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NOTRE DAME LAW REPORTER ASSOCIATION
Notre Dame, Indiana.

SUPREME COURT OF NOTRE DAME

SIMPSON et al. vs CARSON as Admr.
No. 12

Sale—Sale "on Approval"—Conditional Sale—Title in Seller—When Passes—Purchaser Manifesting Approval—Subsequent Sale by Purchaser to Third Person—Not Sufficient Approval to Acquire Seller's Title —No Title in Third Person—Replevin by Admr.—Instructions Approved.

1. There are three transactions involving sale which are executory in character and do not in themselves operate to transfer title in property from owner or seller to purchaser, namely: (1)a bailment with option in the bailee to purchase; (2) a sale upon condition thereafter to be compiled with by the purchaser; and (3) a sale "on approval" or "on trial." where the purchaser has an option to buy if property meets his satisfaction or approval.

2. Where goods are sold on trial or approval or if satisfactory to the buyer. property in the goods does not pass until the buyer has expressly or impliedly manifested his approval or acceptance.

3. Where A delivers his horse to B upon the express agreement on the part of B that if the horse suits him he will execute to A his note with approved security, but if the horse does not suit him he will return it, and thereafter A dies and the administrator of his estate is appointed, and then B, without having executed his note to A or to such administrator, sells the horse to C, title to the horse remains in A. B acquires no title to the horse. passes none to C, and the administrator may maintain replevin to recover the horse.

4. The transaction between A and B is a sale "on approval"—it is a conditional sale on approval, and the only option B has under his agreement with A is the option to buy by executing his note with approved security to A or the administrator, and he can manifest his approval or acceptance of the horse in no other way.

5. Instructions in the record correctly stating the law as here outlined.

Action in replevin by the appellee, John D. Carson as administrator of the estate of Ray Stevens, deceased, against the appellants, Charles D. Simpson and Edward Williams. From a judgment in favor of the plaintiff, the defendants appeal. *Affirmed.*

Clarence R. Smith and William A. Miner for Appellants.

Edward J. Dundon and John J. Killilea for appellees.

VURPILLAT, J. The appellee, John D. Carron, as the duly appointed, qualified and acting administrator of the estate of Ray Stevens, deceased, filed complaint in one paragraph in the action of replevin, against the appellants, Charles D. Simpson and Edward Williams, alleging that, as such administrator, he was the owner and entitled to the immediate possession of a certain described horse, and that the appellants were unlawfully detaining the same. The case was submitted to a jury for trial upon the separate answers in general denial of the defendants, and a verdict was returned by the jury stating the plaintiff, appellee was the owner of the horse therein described, and entitled to the immediate possession thereof. Separate motions of the defendants for judgment *non obstante verdicto* and for a new trial were overruled and judgment entered on the verdict for the plaintiff.

The assignments of error relied on for reversal of the judgment are that the judgment is contrary to the law and the evidence, and that the trial court erred in overruling the separate motions for judgment *non obstante veredicto* and for a new trial.

The facts of the case as disclosed by the record and confirmed by the verdict of the jury are that Ray Stevens, appellee's intestate, agreed to sell to Charles D. Simpson "on approval" the horse in controversy. As conceded by appellants in their briefs, "the understanding was that Simpson was to take the horse and try him, and if the horse should suit him, give Stevens his note with approved security; but if the horse should not suit him, he was to return the horse to Stevens." Pursuant to this agreement Stevens delivered the

horse to Simpson. Some time thereafter Stevens died, and in due course the appellee was appointed and qualified as the administrator of his estate. Thereafter, the appellant, Simpson, without having executed his note with approved security as agreed, and without having done anything whatever to indicate his acceptance or approval of the horse delivered to him by Simpson, sold and transferred the horse to his co-appellant, Edward Williams. And at the time of the commencement of this action the appellant, Simpson, had not executed or offered to execute his note as agreed, and neither Simpson nor Williams, at the commencement of this action, had done or said anything whatever to indicate approval or acceptance of the horse in accordance with Stevens' contract to sell, unless the mere sale and transfer of the horse from Simpson to Williams without the knowledge or consent of Stevens or the administrator of his estate constituted such approval and acceptance.

Upon this state of facts appellants contend that Simpson became the owner of the horse and passed title to Williams, and that plaintiff, appellee, therefore cannot maintain this action to recover the horse. Appellants not only contend that the judgment is contrary to law, but that instructions Nos. seven and eight given to the jury by the trial court as the law of the case were erroneous, and that for the giving of either of such instructions it was error to overrule the motion for a new trial.

The instructions are in the record, and if numbers seven and eight complained of together with number six related thereto, correctly state the law applicable to the facts of the case, then the judgment must be affirmed, otherwise the appeal must be sustained. These instructions are as follows:

Instruction 6. If the jury find that the decedent, Ray Stephens, and the defendant, Charles D. Simpson, entered into negotiations for the sale and transfer of the horse in question, and that it was agreed by and between them that the defendant might purchase the horse upon the condition that he give to the decedent at some future time his promissory note for the horse in the sum agreed upon, and that the decedent delivered the horse upon that express cindition, then the court instructs you, such transaction was a conditional sale, and as such did not pass title in the horse to the defendant, Simpson, until such condition was complied with, until said defendant executed and delivered to the deceased or his personal representative in this case the promissory note to be given.

Instruction 7. If the jury find that the deceased, Ray Stephens, and the defendant, Charles D. Simpson, entered into negotiations by which it was agreed between them that said Simpson was to take the horse of plaintiff on approval—that is, was to take the horse with a view to purchase, and if the horse proved satisfactory to defendant, Simpson, said defendant was then to execute and deliver to Stephens his promissory note in the sum agreed upon, and if the horse did not prove satisfactory to defendant, Simpson. then defendant was to return the horse to Stephens, then and in that state of facts, the court instructs you the transaction constitutes a sale on approval, and such sale does not pass title to the defendant, Simpson, until such approval of the horse is actually

made and indicated by said defendant by the execution and delivery of his promissory note as agreed upon.

Instruction 8. If the jury find upon the foregoing instructions that the negotiation and transaction was either a conditional sale or a sale on approval, and that the condition was not complied with; or that the approval of the horse for purchase was note made by the execution and delivery of the note, then, and in either of said events, title to the horse did not pass from the deceased to defendant, Simpson. And if the jury further find that defendant Simpson, without complying with the condition of executing and delivering his promissory note, if a conditional sale, or without indicating his approval of the horse for purchase and sale, if a sale on approval, then said defendant acquired no title by the transaction and agreement with the decedent, and the property remained the property of the decedent and became the property of the plaintiff as administrator upon the death of Stephens.

And if the jury further find that said defendant, Simpson, in that state of facts transferred said horse to the co-defendant, Wiliams then said co-defendant also did not acquire title to the horse, and the horse remained the property of the plaintiff as against both defendants.

And the court further instructs the jury that such transfer of the horse from defendant, Simpson, to defendant, Williams, was a tortious conversion of the property of the plaintiff for which replevin may be maintained, and in such case, if the jury so find the facts from a preponderance of the evidence, the plaintiff is entitled to a verdict against the defendants, whether a demand was made for the return of the horse prior to the bringing of the action or not.

There are three transactions involving sale which are executory in character and do not of themselves operate to transfer the title from the owner or seller to the purchaser. One of these is a bailment with the option in the bailee to buy the property. The transaction cannot become a sale and pass title till the option is exercised. Cloke vs. Shafroth, 137 Ill. 393-27 N. E. 702. 31 Am. St. Rep. 375; Barnes vs. NcCrey, 75 Iowa, 267-39 N. 392-9 Am. St. Rep. 473; Chase vs. Washburn, I Ohio St. 244-59 Am. Dec. 623; State vs. Stockmaan, 30 Oreg. 36-46 Pac. 851; Dunlay vs. Gleason, 16 Mich. 158-93 Am. Dec. 231; Lyon vs. Lennon, 106 Ind. 567-7 N. E. 311. See 43 Cent. Dig., "Sales," Sec. 11. Another is the conditional sale, or tthe sale and delivery of property upon a stipulated condition thereafter to be complied with, as where a note or security in payment of the price is to be given. 35 Cyc. 326; 43 Cent. Dig., "Sales," Sec. 544; McCone vs. Eccles. (Nev.) 181 Pac. 134; Murray Co. vs. Satterfield, (Ark.) 187 S. W. 927; Platter vs Acker, 13 Ind. App. 417-41 N. E. 832; Admundson vs. Standard Printing Co. 140 Iowa 464-118 N. W. 789; Bonham vs. Hamilton, 66 Ohio St. 82-63 N. E. 597; Wise vs. Collins. 121 Cal. 147-53 Pac. 640. The third is the so-called sale "on trial" or "on approval." Where goods are sold on trial or approval or if satisfactory to the buyer, the property in the goods does not pass until the buyer has expressly or impliedly manifested his approval or acceptance. 43 Cent. Dig., "Sales," Secs. 557-8; Note to 50 L. R. A. (NS) 808; 35 Syc. 289; Mechem on Sales, Vol. 1, Secs. 657-

659; 24 R. C. L. 39; Glascott vs. Hazel, (N. C.) 13 S. E. 789; Pierce vs. Cooley, 56 Mich. 552-23 N. W. 310; Gates Iron Works vs. Cohen, (Colo.) 43 Pac. 667; State vs. Betz, 207 Mo. 589-106 S. W. 64; Osborn vs. Francis (W. Va.) 18 S. E. 591-45 Am. St. Rep. 859; Mulcahy vs. Dieudonne, 103 Minn. 352-115 N. W. 636.

Appellants' case involves more than a bailment with option to purchase. A sale was immediately projected by the appellant, Simpson, and the deceased, Stevens, by their transaction, and the trial court, therefore, correctly decided that such transaction constituted a conditional sale or a sale on approval, and accordingly instructed the jury. And the instruction number eight complained is correct in the statement of the law that "If the jury further find that defendant, Simpson, without complying with the condition of executing and delivering his promissory note, if a conditional sale, or without indicating his approval of the horse for purchase, if a sale on approval, then said defendant acquired no title by the transaction and agreement with the decedent, and the property remained the property of the decedent, and became the property of the plaintiff as administrator upon the death of Stevens."

Appellants are relying upon the proposition that in a case of sale on approval, the acceptance and approval to pass title in the goods may be implied from the conduct of the buyer, and they contend that the subsequent sale of the horse constituted such conduct. They invoke the rule, with the cases supporting it, that acceptance may be inferred from conduct of the buyer in treating goods in a manner inconsistent with any other view than that he is the owner of them, as where he sells or mortgages the goods to a third person after their receipt. This is the rule for determining what constitutes a sufficient constructive delivery and acceptance of goods to take a contract of sale out of the operation of the statute of frauds, and enable the seller to enforce such contract against the buyer. 20 Cyc. 247. The rule has no application for determining what constitutes "approval" in a sale "on approval." Not one of the cases involves such a sale, and such cases are therefore not in point. The case of Beedy vs. Brawman, Wooden Ware Co., (Me.) 79 Atl. 721, stressed by appellant, is such a case.

The buyer's manifestation of approval must be made and determined in terms of the agreement, and not by the arbitrary and independent conduct of the buyer himself. Thus where, by the terms of the agreement, an article is sold on thirty days trial, and is to be returned if not satisfactory, time is of the essence of the contract, and where the article is retained by the purchaser without complaint beyond the prescribed time, the sale becomes absolute and the purchaser liable to an action for the purchase price. O'Donnell vs. Wing & Son, 121 Ga. 717-49 S. E. 720; Dewey vs. Erie, 14 Pa. 211-53 Om. Dec. 533; International Filter Co., vs. Cox Bottling Co., 89 Kan. 645-132 Pac. 180; Hiltgen vs. Viever, 162 Wis. 315-156 N. W. 132; Buckeye Tractor Ditcher vs. Smith, 158 Iowa, 104-138 N. W. 817; Wolf Co. vs. Monarch Refrigerator Co. 252 Ill. 491-96 N. E. 1063-50 L. R. A. (NS) 808 and note. Where no time is stipulated for the trial or approval, the same result follows a purchaser's failure to return the article within a reasonable time after trial. Under-

wood vs. Wolf, 131 Ill. 425-23 N. E. 598-19 Am. St. Rep. 40; Pa. Iron Works vs. Hygeian Ice Co., 185 Mass. 366-70 N. E. 427; Watts vs. Natl. Cash Reg. Co., 25 Ky. L. Rep. 1347-78 S. W. 118; Bostian vs. DeLaval Separator Co., 92 Md. 483-48 Atl. 75; Gurney vs Collins, 64 Mich. 458 31 N. W. 429.

It is held, however, that retention beyond the specified or reasonable time for approval of the purchased article, makes the sale absolute only if the seller so elects. The mere failure to return the property or refusal to accept, or comply with the terms of sale agreed upon, cannot of itself operate to divest the seller of his title and transfer such title to the delinquent purchaser. Bradford Co. vs. United Leather Co., (Del. Ch.) 97 Atl. 620; Warren et al. vs. Russell (Ark.) 220 S. W. 831. In the first of these cases, upon the intervening petition of the Turner Tanning Machinery Co., to reclaim machinery placed on trial and kept by the purchaser till he went into bankruptcy, two years later, the Chancery Court held that "the seller could either resume possession of the machine, and so disaffirm the sale, or sue for the price, and so affirm it." The Chancellor says: "Particularly is this true where, as here, there was no limit of time within which the buyer could make the trial. As the counsel for the seller contended, the buyer never having definitely accepted the machine, and the seller never having limited the time within which the trial could be made, continued use of the machine even for nearly two years, could not be construed as an acceptance, and the seller could as against the buyer have chosen to terminate the trial and enforce by replevin a return of the property. This right he has against the receiver." Continuing, the Chancellor says: "In support of this is the case of In re George M. Hill Co., 123 Fed. 866-59 C. C. A. 354, where a machine sold on trial was used by the buyer until it became bankrupt and with continued refusals to accept, or pay for the machine. When the buyer was adjudicated a bankrupt, the seller sought to reclaim the machine. It was held that there was no acceptance which under the contract was essential to constitute a completed sale to divest the title of the seller, and the (buyer) having refused to accept till bankruptcy, whether, or not, the refusal was justified or made in bad faith, neither the bankrupt nor its trustee, could claim an acceptance as a basis of reclamation of the machine. Applying this principle here, there never was an acceptance of the machine on the part of the buyer and the seller continued to the end to regard it still on trial, which means that it had not been accepted. Though the seller might have regarded the detention and use as unreasonable and chosen to regard it as an acceptance, it may not chose to do so, and it remains unaccepted so far as the seller is concerned. The buyer cannot by his unreasonable detention acquire against the will of the seller a right to the goods sold on trial. The seller may acquire a right against the buyer by the detention, but not the buyer against the seller. This is both a reasonable and just principle. Title did not, therefore, pass to the buyer, even if there had been an agreement as to the prices."

