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Notes on Recent Cases

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NOTES ON RECENT CASES

CRIMINAL LAW—Concealed Weapons—Revolver as a pistol within the statute prohibiting carrying a pistol concealed—Construction of statute prohibiting carrying concealed weapons.

Samuel Schraeder was indicted for carrying a concealed weapon, and upon conviction appealed. *Schraeder v. State,* 162 N. E. (Ohio) 647 (1928).

The accused, who was transporting whiskey in an automobile upon approach of the car of a sheriff, who was pursuing him, was seen to throw a .32-.20 Colt revolver, loaded with cartridges, into the weeds alongside the road. After being captured, the accused was indicted for carrying a concealed weapon, in violation of Sec. 12819 of the General Code, which provides that: "Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person, shall be fined—or imprisoned—". The indictment did not allege that the revolver was loaded with powder and ball, and counsel for the accused contended that a revolver is not a pistol, within the terms of the statute, and that the indictment must allege that the revolver was loaded with powder and ball, in order to constitute it a dangerous weapon within the meaning of the statute.

In passing upon this contention, the Court relied upon the definition of a revolver as found in Funk and Wagnall's Dictionary, to the effect that a revolver is "a firearm, especially a pistol—", and held that it was therefore unnecessary, in a prosecution for a violation of Sec. 12819 of the General Code, for the State to allege in the indictment that the revolver was loaded with powder and ball.

When asked about the revolver, the accused stated that he had it in a pocket attached to the left front door of his automobile; counsel for the accused raised the question whether a revolver kept in such a place was one concealed on or about the person of the accused, within the meaning of the statute.

The Court, in deciding this question, said: "There are certain fundamental rules of statutory construction which are very helpful in the solution of the problem here. In substance, they are that words in a statute should be construed as they are gen-

erally understood, and that effect must, if possible, be given to each and every word of an act. (Lewis' Sutherland, Statutory Construction, vol. 2, pp. 731-749). Applying these rules to the language under consideration, we conclude that our Legislature did not intend to use the words 'on' and 'about', in the phrase 'on or about his person', as interchangeable terms. As we see it the word 'on' in the expression 'on or about the person' means connected with or attached to, while the word 'about' means near by, close at hand, or in reach of. (*People v. Niemoth,* 322 Ill. 51; *Welch v. State,* 97 Tex. Cr. R. 617).

"We are aware that there are decisions in other jurisdictions utterly irreconcilable with the holding here. (*Cunningham v. State,* 76 Ala. 88; *State v. Brunson,* 162 La. 902; *Sutherland v. Commonwealth,* 109 Va. 834). But these decisions are, in turn in conflict with *Paulk v. State,* 97 Tex. Cr. R. 415; *State v. Mulconry,* (Mo. Sup.) 270 S. W. 375; *Barton v. State,* 66 Tenn. 105; and *State v. McManus,* 99 N. C. 555, which are authorities supporting the pronouncement here.

"In the instant case, the revolver during the chase was hidden in the pocket attached to the inside of the left front door of the automobile, and immediately beside the accused, who was driving the car, and, in our opinion therefore, was within the purview of Sec. 12819, General Code, concealed about his person."

J. J. Canty

CONSTITUTIONAL LAW—Legislative power of county commissioners to levy and collect assessments against the state—Mandamus to compel county commissioners to construct sewers benefitting state property.

The State, on relation of John Monger, Director of Health, made application for a writ of mandamus to compel the Board of County Commissioners of Fairfield County to construct a system of sanitary sewers and sewage treatment and disposal works for the service of territory lying contiguous to Buckeye Lake. *State ex rel Monger, Director of Health v. Board of County Commissioners of Fairfield County.* Supreme Court of Ohio, 1928. (162 N. E. 393).

The relator, as Director of Health, served on the Board of Commissioners an order requiring them to construct the system

of sewers in controversy. In his petition for mandamus to compel compliance with the order, the relator alleged that the Board had created a sewer district containing territory generally in accord with the territory described in the order, but that the order had not been complied with, and that the Board refused to comply with the order.

In sustaining a demurrer interposed by the defendants, on the grounds that the proposed improvement was in part for the benefit of state property, the Court said: "The demurrer to the petition will be sustained and a mandatory writ denied upon the ground that the present use of the state property, known as Buckeye Lake, is proprietary, and, the proposed improvement being in part for the benefit of such state property, the imposing of an assessment for the entire expense of such improvement upon a district less than the state would, under the provisions of chapter 4, title III, part second of the General Code, amount to an imposition on such district of a burden that belongs in part to, and ought to be borne in part by, the state at large."

