driver of any motor vehicle on the public highway is required to keep a proper lookout for other cars on the highway in order to see the same in time to stop or slacken speed and thus avoid a collision and failure to do so constitutes negligence, and if they found from the evidence that plaintiff failed to keep a proper lookout for other cars and by reason thereof was negligent and such negligence contributed to cause the collision, their verdict should be in favor of the defendant. By this instruction the jury were told that the plaintiff must keep a lookout for other cars on the highway and then directed that his lookout must be such that if another car was on the highway he must see it when it was such distance from him that he would still have time to stop or slacken his speed and avoid a collision and that failure to do so constituted negligence. The rule embodied in this instruction is akin to the principles announced in *Lauson v. Town of Fond du Lac*, 141 Wis. 57, 25 L. R. A. (N. S.) 40, 135 Am. St. Rep. 30, and cases in other jurisdictions where it is held that it is negligence as a matter of law to drive an automobile along a public highway in the dark at such a speed that it cannot be stopped within the distance that objects can be seen ahead of it. In the *Moyer* case . . . [*infra*] the Appellate Court of the First

District declined to follow those cases and held under the facts of that case the question of contributory negligence of the plaintiff was one of fact and not of law."

In *Moyer v. Vaughan's Seed Store*, 242 Ill. App. 308 (1926), the accident occurred in the nighttime when it was raining and plaintiff was unable to see more than 20 feet ahead. He crashed into a truck which was having trouble with its lights and had stopped partly on the pavement. The court said: "In the instant case we think it cannot reasonably be said that the driver of plaintiff's automobile was guilty of negligence as a matter of law. The night was dark and misty. The plaintiff was driving along a country road where standing vehicles were not to be expected. There is evidence to the effect that there was no rear light on the truck; that the color of the truck and its load blended with the coloring of the surface of the road. These, and many other circumstances which might be alluded to, show that all reasonable minds would not reach the conclusion that the driver of plaintiff's automobile was acting as no rational person would act under like circumstances, and, therefore, the question to be determined was one of fact and not law."

In *Pennsylvania R. Co. v. Huss*, 96 Ind. App. 71, 180 N. E. 919 (1932), an Indiana case, the court held that it is negligence to drive an automobile at such speed that it cannot be stopped within distance that objects can be seen ahead. A brief statement of facts shows that on the 21st day of October, 1927, at approximately 1 A. M., a freight train of appellant, consisting of an engine, caboose and 29 freight cars, upon signal of the conductor stopped at La Otto, with the 13th car from the engine standing across the Lima road. The purpose of the stop was to "cut" the train behind the 16th car from the engine in order to set the 10 cars off at La Otto; before the train was separated and the crossing cleared, an automobile in which appellee was riding as guest, and which was driven by one Emma Menzel, approached over the Lima road from the South and collided with the freight car standing across the highway, the appellee receiving serious injuries for which she now sues. Miss Menzel testified that she drove the car at 35 miles per hour, had the bright lights on, and as she entered La Otto, the speed slackened a little. The court held that it was negligence as a matter of law for Miss Menzel to drive the automobile in which appellee was riding at such a speed that she could not stop the same within the distance that objects could be seen ahead of it. If the lights on said vehicle, on account of physical conditions encountered, would not delineate an object in the roadway straight ahead the distance prescribed by law, then she should have driven such automobile at such a rate of speed that she could have brought it to a stop within the distance that she could plainly see the train of appellant ahead of her, and thus have avoided running the automobile into the freight car. The court said: "We are of the opinion that the sole proximate cause of the injury in this case as disclosed by the uncontroverted evidence was the negligence of the driver of the automobile in which appellee was riding in said vehicle into and against appellant's freight car. At most it can only be said that appellant by permitting its freight car to remain standing on said crossing, created an unconcealed condition in which Miss Menzel's negligence operated to bring about the collision. Considering the undisputed evidence, we cannot escape the conclusion that the injury to appellee was caused by the subsequent independent act of the driver of the automobile, and that the condition created did not in any manner cause or contribute to the negligence of such driver."