One case seems to lend support to appellants' contention that the subsequent sale by Simpson to the co-defendant, Williams, constituted ap-

proval and passed title. This is the case of O'Donnell vs. Wing & Son, 121 Ga. 717-49 S. E. 720. After holding that "by retaining the instrument beyond the time limited, Jones, by his conduct, expressed such satisfaction as to make the sale absolute and entitle the seller to bring action for the price," the court says: "In addition to retaining the piano, it appears that Jones sold it to the defendant. There are cases which hold that under shipments on trial order the fact that the article so received is sold to a third person is itself such an expression of satisfaction as to complete the sale. (If the seller so elects, we say) Title then passes from the seller to him who has obtained possession under a trial order with the right to purchase on given terms if the property proves satisfactory." Although the Court says there are "cases" which so hold, only one is cited, namely: Delamater vs. Chappell, 48 Md. 253. We do not have access to this case. It is not reported in the Selected Case System of Reports. Corpus Juris recognizes it merely as supporting the proposition that "The failure of the buyer to exercise the option within a reasonable time, the article being retained, is equivalent to an acceptance." 35 Cyc. 236-237. And this is all that the main case itself is recognized as authority for holding. 35 Cyc. 290, e, 15. In fact the statement above quoted is nowhere, in case or text, adopted or recognized as the law. The general authoriities referred to by the court, following the statement, presumably as supporting it, give it no support, and another case referred to, the case of Furst vs Commercial Bank, 117 Ga. 472-43 S. E. 728, is acctually *contra*. The statement was wholly unnecessary to the decision, which had already been declared on the other proposition, and we regard it as *obiter dicta*.

That sale to a third person by one to whom property is sold on approval passes no title to such third person before the original sale has become absolute by manifestation on the part of the original buyer of his approval and acceptance of the property in the terms of the agreement is supported by the following cases: Warren et al, vs. Russell, (Ark.) 220 S. W. 831; Glasscock vs. Hazell, (N. C.) 13 S. E. 789; Crocker vs. Gullifer, 44 Me. 491-69 Am. Dec. 118; James Bradford Co., vs. United Leather Co., 97 Atl. 620; Gates Iron Works vs. Cohen, (Colo.) 43 Pac. 667.

As said by the court in Osborn vs. Francis, 38 W. Va. 312- 45 Am. St. Rep. 859-862, "If it is a sale on trial (or approval) it is said to be a sale on condition precedent—to buy if satisfied; that is the title does not pass until the condition prescribed is fully performed, although the possession is delivered, being rather a bailment with option to buy than a sale." The appellant, Simpson, having failed to expressly or impliedly manifest his approval or acceptance of the horse, and the appellee not having waived his right thereto, this condition precedent was not complied with, and Simpson therefore acquired no title to the horse.

But there is yet another condition precedent in this case to the passing of title to Simpson, and that is the giving of his note with approved security as expressly agreed by him. His transaction with the decedent, Stevens, was a conditional sale on approval. Mowbray vs. Cady, 40 Iowa; Glasscock vs. Hazel, (N. C.) 13 S. E. 789. After the first condition, that

is manifesting approval of the horse was complied with, there remained the second condition precedent, the giving of his note with approved security as agreed which was also essential to the passing of the title. 35 Cyc. 281 and 326; 43 Cent. Dig., "Sales," 543; Kutz, vs. Hart, 17 Ind. 329; Platter vs. Acker, 13 Ind. App. 417-41 N. E. 832; Millhiser vs. Erdman, (N. C.) 3 S. E. 521-2 Am. St. Rep. 334; Wise vs. Collins, 121 Cal. 147-53 Pac. 640; Wiggens vs. Snow, 89 Mich. 476-50 N. W. 991; The Drug Co., vs. Teasdall, (Neb.) 72 N. W. 1028. In the case of Glasscock vs Hazell, (N. C.) *supra,* the court says: "The authorities cited by the defendant do not satisfy us that the plaintiff was precluded from asserting title to the property. The plaintiff testified that Hill & Holden did not buy the wheel, but that it was delivered to them upon the understanding that they might purchase, after testing it, upon paying $50 cash, and securing the balance. These terms do not seem to have been complied with, and we do not see, under these circumstances, how the title passed out of the plaintiff." In that case a statute was involved making conditional sales void. In appellants' case no such statute applied.

It is repugnant to right reason and the sense of justice that appellants should be permitted to ignore and violate the express terms of the agreement with the deceased, Stevens, and that appellant, Simpson, should be permitted to sell the horse and convert the proceeds of the sale to his own use, and deny to the decedent's estate, both the horse and the note. The sale from Simpson to Williams not only did not pass title, but it constituted such a tortious conversion of the property as gave to the appellee the right to recover in this action without demand for the return of the property. Crocker vs. Gullifer, (Me.) 69 Am. Dec. 118 and note; Warren et al. vs. Russell, (Ark.) 220 S. W. 831. In the latter case the court, in approving an instruction similar to the one here complained of, said: "The effect of the instruction was to tell the jury that, in the event it found that the sale was on trial, the title to the property did not pass, and that it was the duty of the jury to find for the plaintiff against the defendant, Warren, (third person.) * * * In the present case there was no testimony tending to show that the buyer offered to return the horse, or that the seller waived his right to treat the sale as executory and to declare it an absolute one. The only disputed question of fact in the case was whether or not the sale of the horse was an absolute one, or a sale on trial. If the testimony of the plaintiff was true, and it was practically undisputed, the title to the horse did not pass out of Doyle to Earl Morton, and Warren, who traded for the horse, acquired no other or greater title than Morton. It follows the judgment must be affirmed."

The court's instructions correctly stated the law of the case, the judgment is not contrary to the law and the evidence; there is no error in the record, and the judgment is therefore in all things affirmed.

CARPER vs. WHITCOMB, by Next Friend
No. 14

Infant's Contract—Executed—Purchase Price Recovered—Consideration not Returned, Disposed of and Lost by Infant—Fraudulent Representations as to Age—Issues on Pleading—Instructions in Record Approved.

1. Where the infant, upon his arrival at majority, or at the time he seeks disaffirmance, still has the consideration received or any part thereof, he must, upon his disaffirmance, return it, for the law will not

allow him to repudiate his contract and at the same time retain its fruits as his own; but where he has disposed of, lost or wasted the same during his infancy his right to disaffirm is in no way dependent upon his making good to the other party what he received. 22 Cyc. 614.

2. Even though the infant by his fraudulent representations as to his age induces the other party to enter into the contract, such infant may nevertheless recover what he has paid under the contract if he returns or offers to return the consideration received by him; and an instruction to that effect is erroneous as against the other party to the contract.

3. Instructions stating the law of the case approved.

Civil action by appellee to recover two hundred dollars consideration paid to appellant on a contract executed by appellee as an infant. From a judgment in favor of appellee, plaintiff, the defendant, Carper, appeals. *Affirmed.*

Thos. Spencer McCabe and John F. Heffernan for appellant.

Arthur C. Keeney and Harry E. Denny for appellee.

VURPILLAT, J. The appellant prosecutes this appeal upon the following assignment of errors: (1) the judgment is contrary to the law and the evidence; (2) sustaining appellee's demurrer to the third paragraph of answer; (3) refusing to give to the jury appellant's tendered instruction number five; (4) overruling the motion for a venire *de nove;* (5) overruling the motion for a new trial. The fourth assignment is waived for failure of appellant to present or discuss it in his briefs.

This appeal must be determined largely upon a consideration of the trial court's instructions, which are in the record; and, since these instructions so fully set forth the facts of the case and the issues presented by the pleadings, as well as the law of the case as applied by the court on the trial, we quote in full those instructions material to this appeal, to-wit:

Instruction No. 3. Plaintiff in his complaint, for cause of action against the defendant, alleges that the plaintiff is an infant under the age of twenty-one years, and that he bought from the defendant on or about the 15th day of October, 1920, one horse, one buggy and one set of harness, for which plaintiff paid the defendant $200; that at the time of such purchase plaintiff worked as a day laborer; that the articles purchased were used for pleasure riding only and were bought for that purpose. Plaintiff further alleges that he sold the harness and buggy, and that the horse was condemned as unfit for use; that plaintiff is not in possession of any of the articles of purchase, nor has he any part of the proceeds of the sale of the harness and buggy. Plaintiff demands a recission of the contract of purchase made with the defendant and demands judgment ment for $200, the purchase money on said contract paid to the defendant.

To this complaint defendant answers first by denying all the allegations of fact made by plaintiff; second by confessing plaintiff's action but avoiding liability on the allegations that plaintiff purchased the articles mentioned in complaint for the use of himself and wife and family and that they were articles of necessity; and third, that to induce defendant to sell said articles the plaintiff falsely represented to defendant that he was twenty-one years of age; that plaintiff was at the time a full grown man with beard and moustache and having the appearances of an adult; that defendant had no means of knowing the facts and relied on the representations of the plaintiff; that plaintiff has not re-

turned or offered to return the articles purchased or any of them.

To the special facts alleged by defendant as a defence to the action plaintiff files reply in general denial.

Instruction No. 4. On these issues as stated the court instructs you that the plaintiff has the burden of establishing the facts of his complaint by a preponderance of the evidence; that evidence, which, after considering all the evidence in the case introduced by both the plaintiff and defendant, most satisfactorily tends to prove to the jury the existence or non existance of the facts upon which plaintiff relies for recovery. The theory of plaintiff's right of recovery in this action is that he was a minor at the time he purchased the articles as alleged and that, therefore, he is liable for the purchase price under the contract only at his option; that, having decided to exercise his option not to recognize the contract, but to rescind the same, he is entitled to recover the $200 alleged to have been paid to defendant under said contract. On this branch of the case the court instructs you that it is a general rule of law that an infant—that is a person under the age of twenty-one years— is liable on his simple contracts, such as this, only at his own option, and may avoid such liability and rescind such contract.

Instruction No. 5. And the court instructs you that as a general rule of law an infant may rescind his simple contract and recover back such money or property as he has parted with thereunder. The court instructs you that where such contract is an executed one, and the infant plaintiff has the consideration passed to him, he should return or offer to return the same if within his power to do so; but that, if he has not the consideration which he received, even though he may have wasted or lost the same, then he is entitled to recover without having returned or offered to return the consideration received by him. Plaintiff alleges that he did not have the articles at the time he began his action; that the horse had been taken and condemned, and that the harness and buggy had been sold and that he also did not have the proceeds of such sale. If you find by a pre ponderance these facts and the other facts alleged by plaintiff, then your verdict should be for the plaintiff in such sum as the evidence shows the real purchase price to be which plaintiff paid to defendant; unless you should find the facts to be as alleged by defendant in either his second or third paragraphs of answer.

Instruction No. 6: Defendant first alleges that the articles purchased by the plaintiff were necessaries for the use of plaintiff and his family. On this issue the defendant has the burden of proving such facts by a preponderance of the evidence in the case. Necessities or necessaries are such things as are reasonably required for the board, lodging, education, clothing and sustainance of the infant according to his status or condition in life and society. And if the infant is a married man, as alleged in this case, then the requirements for the support of the family and all the members thereof must be considered as necessities along with those of the infant himself. The court instructs you that a horse, buggy and harness may or may not be considered a necessity, depending upon the means of livlihood, the mode of living, the conditions and demands for the use of such articles, those for whose use they may be required,

whether needed for actual use in the living conditions of the minor and his family or whether constituting a mere pleasure and apparently serving no other purpose. The court instructs you that it is a question of fact whether the horse, buggy and harness contracted for in this case were or were not necessaries in the situation and conditions of the plaintiff, as a minor, and is therefore for the jury to determine from a careful consideration of all the evidence in the case, that introduced as well by the plaintiff as by the defendant.

Instruction No. 7. The court instructs you that if you should find from a preponderance of the evidence in the case that the articles in question were procured by the fraudulent or false representations of the plaintiff as to his age made for the purpose of so procuring them, and that the defendant had no knowledge of such fact of plaintiff's infancy but relied upon the false statements of the plaintiff in entering into the contract, then before the plaintiff could recover he would have to return or offer to return the property received under the contract, and if you find that such false representations were made and relied upon by defendant as alleged, and you further find that plaintiff did not return or offer to return the horse, buggy and harness, then plaintiff would be barred in this action because, although he may rescind his infancy contract and recover his consideration, he may not do so in a case where, as alleged by defendant, the infant procured such consideration by fraud, for in this case the consideration must be returned or offered to be returned before he can avoid or rescind such infancy contract. If, however, the defendant has failed to establish by a preponderance of the evidence the false representations of the plaintiff alleged as a defence, then plaintiff is entitled to recover whether he returned or offered to return the property or not, provided you find as alleged by plaintiff that he did not have and does not now have the property, as you have heretofore been instructed.

By the fifth of appellant's instructions, refused by the court, the court was requested to instruct the jury that "If you find that plaintiff misrepresented his age to the defendant, thereby inducing defendant to contract with him, then the verdict should be for the defendant." This instruction was properly refused for four reasons. (1) It does not state the facts constituting the elements of fraud which the jury must find, namely, that plaintiff falsely stated the fact of his age, with an actual or imputed knowledge that it was false, with intention to deceive the defendant, and that defendant relied and had reason to rely on such statements, and was thereby deceived and induced to enter into the contract with plaintiff. As to these elements of fraud, see Anson *on Contracts* 199; Chapin *on Torts*, 396 Eaton *on Equity* 288; Cobby vs. Buchannon, 48 Neb. 391-67 N. W. 176; Watkins vs. Billings, (Ark.) 42 Am. Rep. 1; Putnal vs. Walker, (Fla.) 55 So. 844-36 L. R. A. (NS) 33 and note; Sewell vs Sewall, 92 Ky. 500-18 S. W. 162-36 Am. St. Rep. 606; Damron vs. Com., 110 Ky. 268-61 S. W. 459-96 Am. St. Rep. 453; Note to 18 Am. St. Rep. 636. (2) The law does not preclude or estop an infant from avoiding or disaffirming his contract on the ground of his fraudulent representation that he was of age when entering into such contract. 22 Cyc.

611; 27 Cent. Dig., "Infants," Sec. 100; 14 R. C. L. 241, Sec. 22; Annotation, 6 A. L. R. 416; Burdette vs. Williams, 30 Fed. 697; Raymond Motorcycle Co. vs. Adams, 230 Mass. 54-119 N. E. 359; Laundry Co. vs. Adams, (Ky.) 208 S. W. 68; Wieland vs. Kobic, 110 Ill. 16-51 Am. Rep. 676; Book Co. vs. Connelly, 206 N. Y. 188-99 N. E. 722-42 L. R. A. (NS) 1115; Ridgway vs. Herbert, 150 Mo. 606-51 S. W. 1040-73 Am. St. Rep. 464; Tobin vs. Spann, (Ark.) 109 S. W. 534-16 L. R. A. (NS) 672; Carpenter vs. Carpenter, 45 Ind. 142; Price vs. Jennings, 62 Ind. 111; Conrad vs. Lane, 26 Minn. 389-4 N. W. 695-37 Am. St. Rep. 412; Whitcomb vs. Joslyn, 51 Vt. 79-31 Am. Rep. 678. In some states the infant is estopped by statute. Decisions applying such statutes are not in point here. Nor are those decisions in point which deny the infant relief in equity for violating two maxims in seeking equity with unclean hands and without doing equity. (3) the tendered instruction was properly refused because the proposition of law applicable to the case was correctly stated to the jury in instruction number seven, *supra*. Indeed, the trial court's instruction is more favorable to appellant than some courts are willing to approve, in that the infant's right to recover from appellant was stated to be upon condition that the infant or offer to return the property received by him. (4) the issue whether or not the appellee made fraudulent representations as to his age and thereby induced the appellant to make the contract was clearly presented to the jury by the trial court's instructions, particularly number seven, and was decided adversely to appellant. The jury having found no fraud on appellee's part, the instruction refused would have had no application, and the refusal to give such instruction was therefore harmless.