But, after holding that a portion of the burden of making improvements on state property belonged to the state at large, the Court further held that this burden could not be collected from the state by means of an assessment against the state by a board of county commissioners. In the words of the Court: "The amount which ought to be borne in part by the state at large cannot be apportioned to and collected from the state under sec. 6602-33c, for the reason that the Legislature is without power to delegate to a board of county commissioners the legislative power to levy and collect an assessment against the state." Because of this lack of legislative power on the part of the Board of Commissioners to compel the state to contribute its rightful share of the burden, it was held that a writ of mandamus could not be granted to compel the Board to make the improvements. To grant the writ would have the effect either of placing upon a particular district a burden greater than could rightfully be imposed upon it, or of compelling the Board to exercise a power which it did not lawfully possess. *J. J. Canty*

AUTOMOBILES—The Negligence of the Passenger. With the introduction of automobiles the question has arisen for deci-

sion whether or not a passenger while riding in an automobile must be alert to discover dangers or be guilty of negligence as a matter of law.

In the case of *Schlosstein v. Bernstein* 142 A. 324 The Supreme Court of Pennsylvania answered this question in the negative. Plaintiff while riding in the car of one Emmett Thomas sustained painful injuries for which this action was brought. Defendant contends that the negligence of the passenger in not observing his approaching car must be deemed as negligence *per se.* The Court stated that passengers in automobiles will not be held guilty of negligence as a matter of law for failing to discover perils, quoting Justice Frazer:

"The tendency of our decisions is to hold a passenger responsible for his actual negligence in joining with the driver in testing a danger he knows exists and not for result of merge inaction in failing to discover dangers of which he is ignorant but might have discovered, had he been giving attention to the roadway ahead of him."

The Court of Pennsylvania has established a correct precedent, which will in probability be followed by other jurisdictions when confronted with a similar situation.

Anthony J. DeDario

BREACH OF MARRIAGE PROMISE—Infancy of promisor—Objections not in time. The case of *Corbin v. Gomes* 142A. 328 was an action in assumpsit for breach of promise to marry. Defendant pleaded the general issue, but was permitted without objection to prove his minority. On conclusion of the testimony defendant moved for a directed verdict on the ground that at the time promise was made defendant was under twenty one years of age. Plaintiff urged that motion should not be granted because no plea of infancy had been filed and that proof of infancy was inadmissible under plea of general issue.

The court held that infancy of the promisor was a complete defense to the action and that the failure to object to the evidence at the time it is offered is a waiver of objection that it is not admissable under pleadings. If evidence offered is not objected to party presenting it is entitled to benefit of any cause of action or defense established thereby. *Anthony J. DeDario*

DIVORCE—Willful neglect. This was the case of *Hammond v. Hammond,* California. It appears in 267 Pac. 893. May 26, 1928.

Action by Bernice N. Hammond against W. D. Hammond. Judgment for defendant and plaintiff appeals.

The action was for willful neglect and extreme cruelty. No other evidence on the latter cause.

It was shown that the plaintiff and the defendant had lived together until ninety days before the suit was brought.

The defendant claimed that he had always supported his wife and as evidence of this defense he produced many canceled checks, to show that he had provided her with money for her support.

The defendant offered as a defense the fact that his wife worked and that she kept the proceeds of her employment. The court was not informed as to the amount of her earnings, nor whether or not the sum was sufficient for her needs. The point of the case is that willful neglect is not established, if while living together, the wife works and is allowed to keep her earnings, so that she may provide for herself. Judgment affirmed.

John P. Berscheid

MECHANICS LIEN—What constitutes materials under Mechanics Lien Law. The case of *Arata and Peters v. Snow Mountain Water and Power Company et al,* appearing in 367 Pac. 932. (Cal.) May 28, 1928. Judgment for defendant and plaintiff appeals.

Plaintiff sued the contractor for foodstuffs furnished under a private contract. Plaintiff alleges that he furnished certain vegetables to the contractor who used them in supplying meals to the men employed in building a dam. Plaintiffs contention is that the foodstuffs were actually used in connection with the construction of the dam.