In *Lauson v. Fond du Lac*, 141 Wis. 57, 25 L. R. A. (N. S.) 40, 135 Am. St. Rep. 30, 123 N. W. 629 (1909), which is the basic and most cited case for the general rule, it was held that one who drives his automobile on a dark, rainy night over a straight stretch of county road, at such speed that he is unable to stop within a distance in which he may clearly see an obstacle in the path is negli-

gence. The court said: "The driver of every automobile in a city knows that streets are frequently torn up, for the purpose of laying water and sewer pipes, and for laying gas mains, conduits for carrying electric wires, and such like, and that repairs on such pipes, mains, and conduits must be frequently made, as well as connections with private consumers. He further knows that children, pedestrians, bicycle and motorcycle riders, street cars, and passengers carried by horse power, are to be found on the streets in great numbers, and frequently huddled closely together. The driver on a country road knows that bridges and culverts must be rebuilt; that highways must be repaired; that washouts occasionally occur; that live stock roam about the roads unattended; that travelers on foot, on horseback, and in various kinds of vehicles, are found using the highways in all seasons of the year, and at all times of the day and night. Such a driver has no right to expect and does not expect, a free and unobstructed right of way over a well-defined track, as does the engineer of a locomotive, or even the motorman of an electric car. The automobile has created a new peril in the use of our public highways,—a peril that unfortunately has been greatly enhanced by the recklessness of drivers who propel such machines with the speed of railway trains along crowded thoroughfares. If his light be such that he can see an object for only a distance of 10 feet, then he should so regulate his speed as to be able to stop his machine within that distance; and if he fails to do so, and an accident results from failure, no recovery can be had. This, it seems to us, is the minimum degree of care that should be required."

A 1935 Wisconsin case confirmed the *Lauson* case as to the speed rule and held that a motorist at night has duty of being able to stop within range of lights except where objects may not reasonably be distinguished. *Mann v. Reliable Transit Co.*, 217 Wis. 465, 259 N. W. 415.

Another case, cited often, which supports the general rule above set out, is a Michigan case, *Ruth v. Vroom*, 245 Mich. 88, 222 N. W. 155, 62 A. L. R. 1528 (1928). The driver of an automobile crashed into a standing trailer, without rear lights, standing across the center line of the highway in such a position that the lights on the truck cannot be seen on clear night, within few feet after he has run out of the black spot caused by the head lights of an approaching car, is negligent as a matter of law. The court said: "It is settled in this state that it is negligence as a matter of law to drive an automobile at night at such speed that it cannot be stopped within the distance that objects can be seen ahead of it; and if a driver's vision is obscured by the lights of an approaching car it is his duty to slacken speed and have his car under such control that he can stop immediately if necessary. The rule adopted by this court does not raise merely a rebuttable presumption of negligence. It is a rule of safety. It is not enough that a driver be able to begin to stop within the range of his vision, or that he use diligence to stop after discerning an object. The rule makes no allowance for delay in action. He must, in peril of legal negligence, so drive that he can and will discover an object, perform the manual acts necessary to stop, and bring the car to a complete halt within such range. If blinded by the lights of another car so he cannot see the required distance ahead, he must within such distance from the point of blinding, bring the car to such control that he can stop immediately, and if he cannot then see, shall stop." This case is followed in *Russell v. Szczawinski*, 268 Mich. 112, 255 N. W. 731 (1934).

In *Lindquist v. Thierman*, 216 Iowa 170, 248 N. W. 504, 87 A. L. R. 893 (1933), the driver of an automobile was held guilty of contributory negligence as a matter of law, where after seeing the headlights of a standing car facing towards him, he drove for some distance and in violation of a statute requiring the driver of a motor vehicle to stop "within the assured clear distance ahead," and was unable to stop before he collided with an unlighted truck which was back of the standing car, the court holding that the quoted words, as used in

the statute, which provided that no person shall drive any vehicle upon a highway at a speed greater than will permit him to bring it to a stop within the assured clear distance ahead, signified that the operator of an automobile when driving at night, as well as in the day, should at all times be able to stop his car within the distance that discernible objects may be seen ahead of it.