There was no error in sustaining plaintiff's demurrer to the appellant's answer that the plaintiff had not returned or offered to return the property or consideration received for the purchase money sought to be recovered by the plaintiff. These facts constitute no bar to plaintiff's cause of action. We think the trial court's exposition of the law on this branch of the case was clearly and correctly stated. In support thereof we are content to rely on the statement contained in Sec. 5 of 22 Cyc. 614, as follows: "Where the infant, upon his arrival at majority, or at the time he seeks disaffirmance, still has the consideration received or any part thereof, he must, upon his disaffirmance, return it, for the law will not allow him to repudiate his contract and at the same time retain its fruits as his own; but where he has disposed of,, lost or wasted the same during his infancy his right to disaffirm is in no way dependent upon his making good to the other party what he received, for the privelege of repudiating the contract is accorded to an infant because of the indiscretion incident to his immaturity; and if he were required to restore an equivalent where he has wasted or squandered the property or consideration received, the privilege of repudiating would be of no avail when most needed. There have been distinctions attempted to be made between executory and executed contracts and between seeking relief at law and in equity, but with only a few exceptions the rule stated has governed the decision regardless of the facts relied on as distinguishing." See also 14

R. C. L. 238, Sec. 20; 27 Cent. Dig., "Infants," Sec. 157. The following are some recent cases sustaining this statement of the law: Perelson vs. Podolsky, 191 Ill. App. 589; Waller vs. Chuse Grocery Co., 241 Ill. 398-89 N. E. 796-132 Am. St. Rep. 216 and note,- 28 L. R. A. (NS) 128; Bank vs. Casey, 158 Iowa 349-138 N. W. 897; Gray vs. Grimm, 157 Ky. 603-163 S. W. 762; Barr vs. Carr Co., 172 Mich. 299-137 N. W. 697; Chandler vs. Jones (N. C.) 90 S. E. 580; Lambrecht vs. Holsaple, 164 Wis. 465-160 N. W. 168; Turner vs Ry. Co., 127 Tenn. 673-156 S. W. 1085; Fassett vs. Seip, 249 Pa. 576-95 Atl. 273; McGuckian vs. Carpenter, (R. I.) 110 Atl. 402; McGraal vs. Taylor, 167 U. S. 688-17 Sup. Ct. 961-42 L. Ed. 326; Blake vs. Harding (Utah) 180 Pac. 172.

Early decisions in some states adopted the contrary rule here invoked by appellant. Some of these decisions have been overruled, some modified. Thus Bartleet vs. Cowles, 15 Gray (Mass.) 445 is expressly overruled by the case of Bartlett vs. Drake, 100 Mass. 174-97 Am. Dec. 92-I Am. Rep. 101, and the new rule has been adhered to in recent decisions. See McGuckian vs. Carpenter, *supra*. Bingham vs. Barley, 55 Tex. 281-40 Am. Rep. 801, and other Texas cases to the same effect are practically overruled in Bullock vs. Sproules, 93 Tex. 188-54 S. W. 661-78 Am. St. Rep. 849-47 L. R. A. 326. The case of Taft vs. Pike, 14 Vt. 405-39 Am. Dec. 228 and other cases are clearly modified by the case of Price vs. Furman, 27 Vt. 268-39 Am. Dec. 194. The great weight of authority and the trend of modern decisions are against the rule invoked by appellant.

The doctrine stated in Reeve's *Domestic Relations* pg. 254, Ch. 2, followed by some courts, to the effect that where the infant's contract was clearly beneficial to him, the consideration must be returned, can have no application to appellant's case, for here the infant's contract was decidedly detrimental to him and secured him no benefits..

Three cases considered by us are strikingly analagous in point of fact to appellant's case, and all three are adverse to appellant's appeal and sustain the right of appellee to recover. In Whitcomb vs. Joslyn, 51 Vt. 79-31 Am. Rep. 678, where an infant by misrepresenting his age bought a wagon, it was held that the infant was not estopped to avoid his contract and recover the money paid. In McGuckian vs. Carpenter (R. I.) 110 Atl. 402, the infant's fraud was not an issue, but recovery of the purchase price of a wagon, horse and harness was sustained where the infant had disposed of the wagon and harness and the horse had become worthless. In White vs. Branch, 51 Ind. 210, where the horse purchased by the infant had become of no value, return was held unnecessary to the right of recovery.

The trial court's instructions correctly state the law of the case, and the judgment is thherefore not contrary to the law. The verdict is amply supported by the evidence and the motion for new triial was properly overruled. There is no error in the record and the judgment is affirmed.

BRIEF OF THOS. SPENCER McCABE IN CASE OF CARPER vs. WHITCOMB.

State of Indiana
County of Joseph
In the Notre Dame Supreme Court
Marshall Carper, appellant,
vs.
James Whitcomb, by next friend, appellee.
Brief for appellant.

1. NATURE OF THE ACTION

This was an action brought by James Whitcomb an infant altho married and father of a child. The plaintiff, represented in the action by his next friend, Thomas Rees, seeks to rescind a contract entered into with one Marshall Carper, in which Whitcomb purchased for a consideration of two hundred dollars a horse, a buggy and a set of harness. Prior to the bringing of the action the plaintiff has disposed of the buggy and harness and the horse has been condemned by the officers of the Humane Society. Plaintiff asks for a return of the consideration paid by him to the defendant in the sum of two hundred dollars.

2. ISSUES PRESENTED

The plaintiff filed a complaint in two paragraphs alleging fraud in the first as a ground for recision and infancy in the second. The defendant demurred separately and severally to the complaint and the demurrer to the first paragraph was sustained and to the second paragraph overruled. The plaintiff's cause then went to trial on the single paragraph of complaint alleging infancy. The defendant filed an answer in five paragraphs viz: 1st, A general denial; 2nd, Confession and Avoidance, alleging that the articles in question were proper items of family expense; 3rd, confession and avoidance, claiming that a return of consideration was a prerequisite to avoidance of an infant contract; 4th, Estoppel, alleging that plaintiff had made false representation in regard to his age and thus induced defendant to contract with him; 5th, Set-off, alleging that the depreciation of the articles in question by reason of plaintiff's use and misuse of them and the value of the benefit he received from them should be deducted from the sum asked by the plaintiff.

The plaintiff's demurrers to paragraphs three and five of the answer were sustained and accordingly those paragraphs were stricken out of the answer. Trial was had by jury and a verdict of two hundred dollars for the plaintiff was returned by them. Before judgment was entered the defendant made motion for a venire do novo which the court overruled. Defendant then filed a motion for a new trial which motion the court also overruled whereupon the defendant prays for an appeal which is granted. The defendant then filed an appeal bond with approved sureties and also filed a bill of exceptions.

3. ERRORS RELIED ON FOR REVERSAL

1. The judgment is contrary to the law and evidence.
2. The court erred in refusing to give to the jury defendants instruction numbered five.
3. The court erred in overruling appellants motion for a venire do novo.
4. The court erred in overruling appellants motion for a new trial.

SYNOPSIS OF THE EVIDENCE

The plaintiff took the stand and his testimony was substantially as follows: That he was a minor, married and the father of one child; that he bought the horse, harness and buggy from the defendant for a consideration of two hundred dollars; that the horse was found to be of little or no use; that he sold the harness and buggy; that his sole income was his wages earned as a day laborer; that he had neither horse harness nor buggy at the time the action was begun. In corroboration of this evidence the plaintiff introduced Mr. Edward Dundon, who said that he purchased the buggy and harness in question; Mr. Fred Dressel, an alleged officer of the Humane Society who had taken the horse into custody; Mr. Marcus Healy, who testified that he treated the horse for heaves prior to its seizure by the officers; Mr. James Murphy, who testified that the plaintiff, James Whitcomb, worked for him as a day laborer at the rate of twenty dollars per week.

The defendant's case consisted substantially in showing thru the testimony of Marshall Carper defendant, that the sale had been culminated only after the plaintiff's representations of majority, upon which he relied and acted. Other evidence brought out by Messrs. Brady, Hughes and Foley adduced the fact that the plaintiff had grossly abused and mistreated the horse, that he still had it in his possession. These gentlemen together with Mr. James Shaw set forth evidence establishing the plaintiff to be a man of moderately wealthy circumstances with an income independent of his wages. The testimony of Mr. C. B. Foley, the only duly qualified horse expert introduced during the trial, showed the horse to be in perfect condition at the time of the sale by defendant to plaintiff.

5. POINTS AND AUTHORITIES.

The important points involved in the decision in this case may be summarized as follows:

1. The triaal court should have given defendant's instruction No. 5 to the jury.

Commander vs. Brazile, 9 L.R.A. N.S. 1117.
International Land Co. vs. Marshall, 19 L.R.A. N. S. 1056.
County Board of Educators vs. Hensley, 42 L.R.A. N.S. 643.

2. The plaintiff's failure to return or offer to return any of the consideration should have been available as a defense to the defendant hence the court below erred in sustaining plaintiff's demurrer to third paragraph of answer.

Ruling Case Law, Vol. 14, page 240
Parson's Contracts, Vol. 1, page 347.
Reeves Domestic Relations, Chap. 2, page 254.
Taft vs. Pike, 39 Am. Dec. 228.
Hall vs. Butterfield, 47 Am. Rep. 209.
Engleberg vs. Pritchet, 26 L.R.A. 177.
Johnson vs. Northwestern Mutual Ins. Co., 26 L.R.A. 187.
Craig vs. Van Beboee, 100 Mo. 584
Riley vs. Mallory, 33 Conn. 206.
Shurtleff vs. Millard, 34 Am. Rep. 640.
Valentine vs. Canali, L.R. 24 Q.B. Div. 166.

6. ARGUMENT

The counsel for the appellant believes firmly that there are a number of errors in the judgment rendered in this case below, any of which are sufficient to sustain a reversal but for various causes we shall here discuss, analyze and consider only two of the many outstanding features

which make this case reversible. They are, first: the refusal to give defendant's instruction numbered five, and secondly the sustaining of the defendant's demurrer to the defendant's third paragraph of answer.

The instruction in question merely stated that if the plaintiff had misrepresented his age to the defendant thereby inducing the defendant to contract with him then the judgment must be for the defendant. Clearly this is a well founded statement of the law in this case. It has long been the rule that the doctrine of estoppel is applicable to infants who make false statements as to their age thus inducing others to contract with them.

In the decision of Commander vs. Brazile, 9 L.A. N.S. 1117, the facts are similar to those of the case at bar. An infant in order to induce another to enter into a contract with him, made false assertions to the effect that he was of full age. It was held that such infant was estopped from disaffirmance of the contract.

In reading the opinion on this case we find the following dictum:

"Infants are shielded from their own improvidence and their contracts as to them are of no force except as to necessaries, *but* when a minor whose appearance justifies belief in such statement, induces a contract which is reasonable by false assurance that he is of the age of majority, he should be and is estopped to repudiate it and should be and is compelled to carry it out or to fully restore the status quo by returning what he got or making compensation if he has wasted it."

Can the learned court refuse a reversal in the face of such a decision? This is not an isolated case as there are others to the same effect. In the case of The International Land Co., vs. Marshal, 19 L.R.A. N.S. 1065, where a minor had represented himself as being of age in entering a contract and later sought to have it set aside, it was held that such a person may disaffirm only by restoring the status quo. If this can not be done then no disaffirmance may take place. Of like import is the case of the County Board of Education vs. Hensley, 42 L.R.A. N.S. 643. These decisions are by no means extraordinary or far fetched. They simply state the only logical and common sensible solution to the question involved. Surely this court shall not do otherwise than follow these universally accepted rulings.

The second question here to be considered is nothing more nor less than that of the necessity for restoring the other party to status quo before recovery may be had by the infant. On this point there is such an unlimited abundance of authority and decisions in appellant's favor that it is difficult indeed to select the ones most applicable. We shall first consider a statement laid down almost a century ago and widely adhered to ever since. It is that of the Honorable Judge Reeve, a superior judge in the Connecticut court and later a state chief justice. In his carefully prepared work on Domestic Relations on Page 254 he says:

"It is a universal rule that all executory contracts which are voidable on the grounds of infancy may be avoided during as well as thereafter."

To this general rule the judge makes these exceptions, viz:

1. "Contracts for necessaries."
2. "Contracts to effect what the

infant is compellable to do in chancery as the execution of a trust, etc."

3. "Contracts under which the infant has so enjoyed or availed himself of the consideration that the parties cannot be restored to their original position."

This third class fits the case at bar exactly. The appellee has so availed himself of the property as to be unable to return or restore it as is seen in the foregoing review of the case. This view is well supported by a long line of decisions among which we find Johnson vs. Northwestern Mutual Life Insurance Company in 26 L.R.A. page 187. Here an infant rescinded a contract of life insurance and sued to recover the consideration by him paid. The court held that where the personal contract of an infant is fair and reasonable and free from any fraud or over-reaching on the part of the other person, and has been wholly or partly executed on both sides, so that the infant has enjoyed the benefit thereof, but has parted with what he received, or when the benefits are of such a nature that they cannot be restored, then he cannot recover back what he has paid. This theory is certainly applicable to the case in hand. It is accepted and supported by no less an authority than Parsons in his Law of Contracts where on Page 347 he says:

"If an infant advances money on a voidable contract which he afterwards rescinds he cannot recover this money because it is lost to him thru his own act and the privilege of infancy does not extend so far as to return this money unless it was obtained by fraud."

We see this line of reasoning evidenced in the case of Taft vs. Pike, 39 Am. Dec. 228. Here an infant seeks to rescind an agreement and recover money paid thereon without returning the consideration he had received. It was held that where an infant has executed a contract on his part by delivery of property or payment of money he may not disaffirm the same without restoring to the other party what he has received from him.

"To protect infants from fraud and improvision," said the court in the decision of Hall vs. Butterfield, 47 Am. Rep. 209, "which from their want of understanding and immaturity of judgment they are exposed, they are permitted to allege their want of capacity to make a contract. But this privilege is to be used as a shield rather than a sword; not to do injustice but to prevent it."

Let it be said here that the counsel is fully aware of the various disabilities of infants to make binding contracts but we can see, as suggested in the foregoing opinion, the disastrous results that would be forthcoming if a liberal construction of the rule prevailed, thus permitting the promiscuous and wholesale disaffirmance of minority contracts, recovery had by the infant without repaying his consideration. This is precisely what an English judge had in mind when he said in the case of Valentini vs. Canadi, L.R. 24 Q.B. Div. 166.

"Where an infant has paid for something and has consumed or used it, it is contrary to natural justice that he should recover back the money he has paid."

However it is scarcely necessary that we refer to foreign opinion when we find the same view upheld in so many of own decisions. For instance in the decision of this question

in the case of Riley vs. Mallory in 33 Conn. 206, we read as follows:

"The privilege of an infant to avoid contracts which are injurious to him and rescind those which are not, is not an exception to a general rule but rather a general rule with exceptions."

The court proceeds at some length to point out these exceptions naming as the third:

"Executed contracts where the infant has enjoyed the benefit and cannot restore the other party to his original position."

In this action as heretofore suggested the appellant has proved that the appellee did enjoy the benefits of his executed contract and he himself admits a failure to restore the property, therefore let us say in conclusion that because of the rules pointed out and the various authorities cited thereon we feel that this honored court should and will reverse the decision in the court below.

Respectfully submitted,

T. SPENCER MCCABE.

BRIEF OF ARTHUR C. KEENEY IN CASE OF CARPER vs. WHITCOMB.

State of Indiana
In the Notre Dame Supreme Court,
Marshall Carper, appellant,
vs.
James Whitcomb, by his next friend,
appellee.
Brief for appellee.

1. NATURE OF ACTION

This was an action brought by James Whitcomb, an infant, thru his next friend, Thomas Rees, to recover two hundred dollars paid by the infant on a contract entered into with Marshall Carper, an adult, for a horse, buggy, and harness. These articles of personalty were bought for pleasure purposes by the infant and used for that purpose. The infant was a day laborer and worked for the support of himself and family. The infant at the time of bringing the action had sold the buggy and harness to effect a cure on the horse which was defective. The horse was subsequently condemned by the Society for the Prevention of Cruelty to Animals, and shot. At the time of the bringing of the action the infant was in possession of no part or any of the consideration received by him under the contract. Wherefore the infant asked a recision of the contract and the return of the consideration paid by him to Marshall Carper.