The essential question is whether the action will lie under Section 1183 Code of Civil procedure which provides for Mechanics Liens. This statute allows a mechanics lien to lie for materials furnished to contractors in the building of structures, buildings, etc. The point to be decided is whether or not vegetables come under the heading materials used and consumed.

There is a well defined distinction between provisions and supplies and materials. Provisions and supplies relate to a stock of food. Had the legislature meant the act to embrace food supplies, the court held, it would have incorporated the term in the Sec. 1183 Code of Cival Procedure.

This case is distinguished from the case where the contractor is under bond to pay for provisions and supplies furnished him. Judgment affirmed.

John P. Berscheid

NEW TRIAL. In the recent case of *Skinner v. Cron,* the Supreme Court of Iowa held, that a Juror's unauthorized visit to the scene of an automobile collision to ascertain how the collision occured and whether witnesses could have seen what they testified they saw, was prejudicial error. The court went on to say that the purpose of law in permitting the jury to view the premises under order of court and in charge of a sworn officer is to enable them better to understand testimony of witnesses and more intelligently to apply such testimony to issues, and not to make them silent witnesses in the case.

The application for a new trial on the ground of misconduct of the jury must be made by motion, but it is permissible for testimony in support of or against it to be made by affidavit under Iowa Code 1927, 11231, 11550, 11551, in view of provision that application must be by motion, and, if cause of jurisdiction be misconduct, motion may be sustained and controverted by affidavits.

89 Wis. 38, 112 Me. 289; 102 Minn. 81, 157 Mass. 579.

F. Earl Lamboley

WILLS. In the case of *Weber et al v. Weber et al,* the Supreme Court of Wisconsin held that in a will contest case in which contestants claimed executrix was incompetent to make will, judgment of circuit court entered in 1926 to the effect that testatrix in 1920 and "for long time prior thereto" was incompetent to make deed of her property held properly excluded, where will was executed in 1918, since finding of incompetency in 1920 was not evidence of incompetency in 1918.

F. Earl Lamboley

CONSTITUTIONAL LAW. The Supreme Court of Minn. held recently that in construing an article of the state constitution, the aim is to ascertain the intent of the legislators and people in adopting it. If the language used is unambiguous, it must control. The entire enactment is to be considered as a whole. If open to construction, the social, economic, and political situation of the people at the time of its adoption, and subsequent changes therein, may be looked to for any light thereby thrown on the subject. A practical common sense construction should be given. (*State ex rel Chase v. Babcock, State of Commissioner of Highways.*)

F. Earl Lamboley

CRIMINAL LAW. In the case of *State ex rel Preston, Co. Atty., v. Hamilton, Judge, et al,* the Supreme court of Iowa held that only the Governor has the sole authority, power, or right to remit, reprieve, commute, or pardon after conviction for crime, under Const. art 4, 16.

On the defendant's conviction for illegal possession of intoxicating liquor, provision in judgment for its suspension during the defendant's good behavior on condition of payment of costs held unauthorized and void, since the power to pardon or reprieve is vested only in the Governor, and attempted suspension of sentence did not constitute arrest of judgment, under Code 1927.

F. Earl Lamboley

WELLS V. HECT & CO.—Court of Appeals of Maryland, 1928. (142 A. 258). This was an action for personal injuries brought by the plaintiff, a woman riding as passenger in the automobile of one Caleb Griffin. While riding therein, the car collided with a truck operated by W. E. Miller, an employee of Hect Bros. & Co. In the lower court, the defendant got judgment on a motion for a directed verdict which the court granted. This is an appeal from that judgment.

The appellant (plaintiff in lower court) alleged in her complaint that the accident happened through the alleged negligence of the defendant's truck driver. The accident occurred after midnight while Miller was returning from a farewell house party at the home of another employee given for the benefit of a depart-

ment manager of the company who was leaving the defendant firm. It was proved at the trial that the employers of the firm had no knowledge of the use of the truck for said purpose nor any previous knowledge of the party until after the accident happened. The appellant failed to prove that Miller, the truck-driver, in using the truck at such a late hour at the time of the accident, did so in the course of his employment and as agent for the defendant. On the other hand, there was ample proof that the truck was used at the suggestion of the department manager, who had no authority to grant this privilege to Miller.