Statutes requiring drivers to maintain speed permitting them to stop within assured clear distance ahead are held applicable to both *day* and *night*. Motorist unable, because of insufficient headlights, to see pedestrian until within few feet, must be able to stop within such distance, and failure to drive at speed permitting such stopping is negligence *per se*. *Curtis v. Hubbel*, 42 Ohio App. 520, 182 N. E. 589 (1932).

Without denying that in many situations, and under many conditions, a driver of an automobile is, as a matter of law, guilty of negligence in driving at such a rate of speed as prevents stopping within time to avoid an obstruction within the range of his vision, there is a strong tendency in the recent cases to refuse to adopt that as a universal formula or a hard and fast rule. In *Rozycki v. Yantic Grain & Products Co.*, 99 Conn. 711, 122 Atl. 717, 37 A. L. R. 582 (1923), where the plaintiff collided with a truck left standing in the roadway without a tail light, when he was driving his car at 12 miles per hour, with blinding rain rendering vision impossible at a distance of more than 20 feet, it was urged that the facts did not show that the plaintiff had used due care, in that he drove his car at such a rate of speed that he could not bring his car to a stop within the distance in which he could easily see objects or obstructions ahead of him; but the court held that the trial court properly rejected the defendants standard and rightly applied the standard of care to be expected from a reasonably prudent person, which was a question of fact for the trial court.

The rule that it is the duty of the driver of an automobile to proceed at such a rate of speed as to enable him to stop within the distance disclosed to his view by his own headlights is so severe as to be impracticable where there is a heavy fog, which in some places is not so dense as to interfere with a reasonable view ahead and in others is so dense that the driver can see nothing ahead, since in the latter condition or locality the driver would be required to stop and the traffic would be retarded, which must be permitted to move on the highway at all times, but in a careful and prudent manner, with due regard for safety of others; and what is careful and prudent will usually be a question for the jury. *Devoto v. United Auto Transp. Co.*, 128 Wash. 604, 223 Pac. 1050 (1924).

The rule contended for that it is negligence as a matter of law for an automobile driver to drive at such a rate of speed that he cannot stop within the range of his lights, the court said: "The rule is entirely too broad, and if put in effect would have very serious and unjust results. It loses sight of the fact that one driving at night has, at least, some right to assume that the road ahead of him is safe for travel, unless dangers therein are indicated by the presence of red lights; it does not take into consideration the fact that visibility is different in different atmospheres, and that at one time an object may appear to be 100 feet away, while at another time it will seem to be but half that distance; it fails to consider the honest error of judgment common to all men particularly in judging distances at night; it loses sight of the fact that the law imposes the duty on all autos traveling at night to carry a red, rear light and the duty of all persons who place obstructions on the road to give warning by red lights or otherwise; it fails to take into consideration the glaring headlights of others and the density of the traffic and other like things which may require the instant attention of the driver; it does not take into consideration that a driver at night is looking for a red light to warn him of danger and not for a dark and unlighted auto or other obstruction in the road." *Moorehouse v. Everett*, 141 Wash. 399, 252 Pac. 157, 160 (1926).

The principal case, which declined to follow the asserted general rule that it is negligence as a matter of law to drive an automobile along a public highway in the dark at such speed that it cannot be stopped within the distance that objects can be seen ahead of it, seems to be more sound, as pointed out by the cases holding *contra* to the general rule. Under the rule thus announced it is difficult to conceive of any situation in which the driver of a motor vehicle would ever be entitled to recover for injuries resulting to him from a collision with any obstruction, however negligently placed or maintained in the highway. The better reasoning supports the view that conduct of a driver of a motor vehicle which is not shown to have been in violation of a law or ordinance should not be declared to be negligence as a matter of law, but that each such case must be considered in the light of its facts and circumstances, and the usual tests applied to determine whether there was a failure to exercise ordinary care in the operation of such motor vehicle. It should be a question of fact, and should be determined by the jury under proper instructions.