2. ISSUES PRESENTED

(The parties from here on are designated as to their relation in the court below).

The plaintiff filed a complaint in two paragraphs. In the first paragraph the plaintiff alleged infancy and incapacity on the part of the plaintiff, that the articles purchased were used and were bought for pleasure purposes only, and that the plaintiff sold the buggy and harness and used the proceeds to effect a cure on the horse, which horse was defective and was condemned and that the plaintiff at the time of bringing the action was in possession of no part nor any of the articles of personalty aforementioned or their proceeds.

In the second paragraph the plaintiff alleged fraud.

The defendant demurred seperately and severally to the complaint, and

the demurrer as to the first paragraph was overruled and as to the second it was sustained. The petition was amended to contain but the first paragraph, on which latter petition, the cause was tried.

The defendant filed an answer in four paragraphs, viz: 1. A General Denial; 2. Confession and Avoidance, alleging that the plaintiff was a married man and not entitled to the disabilities of an infant in contracting; 3. Confession and Avoidance, claiming that a return of the consideration was a prerequisite to the avoidance of a contract entered into by an infant; 4. Estoppel, claiming that the defendant did not know that the plaintiff was an infant and that the plaintiff made false representations.

The plaintiff demurred separately and severally to paragraphs two, three and four of the defendant's answer. The demurrer as to the second and third paragraphs was sustained and as to the fourth paragraph it was overruled.

The defendant then filed an amended second paragraph of answer, Confession and Avoidance, claiming that the articles in question were proper items of family expense. And, an additional, a fifth, paragraph, Set Off, alleging that the depreciation of the articles in question by reason of plaintiff's use and misuse of them and the value of the benefit he received from them, should be deducted from the sum asked by the plaintiff.

The plaintiff demurred separately and severally to the additional fifth paragraph and the amended second paragraph. The demurrer was sustained as to the fifth paragraph and overruled as to the second amended paragraph.

The defendant went to trial then, on the first paragraph, the amended second paragraph and the fourth paragraph of their answer.

The plaintiff filed a reply in general denial to the defendant's answer and the issues were closed.

Trial was had by a jury and a verdict of two hundred dollars for the plaintiff was returned by them.

Before judgment was entered the defendant made a motion for a venire de novo, which the court overruled. The defendant then filed a motion for a new trial, which motion the court overruled, whereupon the defendant prays for an appeal which is granted.

3. EVIDENCE

The statement of the evidence in the Appellant's brief is excepted to in parts that follow, because of unwarranted presumptions of truth and because of variance. A reference to the trial record, Pages ten to thirty, will disclose and substantiate this information. We feel it is our duty to point out these discrepancies to the learned court to avoid inevitable deception by the artful phrasing and that justice may be best served.

The plaintiff took the stand and his testimony was as follows: That he lived in the basement of an apartment in South Bend, Indiana; that he did chores about the apartment, and paid ten dollars per month for rent; that he was married on October 1, 1919, and had one child; that he worked as a day laborer, receiving eighteen dollars per week for his services and that this was his only source of income. That he entered into a contract with the defendant; that he relied on the defendant's honesty and that he was urged by the defendant to buy defendant's horse, buggy, and harness, for which articles the plaintiff paid defendant his

life's savings, two hundred dollars; that he bought the articles for pleasure purposes; that no inquiry was made as to his status nor did he profer any information in that regard; that the horse proved defective on an attempt to use it; that he had the horse in his possession two weeks; that he sold the harness and buggy to obtain funds to effect a cure on the horse and did actually expend the funds for veterinary services on the horse; that the horse was condemned on the recommendation of a Cruelty Prevention officer and the veterinary who had treated it; that he was in possession of no part nor any of the articles he had received nor the proceeds of the sale of any of them.

Mr. Schwertley a witness to the transaction fully corroborated the testimony of the plaintiff.

Mr. Dundon testified that he bought the buggy and harness from the plaintiff because of a sympathetic motive, to allow the plaintiff to make an attempt to save his horse.

Mr. Healey, a veterinary, testified that he was called upon to effect a cure upon the horse in question and found it impossible after working a week on it. That the horse was so affected before the purchase of it by the plaintiff and that he recommended its destruction.

Mr. Dressel, an officer of the S. P. C. A. testified that he inspected the animal aforementioned and recommended that it be condemned. The board passed on the condemnation and on their order it was shot. That he had orders to condemn the horse while in the possession of the defendant, but did not because the defendant said he could effect a cure on the horse.

Mr. Murphy, the plaintiff's employer, testified that the plaintiff was his employee and that the plaintiff received eighteen dollars per week for his services, and that grown, adult, men received twenty-five and thirty dollars per week.

Mr. Miller, recorder of vital statistics, testified, that plaintiff was born October 1, 1901, from the county records introduced in evidence.

The defendant took the stand and testified as follows: That he was a farmer, living on a farm and dealt in horses; that he entered into the contract with the plaintiff because he thought that the plaintiff was actually not a minor but an adult. That he had made public exhibition of the horse from time to time. That he did enter into the contract with the plaintiff as aforementioned.

Mr. Hughes, a student, testified that he knew the plaintiff for ten years. That the plaintiff abused the said horse, and that the plainitff still had the horse in his possession.

Dr. Foley, a judge of horses, testified that he judged horses at exhibitions and that he had judged this horse and found him to be sound. That he saw said horse but once, some two years previous to this trial and identified the horse by a picture of it, defendant's exhibit No. 1 and answered the question saying: "It looks very much like the horse I saw at the exhibition."

Mr. Brady, testified that he saw said horse standing outside on the street, uncovered on a cold day, and that the horse was suffering.

Mr. Hilkert, a barber testified that the plaintiff had whiskers.

Mr. Shaw, administrator for the estate of R. B. Whitcomb, testified that he paid to James Whitcomb fifty thousand dollars. That he was appointed by the Superior Court of

St. Joseph County, state of Indiana. He identified a receipt, defendant's Exhibit No. 2, alleged to have been signed by the plaintiff.

In Rebutal the plaintiff testified that he had three uncles who were living and none dead, and these uncles were poverty stricken. That he had not received money from **any** source except his wages.

The signature on the receipt (defendant's Exhibit No. 2) was proven by expert testimony not to be that of the plaintiff.

4. POINTS AND AUTHORITIES

1. That the articles were not necessaries.

Goodman vs. Alexander, 55 L. R. A. 781.

Guthrie vs. Murphy, 28 Amer. Dec. 681.

Price vs. Sanders, 60 Ind. 30.

2. Marriage is not such emancipation that changes the status of an infant as to his contract liability.

Beichler vs. Guenther, 96 N. W. 895.

Ryan vs. Smith, 43 N. E. 109.

House vs. Alexander, 105 Ind. 109.

3. As between different classes of contracts; and the legal effect on an infant; disadvantageous contracts were void; beneficial, i. e., a gift, were binding; necessaries, binding; not clearly beneficial or harmful were voidable at the infant's option.

Wheaton vs. East, 26 Amer. Dec. 251.

Forda vs. Van Horn, 30 Amer. Dec. 77.

N. & C. R. R. vs. Ell, 78 Amer. Dec. 506.

4. The right of an infant to disaffirm and recover is not dependent on the return of consideration.

Dill vs. Bowen, 54 Ind. 204.

Carpenter vs. Carpenter, 45 Ind. 142.

White vs. Branch, 51 Ind. 210.

Price vs. Furman, 65 Amer. Dec. 194.

Walsh vs. Young, 110 Mass. 396.

That the Court below was correct in sustaining the demurrer to the defendant's third paragraph of answer.

5. Misrepresentation as to age does not estop an infant from suing and is no defense to his action.

Hayes vs. Parker, 7 Atlan. 581.

Conroe vs. Birdsall, 1 Amer. Dec. 105.

Keen vs. Coleman, 80 Amer. Dec. 524.

Bendett vs. Williams, 30 Fed. 697.

Int'l Text Book Co. vs. Connelly, 42 L. R. A. (N.S.) 1115. (1912).

Whitcomb vs. Joslyn, 31 Amer. Rep. 678.

Sims vs. Eberhardt, 102 U. S. 300.

Albrey vs. Calbert, 93 C. C. A. 517. (1909).

All states rule the same as does England and Ireland.

The trial court properly refused the defendant's instruction numbered Five.

5. ARGUMENT

The counsel for the appellant has in his excellent brief confined the argument in support of his contention to two theories, in addition showing some general law. These two theories are two of four cited in appellant's brief in the appellant's grounds for reversal. These two issues are: First, That the lower court erred in refusing the appellant's instruction numbered Five. This instruction stated: That if the plaintiff had misrepresented his age to the defendant thereby inducing the defendant to contract with him, then the judgment must be for the defendant.

Second: That the lower court erred in sustaining plaintiff's demurrer to defendant's third paragraph of answer which was accordingly stricken from the answer. This paragraph stated: That although the plaintiff was an infant he must return the consideration received by him before he could recover on the contract and avoid it.

The instruction as stated above should have been refused, first: be-

cause it is not the law; second, because it is incomplete; third, because it does not state facts sufficient to constitute a good defense and fourth, because of the lack of evidence on the proposition.

In this case the defendant had a reasonable opportunity to ascertain the age of the plaintiff from appearance and association and even though such a misrepresentation was grounded in evidence the plaintiff would not be precluded from recovery. The infant could have said that he was fifty years of age and that would not relieve the defendant of the duty to know his age or from liability. The plaintiff was smooth-faced, small in stature and of a very juvenile character. The plaintiff in this case sat on the witness stand and was beside his counsel throughout the trial and was in such a position that the jury not only knew his appearance, but knew some of his habits. The jury decided that the plaintiff was an infant.

The defendant's refused instruction number Five cited above as a ground for a new trial is asking the learned court to remand this case to conclude an issue of fact that has already been decided, for when the jury found for the plaintiff they necessarily found the reverse of the defendant's object in submitting instruction numbered Five.

As to the law, the concern of this learned court, the instruction would be unfair.

The law brought up-to-date on this point may be framed in the form of an instruction given in this case, which was:

> Even though you find that the plaintiff at the time of entering into this contract fradulently misrepresented his age to the defendant and by this act caused the defendant to enter into this contract; nevertheless you must find for the plaintiff because fradulent misrepresentation of age by an infant does not act as a bar to the rescinding of the contract made possible only through such act.
>
> Treatise 6 A. L. R. 420.

There was no material evidence in this case to support a fraudulent misrepresentation. (Pages 10 to 30). But, to obviate the necessity of further controversy, the following ruling will show that the law contained in the defendant's instruction is fundamentally wrong.

If the allegation that an infant represented that he was of full age were ever permitted to destroy an infant's right of avoiding contracts, not one in a hundred of his contracts would be placed in his power to avoid, for nothing would be easier than to prevail upon the infant to make a declaration which might be shown evidence of deliberate imposition on his part, though prompted solely by the person intended to be benefited by it. This is fully and amply supported by Conroe vs. Birdsall, 1 Amer. Dec. 105.

In the case of the International Text Book Co. vs. Connelly, a recent decision reported in 42 L. R. A. (N. S.) at page 1115, the facts in brief were these:

An infant contracted with a correspondence school and represented himself to be of age. He was held not to be estopped to plead infancy in an action on the contract because of having misrepresented that he was of age, in the subscription paper, the court said:

> It is well settled in this state that in an action upon a contract made by an infant, he is not estopped from pleading his infancy by any representation as to his age made by him to induce an-

other person to contract with him.

In the case of Whitcomb vs. Joslyn, 31 Amer. Rep. 678, the theory is carried to a case in point. An infant represented to be of age and entered into a contract and bought a wagon, he paid part of the purchase price and failed to pay the balance. The vendor sold the wagon on this default. It was held that the infant was not estopped to avoid the contract and sue for the money he had paid.

The authorities are all one way, an estoppel in pais is not applicable to infants and a fraudulent representation of capacity cannot be an equivalent for actual capacity. This is supported by Keen vs. Coleman, 80 Amer. Dec. 524.

The courts take care to make clear their position on this question. At law it is conclusively presumed that a person within the age of twenty-one is unfitted for business, and that every contract into which he enters is to his disadvantage, and that he is incapable of fraudulent acts which will estop him from interposing the shield of infancy against its enforcement. Hayes vs. Parker, 7 Atlan. 581, is quite in point in this connection.

The cases cited by the appellant in his brief on this point are to be considered by the appellee with some misgiving. Three cases are cited in support of defendant's instruction numbered Five.

Commander vs. Brasile, 9 L. R. A. N. S. 1117

Int'l. Land Co. vs Marshall, 19 L. R. A. N. S. 1056.

County Board of Education vs. Hensley, 42 L. R. A. N. S. 643.

The law of the first cast is conditioned on the premise that the infant receive and use the benefits and that he was benefitted by the contract. In this case he was put to a detriment. Too the case holds:

> "We do not hold that any contract may be enforced against an infant at any time on account of a false assertion that he is of age, unless age and appearance indicate such years of maturity as may well deceive the person with whom he deals."

The second case is cited for the purpose of summary and will be treated after the third case.

In the third case, the age was inserted in the contract a much stronger case than the one under consideration, but there was no proof of it having been inserted or allowed there with the intent to defraud and does not relieve the disability or change the character of the action. The court said:

> "It is well settled that in an action upon a contract made by an infant, he is not estopped from pleading his infancy by any representation as to his age made by him to induce another person to contract with him."

The second case sets out that the infant must fraudulently, willfully and intentionally misrepresent his age so as to give it a tortious character. There is no tort in this case, nor is there any evidence to that effect, and the action is Ex Contractu. But, there is evidence to show the good faith of the plaintiff. (Page 12)

From the decisions and authorities cited, there can only be one conclusios as to the law and that the Defendant's instruction numbered Five was properly refused.

The second theory of the appellant is that the lower court should not have sustained the Plaintiff's demurrer to defendant's third paragraph of answer.

The whole list of cases cited on the return of consideration by the appelland in support of his contention presume a valid consideration received and a wilful intent to defraud which are not basic in this case because they do not exist.

This paragraph of the defendant's answer does not state facts sufficient to constitute a good defense.

There was no return of the property made in this case:

1. Because of the consideration having been removed from his possession and out of his control.

2. Because his status as an infant did not require him to make a return of the consideration under the circumstances and acts of this case.

The authorities on this point concur that a failure to return consideration does not preclude recovery.

The case of Green vs Green, 85 N. Y. 553 is very clear on this point. That court held:

"The right to repudiate is based on the incapacity of the infant to contract, and that incapacity applies as well to the avails as to the property itself, and when the avails of the property are spent or lost or otherwise disposed of during minority, the infant should not be held responsible for an inability to restore them. To hold him for the consideration would operate as a serious restriction upon the right of an infant to avoid his contract, and in many cases would destroy the right altogether."

The Lemon Case, 15 N. E. 476 is strictly in accord, the court said:

> "An infant may, before or on arriving at age, disaffirm a purchase of personalty, other than necessaries, made by him during his minority, and recover back the consideration paid, without restoring the property sold and delivered to him where is has been taken from him, or it is sufficient that the property ceases to be in his possession or subject to his control."

In the same class is the case of Wallace vs. Leroy, 110 Amer. St. Rep. 777, the case holds:

> "That in an action against an infant to recover the purchase money of property sold to him, part of the proceeds he still retains, he is entitled to the plea of infancy as a defense, without having returned or oered to return such property or proceeds. The successful intervention of such plea confers upon the person who made the sale to the infant only the right to reclaim his property or such part of it as remains in the possession of the infant."