The only question upon appeal is whether or not the court erred in granting the defendant's prayer of withdrawing the case from the jury on a motion for a directed verdict. This presents the further question whether or not the evidence was sufficient to sustain the finding that Miller was not acting as agent of the defendant at the time of the accident. The upper court, in reviewing the case found that the only possible evidence the appellant could rely upon in her support was an admission made by Miller to a policeman shortly after the accident occurred to the effect that he had been out on business for the defendant company and that he was working overtime. This admission was made in response to the policeman's query demanding to know what he was doing with the truck at such a late hour. But the court held that in any event this evidence could not be admitted to prove agency. There must be proof of agency before the admission of an alleged agent can be offered to bind the principal, *Dearholt Motor Sales v. Merrit,* 105 A. 316 (Md.); *Marchall v. Haney,* 59 Am. Dec. 92 (Md.); *Tifer v. Clearfield and Cambria,* 62 A. 1122 (Md.); *Atwell v. Miller,* 69 Am. Dec. 206 (Md.); *State v. Benson & Company,* 100 A. 505 (Md.).

The Court further held that the rule in the state of Maryland is that when a vehicle owned by a defendant is run by one in the general employment of defendant and an accident occurrs, there is a prima facie presumption that the operator was acting within the scope of his employment. But this presumption, being only prima facie, is overcome by evidence to the contrary introduced at the trial. Where this evidence is uncontradicted and undisputed, it becomes a question for the court and in this case, the

lower court properly took the case away from the jury as the defendant's testimony was almost undisputed.

J. Angelino

ATTORNEY AND CLIENT—Power of court to conduct general inquiry into attorneys' conduct and to compel one of them to testify as to his professional acts.

Petition for a writ of habeas corpus for the release of relator from custody under a committment for contempt in refusing to testify in a general investigation made upon order of the Appellate Division, at the request of a bar association, into the conduct of members of the bar. Relator, a member of the bar, was subpoenaed and appeared at the investigation but refused to be sworn. He was called to testify as to his conduct in the procurement of retainers in cases involving personal injuries. His refusal to testify was a challenge to the inquiry as a whole and the court adjudged him in contempt and committed him to jail. His petition for a release on habeas corpus was dismissed and he appeals. (*People ex rel Karlin, v. Culkin, Sheriff.* N. Y. 1928. 162 N. E. 487).

The Court of Appeals held that the Appellate Division may direct a general inquiry into the conduct of members of the bar and compel one of them to testify as to his professional acts, subject to a claim of privilege, if answer would expose him to punishment for crime. The court stated that precedent could be found for this power both in the Judiciary law of the state (Laws 1912. c. 253, sec. 88.) and in the practice of the English courts since 1567 when by order of the Common Pleas a special jury was instructed to inquire into the various abuses which were then prevalent in England. The end of this inquiry was to discipline such attorneys as were found committing the abuses by disbarrment.

The power of the court in its discipline of its officers is a dual one. It prefers the charges and determines them. There must necessarily be a preliminary inquiry before a decision whether or not to prosecute can be reached. In these preliminary inquiries the power of using methods appropriate and adequate to obtain the needed information is thus implied from the power of conducting the inquiry. There is therefore the power to investigate by subpoena under the sanction of an oath.

That this power of inquiry may not, by its very nature, injure the reputation of the attorney summoned to appear before it the preliminary steps of the inquiry are held in secret and such secret inquiry is not a sitting of a court within sec. 4 of the Judiciary law, whereby sittings of courts are requred to be public. It is a quasi administrative remedy whereby the court is given information that may move it to other acts thereafter. (Matter of Richardson, 160 N. E. 655.)

Full protection against publicity was accorded to the relator in the proceedings but not choosing to avail himself of it, publicity came to him through his refusal to be sworn. Such refusal was a contempt and the order dismissing the writ is affirmed.

D. Donahue

NEGLIGENCE—Manufacturers of electric sewing machine held liable to members of buyer's family for negligence in failing to have article properly insulated.

The plaintiff, Helen Rae Feisel, a minor about the age of one year by her next friend A. F. Feisel brought this action against the defendant, The White Sewing Machine Company, for damages sustained through the alleged defective insulation of a cord attachment, which, with an electric sewing machine, was sold and delivered by the defendant to the plaintiff's mother. Upon trial there was a verdict and judgment in favor of the plaintiff and a proceeding in error was brought to reverse that judgment. (*White Sewing Machine Company v. Feisel.* Court of Appeals of Ohio, 1927. 162 N. E. 633.)