Another ill effect to the adherence to the general rule is, that the duty to provide barriers, lights or warnings to attract the attention of travelers upon the highway, would be so relaxed as to be easily avoided, if the duty is placed upon the driver of an automobile to drive it at such a rate of speed that it may always be stopped within the distance that objects and defects in the highway may be clearly seen.

*Alfred Anthony Sniadowski.*

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**GARNISHMENT—PAYMENT TO DEBTOR BY GARNISHEE BEFORE GARNISHMENT—PAYMENT IN ADVANCE.**—An action was brought by a judgment creditor and garnisher against the garnishee for violating the garnishment notice. The defense set up was that the wages due to the debtor-employee were paid in advance and therefore since nothing was owing from the employer he was not subject to the garnishee proceeding. In testifying the employer-defendant stated that the only purpose the garnisher had in instigating the proceeding was to force the employee and his wife to sign a quitclaim deed to certain property owned by them and upon which the garnisher-creditor had a mortgage. For this reason the employer and employee made the agreement to pay all wages in advance so that no debt would be owing between these two parties which could be garnished. This, the judgment-creditor, claims is collusion and a fraud upon them which vitiates the payment and makes the employer liable. The court *held* that the employer and employee-debtor may rightfully agree for payment in advance of wages to be thereafter earned, even though the purpose as well as the effect is to defeat the garnishment proceedings. *Campagna v. Automatic Electric Co.*, 12 N. E. (2d) 695 (Ill. 1938).

Certain settled rules of garnishment make such a ruling fundamentally sound although at first blush it appears to defeat all the necessary reasons for garnishment. That there must be a debt owing from the employer to the debtor is universally held throughout the states, although one state cannot look to the rules of this proceeding as applied in another state for the matter is entirely statutory. Another rule of garnishment is that no garnishable debt can arise from a contract for personal service where the employee is paid in advance. While it is true that a garnishment reaches not only debts due, but debts to become due, there must be a debt whether due or not when the garnishment is served. Just as a person would pay for a suit of clothes, paying for them in advance, so also may an employer pay for the services of his employee. Certainly under such a situation, there is no debt owing from the employer in such a case but rather a duty on the part of

the employee to perform the service. Such reasoning as this was set out in the case of *Bump v. Augustine*, 154 N. W. 782, 784 (Iowa, 1915). It is also pointed out that although such contracts to pay in advance may be coated with badges of fraud it is never presumed and the mere proof that the agreement was made between the two parties to the labor contract to avoid garnishment is not enough to show fraud and hold the employer.

Many distinctions have been drawn in these cases as to just what constitutes fraud sufficient to create liability on the part of the employer. In the recent case of *Peoples Bank v. Gore*, 172 So. 506 (Miss. 1937), a valuable man threatened to leave the employment of the Merchants' Grocery Company because a garnishment process had been served upon them for a percentage of his monthly wage. In order to retain his services the employer contracted to pay him in advance as to subsequent salaries. Although the plaintiff in the case claimed fraud, the court held that it was not fraud for a person to pay said wages in order to retain the services and that since the only reason for paying the wages was to avoid garnishment this, in itself, was not sufficient. This case contained many interesting ramifications on the subject of garnishment and payment in advance. The employee was to be paid each Monday morning for the subsequent week. Several times the treasurer of the company neglected to make this advance and as a result there was really a debt owing from the employer. The court held that as to this amount the Grocery Company was liable to the garnisher and must pay. It was then that the employer and employee set up the statutory exemption of fifty dollars and claimed that still nothing was owing to the garnisher for the amount not paid in advance did not add up to fifty dollars. The Supreme Court of Mississippi, I believe correctly, held that in such a case these statutory exemptions did not apply and also that once the advancement was not made on time, the entire salary for the coming week was due and subject to garnishment.