It is admitted that the plaintiff made no return of the consideration received by him, but, it must be remembered, that since the property was not in his possession at the time of rescinding, he is under no compulsion to return the property or place the defendant in 'status quo' before rescinding the contract. Sustained by Morse vs Ely 154 Mass. 458, Price vs. Furman 65 Amer. Dec. 194.

These laws as to the return of consideration by an infant have been consistestly and universally adopted. In the state of Indiana the reports running from forty-five to one-hundred and nineteen adopt the following law in substance in every case:

> When an infant disaffirms a contract, he is not bound to restore the consideration, where such consideration has been wasted or lost during his minority, or has become absorbed in other property; but so much of the specific considera-

tion as remains in his hands may be reclaimed by the party.

In the case under consideration the infant neither spent nor did he waste the consideration received, but made a bonafide attempt to keep it in tact, and thru no fault of his own it passed out of his hands. Such an infant is certainly and surely entitled to rescind the contract without making restitution of the consideration received.

Not only where the consideration is lost or wasted can the infant rescind without return of consideration, but, as in the case of White vs. Branch 51 Ind. 210, where an infant received a horse under a contract and so abused and misused the horse and depreciated its value to worthlessness and he recovered the consideration he had paid.

In the case of Carpenter vs. Carpenter, 45 Ind. 143—That it is not necessary to give effect to the disaffirmance of a deed for contract of an infant, that the other party should be placed in 'status quo.'

The consideration received by the infant in this case was inferior, that he acted in good faith, that the consideration could not be returned by him thru no fault of his own, that under such facts and circumstances he was not required to make a return the articles received by him.

The plaintiff's demurrer to the defendant's third paragraph of answer was properly sustained by the lower court; first, because the paragraph did not state facts sufficient to constitute a good defense, and second, because the law contained therein is unfair and incorrect.

To sum up the law of this case the appellee offers the following, in addition to the propositions given above. That if this contract gave any advantage either way it was in favor of the defendant and the legal effect either way if not clearly beneficial to the infant in regard to consideration received, is that the infant may avoid the contract at his option and recover the consideration he has paid. N. & C. R. R. vs. Ell. 78 Amer. Dec. 506.

That marriage is not such emancipation that changes the status of an infant as to his contract liability in this case. Beichler vs. Guinher 96 N. W. 895, Ryan vs. Smith, 43 N. E. 109.

The articles received by the infant in this case were for pleasure purposes and must necessarily be for pleasure purposes and must necessarily be for pleasure purposes because of his station in life, and therefore were not necessaries and the word is construed in an infant's contract. Goodman vs. Alexander, 55 L. R. A. 781.

6. CONCLUSION

In conclusion the appellee believes that the decision of the lower court was correct on both its rulings in rejecting the appellant's instruction numbered Five, because of its embodiment of misstated law and because it was not supported by evidence; and the sustaining of the Appellee's demurrer to appellant's third paragraph of answer, because of its unfairness, erroneousness, and because of the lack of facts sufficient to constitute a good defense.

The infant contracted, paid a consideration, received a consideration that passed out of his possession and control, and was not a necessary, and there being no tortious bar to his recovery, and because he had a right to rescind because of his status, he

rightfully recovered in the court below and should be sustained in this learned court.

Wherefore the appellee prays that the decision of the lower court be, in all things, affirmed.

Respectfully Submitted,
ARTHUR C. KEENEY,
Attorney for Appellee.

NOTRE DAME CIRCUIT COURT

CAUSE NO. 26.
Charles Dunn
vs.
Maud Thomas
Alfonso A. Scott and
James Murtaugh,
Attorneys for the Plaintiff.
Clarence Manion and
Thurmond F. Mudd,
Attorneys for the Defendant.

TRIAL RECORD

Come now the attorneys for the plaintiff and show to the court that they filed their complaint and praecipe for summons on November 14th, 1921. Return of the sheriff. Plaintiff's complaint in one paragraph. Come now Clarence Manion and Thurmond Mudd for the defendant and file a demurrer to the complaint of the plaintiff. Demurrer sustained. Plaintiff files an amended complaint in one paragraph and alleges as follows: That the defendant falsely and maliciously, and with intent to injure the plaintiff's good name and reputation in the community in which he resides, i. e., South Bend, Indiana, County of St. Joseph, did write and publish of this plaintiff a certain false and defamatory letter; addressed to one Rose Kramer. (H. I. copy of letter.) And that by reason of this letter the plaintiff, an attorney of high standing, was damaged to the extent of $1,000.00 and suffered a loss of $500.00 because of the rental he had paid on a house which he and his intended bride were to occupy. And that by reason of this false letter she refused to marry him until he had proved the allegations to be false and untrue."

Comes now the defendant by her counsel and files an answer to the complaint of the plaintiff in three paragraphs: (1) General denial; (2) Communication was addressed to one who was an interested party, and (3) That the facts contained in the letter were true."

Attorneys for the plaintiff now file a reply in one paragraph to the answer of the defendant and deny each and every allegation of the answer of the defendant.

Cause being at issue the jury were mpannelled and sworn, case submitted to trial. Trial had and concluded.

Plaintiff now tenders instructions numbered from one to six inclusive, with a request in writing that each and all of them be given to the jury. Defenrant alsi tenders instructions, numbered from one to ten inclusive, together with a request in writing that each and all of them be given to the jury. The court now indicates which instructions shall be given and which shall be refused, which instructions are ordered made a part of this record withhout a bill of exceptions.

Arguments of the counsel are now heard and the court instructs the jury, and files instructions numbered from one to twelve inclusive, ordered a part of this record without a bill of exceptions.

The jury now retire in charge of a sworn jury bailiff to deliberate upon the case and arrive at a just verdict. Come again the jury into open court with their general verdict, to-wit: "We the jury find for the defendant as against the plaintiff. S. E. Carmody, Foreman."

Comes now the plaintiff by his attorneys and moves the court for a judgment *"non obstante veridicto."* Motion overruled and plaintiff excepts. Plaintiff now files a motion for a new trial. Motion overruled. Plaintiff excepts. Plaintiff now files a motion in arrest of judgment. Motion overruled. Plaintiff excepts.

Court now renders judgment on the verdict; to which the plaintiff excepts.

Plaintiff now prays an appeal to the Supreme Court of Notre Dame, which is granted and five days are given in which to file a general bill of exceptions. Ten days are given the said plaintiff in which to file appeal bond in the sum of $200.00, with C. Haggerty and F. Hughes as sureties thereon, which bond so executed and filed is hereby approved.

CAUSE NO. 27
Paul J. Donovan
vs.
South Bend Motor Sales Co.
John P. Brady, and
E. John Hilkert,
Attorneys for the Plaintiff.
Charles Foley, and
J. Paul Cullen,
Attorneys for the Defendant.

TRIAL RECORD

The plaintiff by his attorneys shows to the court the filing of the complaint of the plaintiff, in two paragraphs and the filing of the praecipe, which was duly issued by the clerk and served by the sheriff. The summons returned by sheriff. Plaintiff files complaint.

Comes now the defendant and files a motion to strike out certain parts of the complaint of the plaintiff. Motion sustained partially to the first paragraph, and motion sustained to the entire second paragraph.

Plaintiff now files an amended complaint in one paragraph, and alleges that the defendant offered to sell him a 1920 Maxwell car in first class condition, free from all defects. And that the plaintiff purchased the said machine. That the machine sold the plaintiff was a second class machine and defective in its mechanism. That the plaintiff, as soon as he ascertained the actual condition of the machine, offered to return it and receive his money back, and a release and discharge from the agreement. Wherefore he demands a release from the agreement and $900.00 purchase price with interest from day of purchase.

Defendant moves to strike out certain parts of the complaint. Motion overruled. Defendant excepts. Defendant's attorneys file a demurrer to the complaint. Overruled. Exception.

Defendant now files an answer to the complaint of the plaintiff in two paragraphs, 1) General Denial, 2) Confession and Avoidance.

Plaintiff files a motion to strike out the second paragraph of the answer. Overruled. Exception. Plaintiff files a motion to require the defendant to separate the second paragraph into separate defenses. Overruled. Exception. Plaintiff now files a demurrer to the second paragraph of the answer. Demurrer sustained.

Attorneys for the defendant now

file an amended second paragraph of answer.

Plaintiff files a demurrer to the second paragraph. Overruled. Exception. Plaintiff now files a reply in denial to the answer of the defendant.

Cause being at issue, jury empannelled and sworn, and case submitted to trial. Trial of the case is concluded.

Come now the attorneys for the plaintiff and file a request for the submission of four interrogatories to the jury in the event that the jury return a general verdict. Defendant objects. Objection sustained to two of the interrogatories.

Plaintiff now tenders instructions numbered from one to five inclusive with a request in writing that each and all o fthem be given to the jury. Defendant now files instructions numbered from one to four inclusive with a request in writing that each and all of them be given to the jury. The court now indicates which shall be given and which shall be refused, which instructions are ordered filed and made a part of this record without a bill of exceptions.

Arguments of the counsels are now heard and the court instructs the jury, and files instructions numbered from one to eleven inclusive, ordered a part of this record without a bill of exceptions.

The jury now retire in charge of a sworn jury bailiff to deliberate upon the case and arrive at a just verdict. Come again the jury into open court with their general verdict, to-wit: "We, the jury find for the defendant as against the plaintiff. F. Hughes, Foreman."

Their answers to the interrogatories of the plaintiff were: "1) Was the automobile fit for the purpose for which it is ordinarily used? Answer. Yes.

2) Was there any defect which could not have been discovered by one not familiar with automobile mechanics upon ordinary examination? Answer. Yes. F. Hughes, Foreman."

CAUSE NO. 28

Rose Ett

vs.

Ike N. Foolem

Jerome Dixon, and
Eugene Kennedy,
Attorneys for the Plaintiff.
Frederick Dressel, and
James Murphy,
Attorneys for the Defendant.

TRIAL RECORD

Plaintiff files praecipe declaring in the action of special assumpsit (Breach of Promise). Process ordered for the defendant, returnable April 1st, 1922. Plaintiff shows issue and service of process. Defendant comes by counsel. Plaintiff files declaration (H. I.) Defendant files plea in two counts, general issue and confession and avoidance. Cause pending on the issues.

EDWIN J. MCCARTHY,
Clerk.

JUNIOR MOOT COURT

CAUSE NO. 6

William H. Thompson
vs.
Aaron Jones, Alexander Smith, John D. Person, Samuel Adams and Josua Simpson

STATEMENT OF FACTS

The United States Government was about to locate a Federal Building in South Bend. There las keen rivalry between the advocates to two locations. Ten prominent citizens had purchased the location on the corner of Main and Colfax streets while the plaintiff owned the corner property at Michigan and Jefferson. The owners of the Main and Colfax location were making strong efforts to induce the Government through the Department of Justice officials to locate the Court building at that point. The Plaintiff was an influential politician and his property was really the more desirable for the location of the proposed building. To induce plaintiff to offer his property to the Government at a figure less than he was willing to sell it for, and to secure the location of the building there so as to enhance materially the respective properties of the defendants which were in the vicinity of the plaintiff's property, and to secure the active efforts of plaintiff towards obtaining the recommendation of the officials of the department of justice for the location of the proposed building, the several defendants promised to execute their promissory note to plaintiff in the sum of $2500 payable one year after the location of the building as proposed.

Plaintiff accepted the proposition of the defendants, offered his property to the Government for $2500 less than it was really worth, and exerted his influence with the interested officials and succeeded in securing the location and erection of the building. Plaintiff exerted no improper influence, was guilty of no fraud, and, in fact, merely represented the merits of his location as compared with those of the other location. Plaintiff did nothing to secure the location of the building for himself and his defendants, than the other ten prominent citizens did to secure the location of the building at the other point. The properties of the defendants were materially enhanced in value as a result of the location of the Government Building, each defendant profiting to the extent of at least $1,000 additional or increased valuation to his respective property.

The note is due and unpaid and plaintiff brings this action to recover thereon.

Eugene J. Payton, and
Charles Robitaille,
Attorneys for Plaintiff.

The plaintiff is entitled to recover on the note of defendant because the note is valid in that it has all the essentials of a valid promissory note, has become due and is unpaid.

The only question presented in this case is the legality of consideration for the note.

In Clark on Contracts, page 358, the author points out that influence brought to bear on public officials, acting in a capacity similar to public officials involved in this case, is not illegal in itself, but becomes so only where corrupt means are to be resorted to. This same principle of the law is upheld in the following cases:

Sedgwick vs. Stanton, 14 N. Y. 467.

Painter vs. Drum, 40 Pa. 467.
State vs. Johnson, 52 Ind. 197.
Elkhart Co. vs. Crary, 98 Ind. 238.

As in the case of contracts to render services in procuring the passage of acts and ordinances, so also in case of contracts to render services in procuring administrative action by governing officials, the services contracted for may be legitimate. If the contract does not tend to induce use of corrupt means, and if corrupt means are not to be resorted to the contract is valid.

Lyon vs. Mitchell, 93 Am. Dec. 502.
Winpenny vs. French, 18 Ohio 469.
Barry vs. Capin, 23 N. E. 735 (Mass.)
Beal vs. Polkemis, 34 W. 532 (Mich.)

Angel F. Mercado, and
Rev. S. Woywod,
Attorneys for Defendant.

1. No person can lawfully do that which has a tendency to be injurious to the public or against the public good. And where a contract tends to be injurious to the public or against the public good, it will be declared void, although in the particular instance no injury to the public may have resulted. Contracts, 13 C. J. Sec. 360; Carbondale vs. Brush, 82 N. E. 252; Palmbaum vs. Magulsky, 104 N. E. 746; Peterson vs. Christensen, 4 N. W. 623; Teal vs. Walker, 111 U. S. 242; Cothran vs. Ellis 346.

2. When the general public is interested in the location of a public office, a contract to influence its location at a particular place for individual benefit or personal gain is against public policy.

Contracts, 13 C. J. Sec. 373;
Spence vs. Harvey, 83 Am. Dec. 89;
Elkhart County Lodge vs. Crary, 98 Ind. 238-49 A. R. 746;
Woodman vs. Innes, 27 A. S. R. 274;
Benson vs. Bowden, 113 N. W. 20.

3. It matters not that nothing improper was done or was expected to be done by the plaintiff. It is not necessary that actual fraud should be shown. Nor is it necessary that any evil was in fact done by or through the contract in order to make the contract void.

State vs. Johnson, 52 Ind. 197;
The Providence Tool Co. vs. Morris, 2 Wal. 45; 17 L. Ed. 868;
Elkhart County Lodge vs. Crary, 98 Ind. 238, 49 A. R. 746.

4. A negotiable instrument given upon an illegal transaction is like any other simple contract as between the immediate parties and cannot be enforced. As between the original parties the illegality of the note is a good defense.

Union Collection Co., vs. Buckman, 119 A. S. R. 164;
Glass vs. Murphy, 4 Ind. App. 530, 31 N. E. 545;
Chesbrough vs. Wright, 41 Barb. (N. Y.) 28.

CAUSE NO. 7

Henry Swartz
vs.
John Coleman

STATEMENT OF FACTS

On March 1, 1921, Coleman wrote to Swartz, offering to sell his house for $10,000, offering to give a deed in exchange for the purchase price on June 1, 1921.

Coleman concluded his offer in these words: "If I do not hear from you to the contrary by April 15th, I shall consider that you have accepted.