The evidence showed that the mother of the plaintiff purchased from the defendant the electric sewing machine which was delivered to the home where the plaintiff resided. There was sold with the machine an insulated cord on one end of which was a plug to fit an electric wall socket and on the other a plug so made that it could be attached to the sewing machine, the purpose being to furnish the electric power necessary to operate the machine.

On the tenth of September the mother of the plaintiff, after attaching the cord to the wall socket pulled off the cord where it was attached to the machine and went to quiet the plaintiff who was restless, when she picked the plaintiff up the end of the cord

which fitted the machine fell from plaintiff's mouth. At that time the rubber cap of the attachment slid down the cord and as a result the child was badly burned about and inside the mouth. It was afterwards shown that the threads on the attachment were so far destroyed as to permit the rubber cap to slide down so as to expose the bare wires or copper connections for about a half inch.

The court in delivering its opinion confirming that of the lower court stated the general rule that a manufacturer or seller is not liable for negligence to third persons with whom he has no contractual relations (*Huset v. Case Threshing Machine Co.* 120 F. 865) but stated that a machine that employs electricity in its operation is such a dangerous instrumentality as would require the manufacturer of such machine to use reasonable inspection of such parts as are used by it in the construction of the machine, such as the attachment and cap in this case, even those parts are purchased from another reputable manufacturer.

The court stated that an electric sewing machine was sold with the express purpose of being used in a home and with knowledge that there were children of tender years there and the danger of faulty insulation should have been foreseen. A duty rested upon the part of the manufacturer towards the members of the family residing in the home irrespective of contract.

The court further decided, in answering a contention of the appellants, that at the time of the accident the machine was not in operation, that although the machine itself was not in operation at the time, the cord attachment was charged with electricity, and as its only function was to conduct electricity, it was being used for the purpose intended when it was performing the only function it could perform.

D. Donahue

COURTS—Here the plaintiff in error was convicted of murder in the first degree and the death sentence imposed. It is clearly a case of circumstantial evidence. The accused had to testify through interpreters as he could not speak the English language. His testimony was interpreted by two young boys who spoke that Cuban language, the language that the accused was supposed to speak. The testimony of the defendant, as appears in the record, is not clear and the interpreters after trying to

interpret the defendants testimony were sworn in as witnesses and testified that he spoke the Cuban language but this did not appear to be the fact as the interpreters later testified that there was no difference between the Spanish and Cuban languages and that the accused didn't show that he knew anything about the Spanish language. Therefore by their own testimony it appears that the interpreters were not capable of understanding the defendant and while the record does not show the extent of the defendants ability to make himself understood in English it appears that an interpreter was necessary, else the court would not have called in and attempted to use interpreters.

The failure to administer the proper oath to a witness renders the witness incompetent. *Crockett v. Cassels* (Fla.) 116 So. 865. The subsequent swearing in of the interpreters as witnesses after the defendant had testified did not operate as a compliance with the above rule. Also, according to Brown, J. "Under the law a defendant in a criminal prosecution has the right, if he so desires, to testify as a witness in his own behalf and in order to make this right fully effective it is necessary that his testimony be made fairly intelligible to the jury when it is practically possible to do so. In this case it is quite clear that the testimony of the defendant was important to his defense, especially in view of the fact that the conviction was based on circumstantial evidence." In view of these circumstances as disclosed by the record the case was remanded for new trial. *Kelly v. State* 118 So. 1.

Marc Wonderlin

COMMERCE—Shipment of Poultry a Federal Matter Exclusively. This case involves suits brought by the Must Hatch Incubator Company, Inc., against I. L. Patterson, Governor of the state of Oregon, and others, and Roland H. Hartley, Governor of the state of Washington, and others, heard together by stipulation, before the U. S. D. C. Or., Wash. (*Must Hatch Incubator Co. v. Patterson,* 27 F. (2d) 447).

The plaintiff brings these suits to enjoin and restrain the enforcement of regulations of the states of Washington and Oregon, prohibiting the shipment into those states of baby chicks unless accompanied by official healh certificates, the plaintiff alleging the regulations to be in violation of the commerce clause of the

Constitution. The law is settled that a state may, in the exercise of its police power, legislate to protect its inhabitants, stock or plants from exposure to disease by prohibiting the introduction into it of diseased animals and plants, although interstate commerce is involved, subject, however, "to the paramount authority of Congress, if it decides to assume control".