All of these cases in which there has been payment in advance rest on the idea of some fraud. The limits to which the employer and employee may go before they are considered to have acted fraudulently have developed to the bounds given the employer in the principal case. Although these proceedings are entirely statutory, courts consider, to some extent, decisions on the particular law of other states. In 1882, the case of *Alexander v. Pollock*, 72 Ala. 137, stated that although the employee made the statement that he would work no longer for the employer if he did not pay him in advance, yet he could therefore defeat the garnishment proceedings; nevertheless the court refused to rule on what the result would have been had the employer designed by voluntary collusion to make that the basis for the advanced payment of wages. In fact, the *dictum* of the court pointed out that had this been the case, fraud would have been provable and the result would have been liability on the part of the employer. However, in *Hall v. Armour Packing Co.*, 102 Ga. 586, 29 S. E. 139 (1897), the court stated that even after the service of garnishment upon the employer, if such an arrangement were made between the employer and employee, the result would be that payment in advance would defeat the garnishee proceedings, even though the collusion had existed. The court stated that because of the moral duty of the employee to support his family and himself, at least to the extent of their wants, such a method would be feasible and the court would not conclude there was any fraud. The court in *Chicago & E. I. R. Co. v. Bladgen*, 33 Ill. App. 182 (1889), stated that the method of paying an employee in advance was to be held valid; and it was in effect decided that it was immaterial whether such an arrangement was made for the purpose of escaping the effect of garnishee proceedings, or not.

Although in the decision in the principal case the court did not discuss the possibility of the employee leaving his position should the employer not consent to payment in advance, it displayed an equitable doctrine which would frustrate any plea of fraud on the part of the garnisher. The garnisher was attempting to

use this statutory weapon to secure property which otherwise he would not acquire. By forcing all the wages received by the employee-debtor to be paid to him in the form of garnishment payment, the employee-debtor could not pay off any of the mortgage that was held by the garnisher-creditor. In that way a foreclosure would result and all the rules of equity in relation to mortgages would be defeated. It is on this theory that the employer presented his case for an agreement to pay wages in advance. Had not the court permitted this defense, the garnishment proceedings would certainly prove a harsh weapon in the hands of the unscrupulous creditor. The court maintained that this was enough to remove any badge of fraud from the agreement of the advanced payment of wages and the garnishment proceedings was successfully circumvented. In this decision, the court stepped into a new field in declaring no fraud existed and gave to the subdued debtor another opportunity of relieving himself of some of the methods through which the creditor can exert his power.

*John De Mots.*

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NEGLIGENCE—DUTY OF OWNER OR OCCUPIER OF PREMISES TOWARD THOSE COMING THEREON—BUSINESS GUEST—PERSON SEEKING EMPLOYMENT.—The trend of decisions is to divide those whose right to enter an owner's premises is derived solely from the owner's consent into two classes: the first, commonly called "invitees" or "business guests," being those in whose visit the owner or occupier of premises has some interest, business or otherwise; the second, commonly called "licensees" or "bare licensees," being those to whom he accords his consent, their visit being for their own purely personal purposes. A business visitor is a person who is invited or permitted to enter or remain upon land in the possession of another for a purpose directly or indirectly connected with business dealings between them. A notice or advertisement that workmen are wanted is, of course, a business invitation to persons who desire to tender services of the sort usually needed in such places. *McGuire v. Bridger*, 49 Can. 632. The fact that a possessor operates a mine or large factory is usually a manifestation of willingness to receive applicants for employment. Only those who have reason to believe their services are the sort which the possessor can utilize in his business are entitled to understand either the character of the business or notice as constituting an invitation for them to enter as business visitors. This comment is concerned with the status of a person coming on the premises of another person in search of employment.