Swartz received the offer in due course and never replied. On March

15 Swartz decided to buy the house, and on April 10 changed his mind, but on June 1st, 1921 he tendered to Coleman the $10,000 and demanded the deed. Coleman refused.

Swartz brings action for $500 damages for breach.

George J. Dawson, and
Joseph M. Casey,
Attorneys for Plaintiff.

Here was a complete Contract. There was a continuing offer and an offer of this kind is deemed to continue in force until accepted, rejected or withdrawn. It may be withdrawn at any time before accepted unconditionally The general rule of law now is that a contract may be specifically enforced even though it originated in an offer which remained open some time before acceptance.

Here, as in other like cases, if both parties meet one prepared to accept and the other to retract, whichever speaks first will have the law with him. An offer is a continuing offer until it is withdrawn and notice thereof given andWtzfiflOm the withdrawal communicated and if it is accepted before withdrawn and notice thereof given and within the time expressl yor impliedly limited, the agreement is complete and the offer is no longer revocable. An offer to buy or sell land does not require as prompt an acceptance as an offer to buy or sell chattels, etc.

Cheney vs. Cook, 7 Wis. 413:
Alford vs. Wilson, 20 Fed. 96.
Keller vs. Ybarru 3 Cal. 147:
Cooper vs. Lansing, 54 N. W;
Boston & Main Railroad Case 3 Cush. 224.
Yerkes vs. Richards, 153 Pa., 646, 9 Cyc. 285;
Quick vs. Wheeler, 78 N. Y. 300.

J. Melvin Rohrbach, and
Joseph E. O'Brien,
Attorneys for Defendant.

ACCEPTANCE — It is immaterial that by the terms of the offer a certain time within which to signify his acceptance is given the party to whom the offer is made. Such offer must be supported by consideration before binding.

Coleman vs. Applegate 11 Atl., 284.
Eskridge vs. Glover, N. Am. Dec. 344.
Cooper vs. Wheel Co. 54 N. W. 39.

CONTINUING OFFER—Is terminated automatically by the lapse of a reasonable time. Facts put forth a reasonable time.

Okley vs. Cook, 21 L. R. A. 127.
Stone vs. Harmon, 19 N. W. 188
Ferrier vs. Storn, 19 N. W. 288.

..OPTION—1. No option-lack of consideration. 2. Facts do not put forth an option. Merely a tentative date, (June 1, 1921) in which the final terms of the sale were to be consummated.

6 R. C. L. 663.

ACCEPTANCE—Data on No. 2 clause was merely to have further negotiations. Letter mere proposal to do business.

Cooper vs. Wheel Co. (Mich.) 54 N. W. 39.
Chicago vs. Dane, 43 N. Y. 240.

GENUINENESS OF CONSENT—No genuineness of consent by party, Swartz, when he failed to answer the letter because an acceptance which does not go beyond an uncommunicated mental determination, reason of any form in which the offer is does not create a binding contract either by framed, or because of the intention t oaccept did exist.

Felthouse vs. Bindley, 11 C. B. (NS) 869.
Corlis vs. White, 46 N. Y. 142.

MUTUALITY—23 R. C. L. 1284—Acceptance must be evidenced in

some positive manner. A mental determination not indicated by speech, or put in course of indication by act to the other party, is not acceptance which will bind the other. Mactier vs. Frich, 21 Am. Dec. 262.

CAUSE NO. 8.

Samuel Johnson
vs.
Springbrook Park Assn. Inc.

STATEMENT OF FACTS

Springbrook Park Association is a corporation duly incorporated, organized and operating under the laws of the State of Indiana. The Association owns or leases what is known as Springbrook Park, adjoining the City limits of South Bend, Indiana, where it conducts under its auspices, county fairs, races and other general public amusements, charging admission, etc.

At the conduct of the recent Interstate Fair in the Park, among a number of policemen employed by the association to police the grounds, etc., was James Fitzmorris. The plaintiff on Thursday evening, Sept. 1921, along with other lads (young men ranging in age from fifteen years to twenty years) went to the Park to attend the fair. Some of the boys paid their way in, while the plaintiff and Johnny Jones, hopped the fence, the other fellows sought to attract Fitzmorris attention from the plaintiff. The policeman did not see the plaintiff steal his way in the park, but plaintiff, when he saw the policeman, started to run and the policeman, suspecting that plaintiff had beat his way in started after him. When Fitzmorris came near the plaintiff, plaintiff stopped and turned half way around, the policeman striking him across the side of the face, cutting a gash in the cheek and side of the head. Several stitches were required to properly care for the wound, the plaintiff was in the hospital for a week and will have a scar as a result of the wound inflicted. Fitzmorris intended to eject plaintiff from the park.

Action against the Springbrook Park Association for damages in the sum of two thousand dollars.

Patrick J. O'Connell, and
George J. O'Grady,

Attorneys for Plaintiff.

It is admitted that the relation of master and servant existed between the defendant and Fitzmorris at the time of the assault and battery. To this relation which exists between the Springbrook Park and Fitzmorris applies the Doctrine of *respondeat superior*. A master is liable because it is on the whole better that he should suffer than that innocent third persons should bear the loss of such an act. In support of this point we submit the following cases:

Duckson vs. Waldron, 135 Ind. 507;
Schulz vs. Paul, Vol 1, N. D. Sup. Ct. Rep.
Singer vs. Phipps, 49 Ind. App. 116.

The plaintiff alleges that unreasonable and excessive force may not be used in the ejection of a tresspasser from the land tresspassed upon.

Talmadge vs. Smith, 59 N: W. 656.
Newcome vs. Russell, 22 L. R. A. 724.

James R. Emshwiller, and
John M. Gleason,

Attorneys for Defendant.

ONLY OUR OWN OPINION

EDITORIALS

CLASS OF '22 AT THE BAR

The School of Law is justly proud of the records made by its graduates at the bar examinations throughout the States. Beginning with the adoption of the present system of final written examination as a condition precedent to graduation the men of the Law School, as a class each year, have done remarkably well at the ensuing first bar examination in their respective States for admission to practice their chosen profession. With the expansion and improvement of the pleading, practice and court courses this record of success at the bar examinations has become even more pronounced. If, as must be expected, a very few do not succeed in their first attempt for admission, perhaps due to exceptionally difficult tests, invariably these are successful in the second effort.

Not only do the men of the Law School pass their examinations successfully but they generally pass with distinction, so much so that the applicants from Notre Dame have come to be received at these examinations and hailed by the other applicants as are Rockne's warriors from N. D. on the gridiron.

The glowing reports of the men of '20 and '21 are still vividly in mind. And with their remarkable successes, uniformly high ratings, conspicuous attainments and reflected credit on old N. D. U. still ringing sweetly in our ears, we must comment on the recent chronicle from Ohio, the extraordinary beginning in mid-year, of the class of '22.

Bernard Vincent Pater and John Joseph Buckley were eligible to take the Ohio Bar Examination in December. With more than half their senior year to go we frankly expressed our misgiving about the result. But these men of '22 girded themselves for the fray, went two abreast to Columbus, Ohio, successfully combatted the legal elements, and sent back enthusiastic telegrams which may be paraphrased thus: "We have met the enemy, and they are ours"—two certificates of admission to the Bar, two full-fledged lawyers from Ohio, and two scoops for the Class of '22.

The large delegations that go to the June examinations in Ohio and Iowa, and to the July examination in Illinois, as well as the other men of '22 who take their bar examinations in other states, are encouraged and spurred on by the exceptional success attained by these two men of Ohio.

The thankfulness and congratulations of the School of Law to you, Bernard Vincent Pater and John Joseph Buckley.

E. I. C.

Since the foregoing was set in type Mr. Robert P. Galloway of the Class of '22 has been officially notified of his successful passing of the New York Bar in March.

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THE SANCTION OF THE LAW

Sanction of Law is the power to compel the enforcement of the law. Without the element of force, law cannot be rendered effective. The assurance that punishment will fol low swift and certain after the violation of a legislative enactment is the greatest weapon that society has to rely on. It is better to make this penalty slight and be certain that it

will be applied than to make it heavy and have it applied only occasionally. Today, the United States is suffering from crime largely because juries will not convict. It is not because the penalties attached to the violation of laws are too heavy, but it is due to a false sentimentalism. The laxity of juries in this respect is largely responsible for the increase in crime. If there was a moral certainty that juries would convict when they were presented with the proper evidence, much of the present crime would cease and the possibility of future crimes would be greatly deminished. If it is necessary to weaken the sanction of the law in order to convict criminals, weaken it by all means. Perhaps the consciences of juries may become better in this respect or perhaps they may become hardened so that at some future time, a more severe penalty may be placed upon violations of law. Society was instituted because man is a social animal and demands intercourse with his fellows. However, if degenerates and morons are permitted to prey on society, man will lose much of his social side and will revert to the law of the club. If society is to maintain its primary function namely, the promotion of social and commercial relations among its members, crime must be diminished and criminals must be apprehended and punished. This can only be accomplished by enforcing the laws that are on the statute books. When juries are confronted with sufficient facts to convict a man they must not hesitate to administer the full sanction of the law. If they continue to hesitate in the future as they have done in the immediate past, crime will continue to spread with alarming rapidity until the whole fabric of government comes tumbling over the shoulders of every citizen. The present is the time to cure past offenses and to prevent future violations. Lax enforcement has failed. Try strict enforcement of law and note the beneficial result.

J. J. B.

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Legal Ethics

At the mention of Legal Ethics many so-called wise men are inclined to turn their heads and smile in a knowing way. However, Legal Ethics exist and the code of legal ethics is one of the finest professional guides possessed by any group of men practicing a common art. The Bar Associations of each state are beginning to place more and more stress on this branch of learning and the code itself is being more strictly adhered to in practice. A few years ago, it was a unique thing to hear of a lawyer being debarred for malpractice. Today, the event is not remarkable by any means. Legal shysers and tricksters are being forced from the profession and their places are being filled by clean-minded men who are a credit to the noble profession which they serve. Morality is coming to the front in the Law more than it is in any other profession. There may be unwritten codes of ethics in other professions, but in the Law, the code is written, definitely and clearly. An offense against the Ethical code is easily detected and the result is generally disastrous to the one who has wandered from the path of professional duty. This adherence to the legal code of ethics will do a great deal to elevate the practice of the law to its exalted position. It is the most important profession in the world and the men who practice it should be the cleanest and most

honorable body in the world. The ordinary client is wholly dependent upon the attorney who represents him and the Legal profession is doing everything in its power to make certain that he will be represented only by a man who is competent to act professionally, eager to see justice done, and morally able to resist the temptations that might be thrown in his path because of the helplessness of his client.

J. J. B.

THREE NEEDED STEPS OF PROGRESS

In a recent address at a banquet of the Chicago Bar Association William Howard Taft, Chief Justice of the Supreme Court, took for his subject "Three Needed Steps of Progress." He opened his address with saying that the Jurisdiction of the Federal Courts has been vastly enlarged, that dormant powers of the Federal Government under the Constitution have been made active, and the Federal Government has poked its nose into a great many fields where it was not known before, for lack of Congressional initiation. Chief Justice Taft then started to show how the jurisdiction of the Federal Courts has been enormously enlarged and the following is the substance of his remarkable address:

In the first place, the giving to the Federal trial courts jurisdiction of suits involving federal questions, without regard to citizenship was one addition. Then the enactment of the Interstate Commerce Law and the casting upon Federal Courts the revisory power over the action of the Interstate Commerce Commission was another. Then, the Anti Trust Law, the Railroad Safety Appliance Law, the Adamson Law, the Federal Trade Commission Law, the Clayton Act, the Federal Employers' Liability Law, the Pure Food Law, the White Slave Law, and other acts, and finally the Eighteenth Amendment and the Volstead Act, have expanded the civil and criminal jurisdiction of the Federal Courts of first instance, to such an extent that unless something is done, they are likely to be swamped —and delay is a denial of Justice. An increase of the judges in the Federal System is absolutely necessary. The existing arrangement of courts and districts in nine circuits is a matter of long standing. The arrangement has really been outgrown and ought to be changed.

The second step that should be taken is a simplification of the procedure in all cases in the Federal trial courts. There still exists that distinction between actions at law, and suits in equity and suits in admiralty. There is no reason why this distinction, so far as actual practice is concerned, should not be abolished entirely, and what are now actions in law, in equity, and in admiralty, should not be conducted in the form of one civil action, just as is done in the Code States. Of course the right of jury trial secured by the Constitution is civil cases involving over $20. must be preserved and can be without much difficulty, and can be reconciled with the right of a man under equity procedure to certain forms of more satisfactory remedy, preventive and otherwise. What can be done in Great Britain in this regard can certainly be done here, and the simplicity of the practice there reflects on the enterprise of the lawyers on this side of the water.

The third step to be taken is a change in the jurisdiction of the Supreme Court. In the first place the jurisdiction of the Supreme Court is defined in a great many different

statutes and special acts, and it has really become a trap for the unwary. Some are now working on a proposed bill to simplify the statement of the jurisdiction of the Supreme Court and have it embraced in one statute.

The three reforms, therefore, are, first, an increase in the Judicial force in the trial Federal Courts, and an effective distribution of the force by a council of judges; second, simplicity of procedure in the trial Federal Courts; and third, a reduction in the obligatory jurisdiction of the Supreme Court and an increase in the field of its discretionary jurisdiction by certiorari. It thus will remain the supreme revisory tribunal, but will be given sufficient control of the cases which come before it, to enable it to remain the one Supreme Court and to keep up with its work.

B. V. P.

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COLLEGE EDUCATION FOR LAWYERS.

A certain learned Jurist has aroused considerable comment over his proposal that no man should be admitted to the Bar unless he can show a degree in the liberal arts or its equivalent. There is a great deal to be said on both sides of the proposition. An education in the liberal arts broadens the mind of the student and renders him more able to grasp the profound maxims of the law. It gives him a more extensive knowledge of history and science. It enables him to better appreciate the nice distinctions of pleading. It prepares him to know more about humanity and by this increased knowledge to better analyze the motives prompting certain acts that he will be called upon to judge. Surely these things are good and desirable. However, there is another aspect to the problem. If compulsory college training became a necessary part of the requirements for admission to the Bar, many men would be forced to throw aside their ambitions and aspirations and be content with another profession. In all probability, a great amount of valuable talent would be lost to the legal profession. The practice of the Law would become a pastime for the rich. The poor would be forced to be content with other branches of learning which would be less exact in their requirements. Throwing the reins of the law into the hands of wealth would be one way of making the line between rich and poor more distinct and pronounced. Another objection to the proposition is that during his college career, a student is apt to become hardened to study and when he takes up the threads of the law, he would not be inclined to weave them into a strong cable. The scattered strands would fade in his grasp and the result would be that he would not finish his legal preparation with the knowledge that is possessed by a man who comes fresh and eager to this mighty stream of knowledge. Given the ideal student and there is no doubt but that he will make a better lawyer if he is equipped with a degree in the liberal arts and a degree in Law than he would be if he were trained only in the Law. However, we are inclined to think that with the ordinary man, a thorough course in law bolstered by some academic study is more desirable than two entire college courses. We would advise that no student be given a degree until he finished his professional course for once a degree is obtained, the student is apt to become hardened to his task and the ultimate goal is lessened because it has been half won. Surround the objective with

the glamour that can be had only when a man approaches it for the first time.

J. J. B.

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SERVICE: HONEST AND FAITHFUL.