So the question here is whether Congress has "assumed control" of the entire field of transportation of live poultry from one state to another, in so far as means for the prevention and suppression of contagious and infectious diseases is concerned. By acts of Congress; 21 USCA 120 et seq. Act Feb. 2, 1903, and 21 USCA 123 et seq. Act March 3, 1905; and the amendments thereto of Feb. 7, 1928, it seems clear that Congress intended to give the Secretary of Agrculture supervision of the shipment or transportation of live poultry, from one state to another, in this regard. The defendants do not question this authority. But it is suggested that in the absence of any action on the part of the Secretary of Agriculture, there is no invalidity in the state action.

Quoting from the decision in Oregon—*Washington Ry. & Nav. Co. v. Washington,* 70 L. Ed. 482, and basing the decision of the instant case thereon, the court stated, "The obligation to act without respect to the states is put directly upon the Secretary of Agriculture whenever quarantine, in his judgment, is necessary. When he does not act, it must be presumed that it is not necessary".

Accordingly a motion to dismiss was denied and interlocutory injunctions were granted.

The case is concise and well-reasoned and appears valuable for its copious citations in support of all the propositions involved; more valuable in that, though in indirect fashion, it tends to curb and restrict the ever-lengthening arm of the police power.

At the same time the opinion is a dangerous one and it is questionable whether or not this is a valid exercise of the administrative power of Congress. The writer believes the rule to be that when Congress remains quiescent on a matter within its jurisdiction, it is within the province of the states to take legislative steps in governing said matter, such legislation to be valid and effective until Congress does assume active jurisdiction. In the opinion Judge Rudkin reasons that Congress has assumed

control of the matter by virtue of its having, by acts of Congress, delegated this authority to the Secretary of Agriculture. This conclusion is dubious. When the Secretary of Agriculture does not act it is the same, in effect, as thought Congress had not acted in the matter, and hence, in such instance the state legislation should be valid. But to bind the states by the discretion or indescretion of the Secretary to act is to confer on an administrative officer a power most inconsistent with the principles of our government.

Judge Rudkin has the reputation of being a thorugh Federalist and it is possible that herein lies the force that directs his decision.

Chas. A. Haskell

LITERARY PROPERTY; EQUITABLE JURISDICTION; INJUNCTION; DAMAGES. This is a suit to restrain the infringement of a copyright, and to recover damages and profits. In April, 1927, the Atlantic Monthly published an article by Charles C. Marshall, attacking the candidacy of Governor Alfred E. Smith, based upon the adherence of the latter to the Roman Catholic Church. Upon the recommendation of the editor of the Atlantic Monthly, Governor Smith resolved to meet publicly these objections in an open letter also intended to be published in said magazine. The letter was sold outright to the Atlantic Monthly upon the condition that concurrent with its publication in that magazine, the letter should be given to the entire press of the country. With full rights to republish it, with or without giving credit to the magazine, a stipulation which was agreed to by those representing the Atlantic Monthly. The magazine then made public announcement that it would publish the reply of Gov. Smith to Marshall. The defendant ,the Post Publishing Co., learning of this, and failing otherwise to secure a copy of the letter, secured a copy thereof by bribing a watchman in the employ of the Atlantic Monthly. Having effected this despicable piracy the defendant proceeded to publish the letter on the 16th of April, the day before that assigned by the Atlantic Monthly for the publication of the letter. This is the infringement relied on as the basis of the present suit.

The court found that the plaintiff, The Atlantic Monthly, had a valid copyright as to the letter but that this suit must fail for the reason that the copyright had expired before the commencement of the suit, thus making the issuance of an injunction out of the question, and leaving no basis for equitable jurisdiction, and hence refusing to award damages. But despite this, District Judge Morton, proceeded to compute those damages to which the plaintiff would be entitled in an action at law.

The case offers interest not only because of the national character of the parties involved and the disclosure of the lofty ethical standards of the American Press, but also in that it traces the transition from the common law of literary property to our modern copyright laws, their causes and effects. Again is disclosed the fact that our procedure would merit improvement. A case is before the court and tried on the merits; a most despicable piracy is proven beyond a doubt, so much so that the court proceeds to compute and enumerate those damages to which the aggrieved party is entitled; then, because the party approached court through the portals of equity, he must withdraw, uncompensated, to return to the same tribunal with substantially the same case clad in the atttire of an action at law. Shades of the archaic past. (*Atlantic Monthly Co. v. Post Publishing Co.*, 27 F. (2d) 556).

Chas. A. Haskell