In *Albion Lumber Co. v. DeNobra*, 72 Fed. 739 (C. C. A. 9th, 1896), the deceased person was seeking employment in a logging camp. He was told to get on a logging train, the property of the defendant, go to a certain place for blankets, and return and go to work. While going for his blankets, the train was derailed, and he was killed. Damages were recovered. It appeared that the defendant's sole business was logging, and it had never authorized the use of the road for carrying passengers; but there was evidence that the defendant's general superintendent had instructed the plaintiff to use the train. There was also evidence that the trains were used, with knowledge of the defendant, for carrying people up and down the road.

In *Warner, Adm'r v. Mier Carriage Co.*, 26 Ind. App. 350, 58 N. E. 554 (1900), it was held that one who was injured by falling into an elevator shaft while being shown about the premises by the superintendent for the purpose of informing the injured party concerning the duties of the employment that he was seeking, could recover damages for the injuries sustained by him.



In *McDonough v. James Reilly Repair & Supply Co.*, 90 N. Y. Supp. 358 (1904), the court said that one who enters the premises of a machine shop to seek employment at the invitation of the foreman, and in accordance with the recognized custom acquiesced in by the proprietor, is more than a mere licensee, and the proprietor owes him a duty of ordinary care for his safety. The court said that the invitation extended to him was so connected with the purposes of the defendant's business as to render the acceptance of that invitation beneficial to the defendant. This case is to be distinguished from that of a mere seeker of employment. The latter comes upon the premises in furtherance of no recognized custom of business. The courts have sometimes held him to be a licensee simply. It would seem, therefore, that the custom of the business is the controlling factor. If the company is understood to extend an invitation, either express or implied, to the seeker of employment, then the custom of the business has dictated that the protection afforded the individual in search of employment is to be that owing to a business guest.

In *Zeigler v. Oil Country Specialties Mfg. Co.*, 108 Kan. 589, 196 Pac. 603 (1921), the plaintiff went to the defendant's plant and inquired for employment. The superintendent referred him to the foreman and pointed to the door through which the plaintiff should go to find him. The plaintiff went as directed, fell into a trap door and was injured. The plaintiff did not go to the defendant's premises for his own convenience nor to inquire about matters which concerned himself alone. He went to seek employment. His going to the premises of the defendant was for the possible benefit of both. The act of the superintendent in his direction of the plaintiff to the foreman took the plaintiff out of the class known as licensees, if he had ever been in that class, and gave him the status of an invitee.

In *Mideastern Contracting Corp. v. O'Toole*, 55 Fed. (2d) 909 (C. C. A. 2nd, 1932), deals with applicants for work in a construction gang. While in the temporary building of the contractor the question arises as to whether the invitees were entitled to a reasonably safe place for their entertainment. The defendant had wanted two gangs of men to work a night shift in the subway. Under its arrangement with the union it telephoned to its headquarters and asked for men to fill the gangs. The defendant had provided for shacks for their reception so that they might change to their work clothes. The improper lighting precautions resulting in a short circuiting constituted a failure in their duty to provide a reasonably safe place for them. The plaintiffs sued as business guests and that was their status, as evidenced by the express request for their presence and a consequent duty to afford them greater protection than that owing to mere licensees.

Where a hotel owner owed a person seeking employment in the basement of the hotel upon the owner's invitation the duty of using reasonable care to provide the premises in safe condition. The hotel's housekeeper was authorized to employ persons to do chambermaid work. The employment agency sent a Miss Denny to the hotel. Upon inquiry at the main desk, she was told to go to the housekeeper's office in the basement. Arriving in the basement, which was poorly lighted, she selected the only avenue open to her, descent down a ramp upon which cleats had been fastened to facilitate the employees' descent. It had been used for this purpose. Miss Denny slipped and injured herself. She recovered a \$2,500 judgment. By a poorly lighted condition of the basement and a worn condition of the cleats on the only mode of descent available to reach the housekeeper's office, the hotel failed to provide adequate safety for its business guest. *Denny v. Riverbank Court Hotel Co.*, 282 Mass. 176, 184 N. E. 452 (1933).