Military men have a wonderful knack at phrasing curtly and clearly and completely. Long explanations are not considered. They speak and in a few words tell a story that cannot be misunderstood. Aat the close of the war, most of the discharges from military service bore the inscription: "Service: honest and faithful." This phrase told a great and wonderful story. It spoke of labor and sacrifice. It told of danger and hardship. It bespoke a spirit ready to serve and a service that was true to the spirit which prompted it. Today, the men who won this military honor are laboring in fields afar. Some are in the work-shop; some are in offices. Others have sought the soil as producers while many are engaged in professions. How many of those men who won the phrase of distinction are carrying on in the spirit that won it? How many of those who never had a chance to win it in military work are striving to achieve it in civil life? It can be won now as it was then. Perhaps it will not take the same form. Perhaps it will be in a more substantial form. However, it can be won by every man and woman in the world if they will merely labor to win. Work is the means by which it can be won and the spirit to work honestly and faithfully is the only spirit that will bring the much desired reward. As George Ade has said:

"The man who does the best he can
Whatever be the field of his endeavor,
Will find life full and sweet.
And when he leaves this place of mortals
With face turned toward the golden portals,
He'll get there with both feet."

Put your shoulder to the wheel and keep up your spirit. Then, when life's troubles are over some sage will write your reward with the phrase: "Service: Honest and faithful."

J. J. B.

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UNDERSTANDING MEN

Man is the biggest problem of mankind. The solving of this problem is difficult because each case presents a different phase of the same subject. It is impossible to build principles or enact laws that will give each man the greatest amount of justice possible. However, laws are enacted not so much to protect the individual as for the benefit of society. But society is composed of a sum total of individuals and if the individual is disregarded, the effect of such neglect will invariably reflect on society as a whole. Therefore, while Courts are enforcing laws, they should strive to make allowances for individual differences. They should not overlook the human element. Up to the present, society has been more concerned over the safety of property than it has over the safety of its parts. This has led many who are not property owners to disregard laws and this disregard has led to a great portion of the crimes committed. We do not recommend laxity in the enforcement of laws nor do we recommend babying criminaals, but we do recommend that some consideration be given to the things that go to make up character—namely environment, education, and heredity. Each of these is responsible for some

of the criminals. Therefore, legislatures should strive to eliminate the cause of crime rather than to spend all of their time framing laws to protect property by punishing men who are merely the effects of such conditions.

J. J. B.

CLASS—ICKS

A TOAST

To the University Freshmen of Notre Dame, at the Oliver Hotel, May 27, 1919. (Those Freshmen are today's Seniors).

By Francis J. Vurpillat.

Gentlemen of the Jury:—

A few days ago I was unceremoniously held up on a busy thoroughfare of the city of South Bend, by a freshman lawyer named Foley. Presumably acting for the other lawyers as well as for himself, he arrested me and ordered me to appear here on this occasion. Upon my promise to do so, he permitted me to go on my own recognizance. In fear I have come; in duress I am here, compelled to eat and, what is worse, to speak—worse for you.

To add insult to injury these fellows brought me here to the table, leaving me under the impression that this affair was to be an exclusive Freshmen Law Banquet as heretofore, so that the torture I have prepared to inflict on them must now be visited upon this great gathering of University Freshmen. The extempore effort, prepared in the dark hours of last night is nothing compared with the effort of my friend, Cooney, who must have labored day and night for weeks on his speech. Yet this thirteen inch gun must be unloaded. The only difference it will make will be in the greater casualty list. To meet this the engineers may call upon the doctors for aid, and the merhanical engineers may bury the dead in the light of the electricians, while the journalists may write the obituaries and the epitaphs.

Now, I am prosecuting this gang of conspirators, including, of course, the arch-conspirator just named. I am also including as defendants the inferior court that assumed to act without any jurisdiction, and the officer who had apparent but not legal authority to make the arrest. This is not a criminal case as the characters of the conspirators indicate it might well be; but it is a civil action for the tort of false imprisonment of no less a personage than the "prof." himself. "Lo! the poor Indian"—the poor prof. of the Notre Dame Law School.

You will observe, Gentlemen of the Jury, that I am the plaintiff in the case and that the plaintiff is his own lawyer. I am prosecuting my own case, although I am fully cognizant of the old legal adage that "a lawyer who pleads his own case has a fool for a client." But I'll say to you, Gentlemen, that I am just foolish enough to do that very thing in this case.

I am demanding untold, illimitable damages of every kind and description known to the written and the unwritten law—damages called nominal, actual, compensatory, punitive, exemplary and vindictive; and, if my good co-prof. here, who teaches damages, has any other kind in his category, I shall be glad to include them also. Gentlemen, I am demanding the modest sum of $1,000,000.

Why not? I have a live precedent to support me, in the case of Henry Ford vs. the Chicago Tribune. What manner of man is this our Caesar, this our Ford, that he may feed on a $1,000,000, when this plaintiff may not? Therefore, in like consideration, I should have a verdict for $1,000,000 actual, compensatory damages. However, Gentlemen, if you should find that the proven character of the plaintiff is such that he cannot be actually damaged; or, if you should be of the opinion that the Chicago Tribune has millions for defense and tribute while these conspirator defendants have not even cents; or, in short, you should feel that plaintiff's case is only an *injuria sine damno*, then, of course, shall I have to be satisfied with the customary nominal damage of one dollar. In truth, Gentlemen, since I have given this matter of damages a second thought, I really don't care for $1,000,000 as much as I do for vindication. So I am really willing to sacrifice myself on the altar of the court, as did the late Theodore Roosevelt in his libel case against the Mankato paper when he renounced his right to actual damages and magnanimously accepted his nominal dollar. I am consenting to have you put me in the same class with Mr. Roosevelt, of course, not as a dead one.

But perhaps you do not think I have any case at all—that I have only a *damnum absque injuria*, which, as you learned, is defined for the sake of freshmen memory as a damn bad injury without a remedy. Can it be possible that you may have relegated the poor plaintiff prof. to such a status in his all-important case? I can hardly think so. But lest I should fail to resort to every known technicality and flaw of the law in my client's behalf, I shall now proceed to take the law into my own hands for redressing this grievous wrong, careful, however, as the law of torts demands in such case, not to commit breach of the peace.

First of all, I shall resist this illegal arrest and break this false imprisonment. I shall run to the nearest wall and turn my back to it so as to supply myself with the tangible evidence of the right to invoke the ancient law of self-defense, or, I shall stand my ground right here where I have a right to be, and being myself without fault, I shall invoke the modern law of self-defense and repel the assaults of my aggressors, force with force, to the very extent of overthrowing the entire freshmen law class. Then I shall resort to slandering the class careful, however, that no one else shall hear it, so as not to furnish the element of publication. Then I shall say all the mean things about the class and its members even to the point of provoking an assault, careful, however, not to let any one get near enough to me to furnish the element of present ability to commit the assault.

" Now then," there's Jones of Illinois and Jones of New York. I don't know of anything commoner than "The Two Joneses," unless perhaps, it might be the "Gold dust Twins." Yes, there is some thing as common as Jones, and that's Smith of Minnesota. Blacksmith, Locksmith, or John Smith, famed for having kidnapped Pocahontas.

There is the Ohio delegation beginning with Delmar Edmondson. He has copped everything in the other colleges of the University and has come to put one over on the Law School; and, concededly, he can do it if he stays. He is suspected of hav-

ing eleven talents, he always plays right, is a playwright—in fact he is a veritable George Ade of the University. And there is the other end of the Ohio delegation, the Weisend, and between these ends of the Ohio minstrels are Flick-er Buckley and Nyan to them are Moran Prokop, whatever that is, and there's the fellow we call Pater, but who, according to the correct pronunciation of the Justinian Roman Code, should be called Pater—*pater familiis*, father of the Ohio family.

There's Schwertley of Iowa, who never acts inertly in class. And there's Langston, presumably a prohibition outlaw of Bryan's state. There's Sanford, who, except for the sand in the fore part of his name might be the celebrated Ford of Michigan. There's the circus man from the show-me state of Mo.

There is a Miner from Pennsylvania, doomed always to be *non sui juris* because under the age of twenty-one. Yes, and there's Doran and the Craugh of the New York delegation. And there is Wilson of Tennessee who is guilty of the tort of conversion for having wrongfully appropriated the good name of the president of the United States.

There is the congenial Conway who chews the cud from Oklahoma; and Chester A. Wynn of Kansas. I knew a Chester A. Arthur, but if this man Wynn will add a "d" to his name he might become a whirlwind in the legal profession. We cannot ask the question this year, "Has anybody seen Kelly?" so me must substitute Murphy of Wisconsin.

There is the Illinois delegation, Culkin, Dixon, Paden, Schiavone and Jones. These fellows call to mind how a typical Dutchman tried to work a joke on his wife that had just been perpetrated on him. A fellow said to this Dutchman: "John, did you hear that noise?" "No," said John, "vat noise?" "Illinois." "Ho! ho. I'll chust go right avay and get dat on my wife," said John and to the rear of his bakery he went. "Hey, Vife, did you hear dat racket?" "What racket?" "Illinois, ha- ha-"

Ardo Reichert and Romine Peichert remind me of Romulus and Remus of Rome. I almost forgot Scott of California. Great Scott. I know he is not old enough to be the hero of the Dred Scott decision. Great Scott. Words have many synonyms but synonyms for phrases are hard to find. There is a good one for great scott, however, and that is Gee Whiz.

Now Gentlemen, pardon me, I don't like you as lightly as my pertinent remarks may import. "I Really Do Love You," is the name of a song I heard way back in the days of my youth. And if it were not for the noise I'd make, I'd sing that song to you now. (Sing, if demanded, as follows: "I really do love you, I'll take the name of Patterson and you take Bridget Donahue"). Gentlemen, I really do love you. I like you as individuals, I am proud of you as a class. You are above the average of any former class. And it need not detract from the volume of sincerity of this compliment to tell you that we say that every year at the freshmen banquet, for we always say it in the superlative degree, and you are the last class.

But speaking seriously, Freshmen Lawyers of 1919, I wish you all back for 1920. You have made an excellent start and will succeed admirably. With the splendid new law building and facilities added and the improved course that will be offered you

will have opportunities and a law course unexcelled by any in the country. Your condition just now reminds me of the prediciment of the real estate agent who was about to close a sale of property site in a little country town on the river, when the prospective purchaser wrote to inquire whether there was a mill at the place. There being no mill the agent dolefully informed him as follows: "Dear Sir: We have a splendid dam by a mill site, but no mill by a damn site." Come back next year and work by our beautiful dam site and I'll assure you the mill.

FOOT BALL PARLANCE

Coumbus, Ohio, Dec. 7, '21.
Senior Law Class:—

First half over. Team still in good condition.

John Buckley and
Vince Pater.

Reply:

Pater and Buckley,
Care State Bar Examiners,
Columbus, Ohio.

If you need Rockne between halves, say so.

Senior Class.

LAW SCHOOL NEWS

The semester examinations are over, and the last marker we passed was "Four months to LL. B." It seems but yesterday that we heard the little talk Judge Vurpillat gave us on our first day out as college men. It was rather hard to bleieve that time would go so fast, when we were down looking up—but now that we are up looking down, we can easily see that the time has slipped all too quickly.

* * *

Registration for the second semester was not nearly so complicated as for the first. Many of us, however suered severe fright when the Students' office neglected to credit us with well-earned grades.

* * *

We know some skeptics who believe that a man can't talk his way through school. Perhaps, he can't, but we can name some fellows who are singing their way through. E. g. Fred Dressel, Jim Murphy, Mark Storen, etc. Truly, "music hath charms."

* * *

John Killelea and Robert Fallo-way finished their courses in January, and have departed for unknown destinies. John will probably take the Illinois bar "exam" in March, while Bob will see what the New York examiners have to ask of him. Good luck to you both!

* * *

Albert "Duke" Hodler, worthy representative of Oregon, and famed football player of the Northwest during 1919 and 1920 was associate coach of the freshmaan team last fall. He and Barry Holton acquitted themselves in great style.

* * *

John McGinnes, who spent his first years of law at the University of Washington, has pitched in with the Seniors in the final assault on the law. George Dawson, former student at Minnesota, has entered the Junior class.

* * *

The Junior Moot Court ended with the first semester and the Class of '23 will take up trial work. The first case on the docket is to be fought out by Messrs. Lennon, Tschudi, Cochrane and Glotzbach. The reputation

of these men is enough to insure us an interesting and competent presentation of the rights of the respective parties.

While Notre Dame does not require a degree for entrance into the Law College, still there are not a few budding barristers who possess them. In the Junior Class there are at least five who have sheepskins, and many more who have completed two or three years of pre-legal work. A degree in liberal arts is most desirable for the man who intends to follow law and it is to be hoped that the underclassmen will take every opportunity they have to get electives in the other colleges.

The famous quartet of Garvey, Kane, Degree and Seyfrit, is broken up with Hector's withdrawal from the school.

Many distinguished senior lawyers have hied themselves off the campus for this semester. Among them are Art Keeney, Vince Pater, Steve Carmody and Frank Hughes.

"Red" Holleran from "somewhere" is beginning his after-Xmas work with new ambition, after spending his vacation manifesting special interest in the belles of South Bend. We think his time was profitably spent as he is now giving up theoretical for the practical side of the law. This is a practical age, "Red."

The Sophomore impromptu arguments on technical legal questions and weighty problems in general, are attracting much attention from upperclassmen and professors, especially from Prof. Whitman, the librarian, who continually insists upon them being "louder."

"Bov." Brady from Utah says it is no disgrace for one coming from the Great Salt Lake region to be called a "floater." Salt, he argues, is a security that text-book writers have omitted in their legal treatises.

In his jocular way, Prof. Hunter voiced an opinion recently in his eight o'clock class that a time-clock would greatly lessen his work in taking care of the late arrivals. Local opinions, though not usually followed in the law, certainly invite inspection and often praise.

Thomas Barber, the first in class alphabetically, while pursuing his studies "with diligence and assiduity" a la Blackstone, astounded his fellow-classmates by asking this question: "Is there any moral or legal objection to a man marrying his widow's sister if there is no breach of the public peace?"

The worth of a Law College can be determined by the number or the percentage of its students who pass the State Bar examinations on their first attempt. Using this rule as a guide, The Hoyne's College of Law must be reckoned well up in front. All of the students of the class of 1921 who took the bar examinations have passed and one of these students led the class of Tennessee. The others finished well up in their respective state examinations. It looks as though Notre Dame would continue her wonderful success in this class of 1922 have already passed the Ohio Bar, John Buckley and Vincent Pater. We point with pride to the record that the former students of Notre Dame have made after they have taken up the practice of the Law. The Faculty of the Law School deserves great credit for the success of the Notre Dame men because it is largely through their efforts that this fact has been made possible.

ALUMNI DEPARTMENT

Memorandum on the Sherman Law What It Is and What It Is Not.

By OLIVER E. PAGAN,
Special Assistant to the Attorney-General.

A.

Congress has sole and plenary power to regulate—to prescribe rules for governing—interstate commerce.

This power has been little used. Congress has passed laws which do regulate—

The business of interstate common carriers.

The care of livestock transported in interstate commerce.

The interstate transportation of explosives, etc.;

And laws which prohibit—

The interstate transportation of—

Lottery tickets,

Obscene articles,

"White slaves,"

Stolen motor vehicles,

Game killed in violation of State law, etc.

When States undertake by law to encroach upon this power of Congress, their laws are nullified by the Federal courts in cases coming before them.

When individuals or corporations undertake to usurp this power of Congress *in certain ways*, they violate the Sherman law.

The Sherman law, then, is not a law to *regulate* interstate commerce but is a law to *prevent* certain private regulations of or interferences with interstate commerce which anticipate the action of Congress, leaving all others untouched.

B.

The title of the Sherman law is "An Act to protect trade and commerce against unlawful restraints and monopolies.'