**TORTS—ASSAULT AND BATTERY—PROVOCATION.**—The plaintiff sued for wages due him since the time of his discharge by the defendant. He was hired as office manager on an employment contract, and he used such abusive language to the president of the defendant company that he provoked a fight between the president and himself. The lower court said that the defendant was justified in discharging the plaintiff. The plaintiff contended, on appeal, that since he had not provoked the assault on himself in such a way as to justify it, the company was not justified in discharging him. *Held*, on appeal, abusive language does not justify an assault on the user by the one to whom it is used, but provocation of a fight under these circumstances was a legal justification for the discharge of the plaintiff since these fights among the staff tend to interfere with the proper conduct of the employer's business. The reason, said the court, that abusive language will not justify an assault on the one who uses it is that the primary social obligation existing between men is that they refrain from injuring one another. As the court rather quaintly emphasized the point—"hard words break no bones." *Royal Oak Stave Co. v. Groce*, 113 S. W. (2d) 315 (Texas, 1938).

This decision follows no new rule in the law of Torts, for it arose concomitant with the admission of self-defense as a justification in assault and battery. *Chapelyn of Greye's Inn*, Y. B. 2 Henry IV, 8, pl. 40 (1400). In the latter case it was said that a man is not justified in defending himself if he can escape with his life. Of course although mere words or gestures will not justify an assault however insulting they may be, a person is not bound in every case to wait until struck before going to his own defense. If words are accompanied by such a present threat of force that a reasonable man would be justified in thinking that if he did not immediately defend himself he would be in danger of serious bodily injury, the one so threatened is privileged to use reasonable force to repel the threatened assault. *State v. Davis*, 1 Ired. L. 125, 35 Am., Dec. 735 (1840); *Handy v. Johnson*, 5 Md. 450 (1854); *Townsdin v. Nutt*, 19 Kan. 282 (1877).

It is because mere words do not constitute an assault that they will never justify force in protection against them however gross and offensive they may be. The law allows one to meet force with force, but not words with force. Words can do no harm unless slanderous and the law provides a remedy for that in an action for slander where there are the legal requisites. Most states adhere rigidly to the rule against allowing provocation by words as a justification for assault. *Grau v. Forge*, 183 Ky. 521, 209 S. W. 369, 3 A. L. R. 642 (1919); *Davis v. Robinson*, 94 Ind. App. 104, 179 N. E. 797 (1932); *Kramer v. Ricksmeier*, 159 Iowa, 48, 139 N. W. 1091, 45 L. R. A. (N. S.) 928 (1913); *Goldsmith v. Joy*, 61 Vt. 488, 17 Atl. 1010, 15 Am. St. Rep. 923 (1889); *Turk v. Martin*, 124 Va. 103, 97 S. E. 351 (1918); *Goucher v. Jamison*, 124 Mich. 21, 82 N. W. 663 (1900); *Chicago Mill & Lumber Co. v. Bryeans*, 137 Ark. 341, 209 S. W. 69 (1919). The use of force in self-defense is permitted merely for protection and not for the purpose of punishing another for insults.

The law weighs in determining questions of self-defense and provocation the proportion between the mode of resentment and the provocation. Thus because the interest in the security of the person against invasion is equivalent to a first principle, the law prefers to limit as closely as possible the excuses for the use of force against another's person. However, because the law recognizes that it is close to injustice to make a man stand by to be insulted by anyone who so chooses, the provocation will bear great weight in the determination of close questions. In the law of homicide provocation sufficient to make a man lose control of his passions will reduce the degree of a crime from murder to intentional manslaughter. In almost every case the court will examine the circumstances closely, where provocation is an element, to be certain that the provocation was sufficient enough and recent enough to affect the actions of a reasonable man.