The word "unlawful" in the title implies that there are lawful restraints and monopolies, and that these are not within the purview of the Act. For example—

The incidental elimination of competition arising from the formation *in a normal way* or partnerships or corporations out of competitive units or from purchases *under normal conditions* of the businesses of competitors, they going out of business under the terms of the sale, are lawful *restraints;* and patents give lawful *monopolies* to patentees, their lessees and assigns, though not any right to form unlawful combinations with other patentees or others to secure benefits over and above the benefits granted by the patents. Note that a patentee has an *exclusive* right to make, use and vend the article he invents. Copyrights are in the same class. *Exclusion* is the main feature of all monopolies.

C.

The two important sections of the Sherman law are as follows:

"1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one

year, or by both said punishments, in the discretion of the court.

"2. Every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

D.

The Sherman law is a law to prevent—

1. Carrying on interstate trade by *unlawful methods,* looking (a) merely to the benefit of the actor or actors through the exclusion of competitors from the trade (monopoly provisions of Sec. 2 and conspiracy provisions of Sec. 1), or (b) to the benefit to the actors arising from the use of "unified tactics" on their part, with injury (conspiracy-monopoly provision of Sec. 2 and conspiracy provision of Sec. 1) or without injury (contract and combination provisions of Sec. 1) to competitors;

2. Persons not carrying on the trade in question from interfering, by unlawful or tortious means, either gratuitously or to obtain a collateral benefit, gratify spite, or coerce action in some extraneous matter, with the carrying on of that trade by another, or with the course of trade between others (conspiracy provision of Sec. 1).

E.

The Sherman law touches the common law only in the phrase "restraint of trade," the meaning of which was fixed at common law in numerous decisions upon contracts the enforcement of which was sought in civil suits, and in a few decisions in criminal cases of conspiracy to restrain trade, principally growing out of concerted but peaceable efforts of workmen to secure better wages.

Carrying on trade under tacit understandings, or "unification tactics," not in the contractual form (the Sherman-law *combination*), was unnoticed in common-law times, is not unlawful in England today, and is lawful in the United States only as it is made so by such specific provisions as that in Section 1 of the Sherman law. Just here is the reason for the difference between the English and American decisions. It is not a difference in reasoning, but is one arising out of the positive provisions of the American law. The courts of both countries are bound by the common law until it is changed by statute. It has been changed in this country but not in England, as to the matter here under consideration.

In England, because of recent legislation against it, a charge of conspiracy cannot now be predicated upon mere concerted efforts of workmen peaceably to secure better wages; nor can such a charge be here based upon the Sherman law. A recent statutory provision by Congress forbids considering labor organizations unlawful combinations so long as their purposes are legitimate. Producers of farm products, moreover, are exempted by law from being charged with violating the Sherman law merely because they fix reasonable prices for their products by agreement.

Contracts in restraint of trade are in terms made illegal by Section 1 of the Sherman law. They were not *unlawful* at common law. They were merely *unenforcible* in the courts be-

cause against public policy, with one exception: A contract in restraint of trade in which the vendor of a business and its good will agreed to keep out of the business for such a reasonable time or within such a reasonable distance as to insure the purchaser's obtaining the benefit of his purchase *was* enforcible. As a result of modern conditions, such time and distance are now, in England, treated with greater liberality than they formerly were. The same exception and like liberality of treatment are accorded contracts in restraint of trade in the United States, the one by force of the common law and the other by reason of modern considerations in its application. Just here lies the only opportunity there is to consider *reasonableness* in *connection wih restraints of trade.* The idea that reasonableness has any bearing upon combinations or conspiracies of some traders to injure others, or upon gratuitous and tortious interferences with the business of traders by non-traders, is as absurd as the idea of reasonable burglaw.

The word *monopolize* is used in the Sherman law in a sense unknown to the common law. Monopolies of trade at common law were granted by the crown. An *exclusive right* was given by the crown. The monopoly of the Sherman law arises from a grasping by traders of the trade from their competiors by *unlawful methods* of carrying on business, resulting in, or tending towards, the exclusion of competitors from the trade. The excuse for the word's being used in the Sherman law lies in the fact that the exclusion feature is common to both the common-law and the Sherman-law monopoly—the *result* is the same in both cases, altho the *methods* of obtaining the two kinds of monopoly differ, in that the one proceeded from the act of the Crown while the other proceeds from the acts of individuals.

Again, a monopolist at common law usually had an exclusive right in the whole of a given line of trade, while under the Sherman law one begins to monopolize a line of trade as soon as he begins to use unlawful methods in carrying on his business.

The size of the business, absolutely or relatively, is not the criterion of monopoly under the Sherman law at all. We may be sure that when Congress gets ready to limit the volume of business one may do honestly, it will provide some means of keeping track of all business done and of furnishing all concerns engaged in each line of business with the information that will prevent the ones doing a dangerously large percentage of the business from passing the limit fixed by law. It will be a long time before Congress does any such thing as *this.*

Indeed, if monopoly under the Sherman law *has* any reference to the comparative size of the business, a small concern using unlawful methods of carrying on its business cannot be touched until it has secured by such methods say over half of the business. This consideration alone reduces the proposition that a big business, as is popularly supposed, is a monopoly to an absurdity, because a single concern is amenable to the Sherman law only for monopolizing under the second section of law and not at all under the first section, which requires the co-operation of two or more.

F.

Expanding the foregoing, and drawing permissible inferences

therefrom, we may say, that—

The first section of the Sherman law addresses itself only to *restraints* of trade through contracts, combinations or conspiracies.

Contracts and combinations in restraint of trade seek to benefit the parties thereto at the expense of the public.

Conspiracies in restraint of trade seek to benefit the conspirators at the expense of traders outside of the conspiracy. The conspirators may or may not be traders themselves.

If a group of traders seek to injure its competitors outside of the group by grasping the trade through methods so unlawful as to exclude such competitors from the trade, or to tend to that result, they not only conspire in restraint of trade but they conspire to monopolize the trade.

If conspirators not in the trade seek to injure concerns in trade, by unlawful interferences, they conspire to restrain trade but they do not monopolize or grasp the trade to themselves. There is, however, a distinction between a direct object to injure and a direct object to benefit the parties "conspiring" in a legitimate way with only incidental injury to others.

The second section of the law addresses itself only to *methods of doing business* not normal or usual; i.e. to unlawful methods within the meaning of those terms as defined by the courts; and so it addresses itself to *monopolization,* in the sense of vexing, disturbing or distorting, the whole of the trade in any line, it being a *part* of the whole trade of the country. It is to be noted that the second section covers the case of a *single concern* grasping business from its competitors by unlawful methods.

The Sherman law is *not* a law to condemn transactions which have always been normal in business even if incidental effects, having the appearances of restraints of trade or of competition, flow therefrom. We may instance a transaction involving the outright purchase of a competitor's business and property when it is *bona fide* and does not come at the end of a campaign of unfair and tortious trade methods used by the purchaser to put the seller in a position where he *must* sell. The fact that the competition formerly existing between the parties is eliminated by the sale does not make the transaction a "combination in restraint of trade." Only separate and presently-existing concerns can *engage in* a combination within the meaning of the first section. A concern that goes out of existence cannot engage in a continuing combination. A defunct thing cannot function in any way. Of course anything lawful in itself *may* be a step in an unlawful plan.

The Sherman law is *not* to reduce all concerns to one level by compelling large concerns to divide their business with smaller ones; i.e. not a law to maintain the poor, incapable or inefficient at the expense of the rich, capable or efficient, to handicap large concerns for the benefit of small ones, to give the small ones *advantages* in their struggle for existence, or to enforce the golden rule, or any rule but that of lawful competition, which necessarily carries with it the idea that success, it may be at the expense of competitors, is a necessary incident to the working rule of competition, which the law

now favors instead of a policy of governmental regulation.

The Sherman law is *not* a law to prevent a business concern from enjoying all the results of its successful competition lawfully conducted, even a resulting "monopoly" in the popular sense of that word.

The Sherman law is *not* a law to prevent a business concern from "dominating" its own business, or conducting it in any lawful way which suits it, even if its methods differ from those of other concerns and seem calculated to drive such others out of business or to wreck its own business. Neither the courts nor the Trade Commission can *supervise* the business methods of business concerns, or do anything but prevent the use by them of *unlawful* methods.

The Sherman law is *not* a law to compel a business concern to know the extent of its competitors' businesses, individually or collectively, or otherwise to attend to any business but its own.

The Sherman law is *not* a law to limit the amount of property or money to be used or invested in a given business, or to limit the number of different enterprises a given concern may conduct, whether related or not, even if they concern necessaries of life. The fact that legislation on this subject is now under consideration in Congress is proof that the Sherman law does not cover it.

The Sherman law is *not* a law to put business concerns on the same footing as inn-keepers and common carriers in their dealings with the public: i.e. not a law to prevent discrimination by a concern between its customers, or the choosing of its customers, upon any theory that suits it, without having to give a reason for so doing.

The Sherman law is *not* a law to authorize the courts to ignore the rules of logic, or the well-settled principles of the criminal or civil law.

G.

Prevention, so far as the Government is concerned, takes the forms of criminal punishment for past, and injunction against continued violation of the law.

That this law, contrary to usual principles, provides for an injunction against the commission of crime must be taken to indicate that Congress felt an unusual tenderness towards prospective violators of it, or else that Congress foresaw that such difficulties would arise in interpreting the law as fairly to call for their settlement, as to some practices at least, in civil proceedings. The latter seems to have been the view of the Department of Justice in its administration of the law.

H.

The conditions prevailing at the time the Sherman law was enacted have so far changed that the unlawful methods then freely used for grasping trade from competitors have mostly disappeared, and the current practice is for traders to adopt "unified tactics" coming within the combination provision of Section 1. Of course, combinations in restraint of trade being in terms made illegal by Section 1, the use of such tactics constitutes an unlawful method of doing business upon which a charge of conspiracy to monopolize under Section 2 may be based.

Furthermore, the "unified tactics" now in vogue assume the form of the

ldy plan of so-called open competition, which seems to be a lawyer-

made scheme for inducing business men to fool themselves and believe that they can at the same time fool the courts. This plan has recently been properly characterized as "teamwork to fleece the public." The good old-fashioned method of trading was for each business man to attend strictly to his own business without consulting his competitors or reporting the details of his business to them from day to day. Above everything else the Sherman law is a law to preserve the normal and condemn the abnormal method in business. The Eddy plan is a ridiculously abnormal method of competition which would never have been thought of if the Sherman law had not been on the books. We can easily imagine what a cry of protest would arise from business men if it were proposed to *compel* business men by law to do the things which they now so willingly do in pursuance of the Eddy plan. Let us hope that this Eddy plan is the last ditch of the Sherman law violators among *traders.*

Most of the violations of the Sherman law by *non-traders*—those who interfere, for purposes of their own, with the freedom of action by *traders,* in whose business they have only a secondary interest, have been perpetrated by laborers working for traders directly or indirectly.

Under a government of law, no sane person can claim a right to impose punishment upon another for not conducting his business according to rules laid down by the person aggrived, or wantonly to destroy the business or property of one who does not comply with his demands in matters pertaining only indirectly to the trade being carried on. And yet laborers assume to do this, and believe that the law is powerless to interfere. Certain classes of labor, ers, like the I. W. W., are honest enough to say that their "right" to do such things is above and outside the law. The others, or at least their representatives, seem to think that union organization endows them with a species of sanctity that exempts them from the operation of the laws which society relies for its continued existense. A recent decision of the Supreme Court has disabused the minds of unionists upon this point, so much so that they now talk of securing a repeal of the Sherman law, as though that were the only law standing in the way of their unconscionable claims. A state of society wherein such things would be permissible is unthinkable.

NEWS ABOUT THE ALUMNI

LEO B. WARD, L. L. B., '20

Sunny California held the greatest lure for Leo, and today we find him diligently practicing law in the offices of Hon. Jos. Scott, one of the most renowned atorneys of the Pacific coast. "Red" is making great headway in the courts of Los Angeles, and already he has successfully argued many important demurrers and motions in big cases of Hon. Scott.

Leo's specialty is "Cinema Law" and on his knowledge of this phase of the law, he is building a wonderful reputation for himself.

* * *

FRANK COUGHLIN, L. L. B., '21

In our very midst we happily find this newly-born prodigy of the Law. After his graduation last June, Frank located himself in South Bend and began his duties as assistant prosecutor of St. Joseph County. He has retained every scintilla of his old football punch and fighting spirit and uses it to a very decided advantage in routing out and prosecuting crime. As a consequence all bootleggers and so-called entrepreneurs of vice and crime are giving Frank the wary eye.

At present we find him vigorously campaigning for the nomination, in the May primaries, for Prosecuting Attorney on the Republican slate. Coincidentally, he is fighting, politically, his friend and brother alumnus, Eddie Doran, a Democrat, but Frank says: "All's fair in politics and love," and Frank ought to know, especially about the latter, for he entered the ranks of the "Brave Benedicts" last May. More power to our old Football captain.

* * *

SHERWOOD DIXON, L. L. B., '20

We hadn't heard from "Dix" for nearly two years, but no news is generally good news, and so it has been in this instance. Just a few weeks ago the staff received the wonderful tidings of Sherwood's successful fight in the Supreme Court of Illinois. His victory is truly marvelous considering that he has been out of college scarcely two years, and already has a victory, in the Illinois Supreme Court, chalked up on his legal record.

This success is still another preeminent proof of the excellence of the Hoynes College of Law, ond plainly bespeaks of the academic and legal merit of its professors.

* * *

EDWIN DORAN, L. L. B., '20

"Eddie," president of the Senior Law Class of '20, was last month taken in as a junior partner in the South Bend law firm of "Shivley, Gilms, & Arnold," and the name of "Doran" now follows that of Arnold and it is letered in gold on the office doors of the firm.

Nearly every day Eddie can be found before one of the local courts fighting or arguing a case in true Notre Dame style. Just recently we were greeted with Eddie's political card, announcing his candidacy for the nomination of Prosecuting Attorney on the Democratic ticket.

* * *

JOE SUTTNER, L. L. B., '10

"Joe" recently passed the California Bar Examination, and after being sworn in he immediately opened up an office in Los Angeles. Joe's first case was of a most technical nature, but his mastery of the rights of riparian land owners brought him victory in this judicial contest—his initial litigation.

J. C. SHEA, L. L. M., '17

Mr. Shea was elected president of the Dayton Ohio Bar Association, in the last convention of the Daytonian Barristers. At this same convention, Thomas Ford, another Notre Dame Lawyer, was chosen as treasurer.

* * *

JOHN L. WEISEND, Law, '18, '19, 20

Leaving Notre Dame in '20, "Susan" finished his course at Ohio Northern University, Ada, Ohio, and was graduated in June of '21. He passed the State Bar exam. the same month and since then has affiliated himself with the eminent law firm of "Dowling, Dowling & Moriarity" in Cleveland.

"Susan's" hobby is trial work, and as a young trial lawyer he is getting along exceptionally well. Last month he won a "suit" for a large clothing company.

* * *

J. P. O'HARA, L. L. B., '20

Comes now the above titled defendant prancing down the highway of political success on a Democratic charger, telling us that he is to be the very next Probate Judge of McLeod County, Glencoe, Minnesota.

Certainly we all remember Joe Patrick for his campus activities and "extractivities" and sincerely hope that our old friend and barrister will not only survive the primaries but will also emerge from the chaos of this coming political melee, bearing the palm alone.

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Bernardo Lopez

Manila—
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Turlac, Tarlac—
Jose Urquico

Misamia Province—
Emilio Aranus

Sorsogen—
Doroteo Amador