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INTIMIDATION OF EMPLOYES. A recent case decided by the Supreme Court of Pennsylvania, *O'Neil* v. *Behanna et al.*, 37 Atl. Rep. 843 (Penna.) (July 15, 1897), clearly lays down the law concerning intimidation of employes by strikers or other persons in endeavoring to induce them to quit work. The court holds that it is an unlawful intimidation of employes for a large number of persons to surround them, and to follow them for a considerable distance, urging them in a hostile manner not to go to work, and calling them opprobrious names, though no physical violence is used, and persons so doing are liable in damages to the employer. That when persons are going to a place of employment, either under contract to work or in search of work, others have no right to stop them and occupy their time without their consent or that of their employer if actually employed, in order to peacefully urge them not to go to work; and persons so doing are liable to the employer in damages.

This decision was a reversal of a decree for defendants in a bill in equity by Margaret O'Neil against Noah Behanna and others for an injunction and damages.

In Pennsylvania it is of great importance that the courts should clearly and firmly maintain the grounds they have taken on this subject, since the legislature has by statutes exempted employes from liabilities for unlawful combinations to fix the price of labor: Acts May 8, 1869, P. L. 1260; June 14, 1872, P. L. 1175; April 20, 1876, P. L. 45, and June 16, 1891, P. L. 300.

The constitutionality of these acts was questioned in *Cote* v. *Murphy et al.*, 159 Pa. 420 (1894), on ground that they embraced only a particular class of citizens, but this point was not decided. Should these acts be upheld and striking employes be exempt from liabilities for their unlawful combination, it becomes of the greatest importance that the courts should guard the interests of the employers and of those employes who wish to work by clearly pointing out what constitutes intimidation or interference and by rigidly restraining reckless or irresponsible men from overstepping the line.

The decision is in accord with those in similar cases in the United States Courts as well as previous decisions in Pennsylvania. *In re Doolittle and another, strikers*, 23 Fed. Rep. 544 (1885), it was held that a simple "request" to do or not to do a thing, made by one or more of a body of strikers under circumstances calculated to convey a threatening intimidation, with a design to hinder or obstruct employes in the performance of their duties, is not less obnoxious than the use of physical force for the same purpose. A "request" under such circumstances is a direct threat and an intimidation, and will be punished as such. To the same effect, *U. S.* v. *Kane*, 23 Fed. Rep. 748 (1885).

In *Murdock, Kerr & Co.* v. *Walker et al.*, 152 Pa. 595 (1893), it was held that a court of equity will restrain by injunction discharged employes, members of a union, from gathering about their former employer's place of business, and from following the workmen whom he has employed in place of the defendants, from gathering about the boarding houses of such workmen, and from interfering with them by threats, menaces, intimidation, ridicule, and annoyance, on account of their working for the plaintiff.

PRESUMPTION OF MOMENT OF DEATH; SURVIVORSHIP. Valuable property rights often depend upon the question whether or not one of two persons who perished in the same disaster survived the other for any appreciable time. The Supreme Court of Rhode Island recently decided that where three sisters were killed in the same accident, the burning of their house, there was, in the absence of all evidence, no presumption that any of them survived the others: *In re Wilbor et al.*, 37 Atl. Rep. 634 (June 8, 1897).

While the law on this subject is now well settled to be that laid down in the above case, it did not take its present form without many conflicting decisions. The difficulty arose from the fact that the civil law had a definite rule on the subject, and its influence, especially in the ecclesiastical courts, warped the minds of English

judges from the principle of the common law. According to the civil law there is a definite series of presumptions arising from the age and sex of the victims. For instance, a person under fifteen or over sixty years of age is presumed to have perished before one between those ages, while one of the male sex is presumed to have outlived a female. This is the law to-day in Louisiana and California: *Code Napoléon*, §§ 720–722; *Louisiana Civil Code*, §§ 936–939; *California Code*, § 1963, c. 40.

In England the question of presumption of survivorship first arose in the case of *Rex* v. *Hay*, 1 W. Bl. 640 (1767). Lord Mansfield refused to give a decision on the point, saying that there was no precedent, and the case was compromised. However, several later cases definitely followed the rule of the civil law, holding that a husband was presumed to have outlived a wife, and that where two brothers died together the stronger was presumed to have outlived the weaker: *Colvin* v. *Procurator-Gen.*, 1 Hagg, 92 (1827); *In re Selwyn*, 3 Hagg, 748 (1831); *Sillick* v. *Booth*, 1 Young & Coll. 117 (1842).

But the effect of these decisions has been swept away by the leading case of *Underwood* v. *Wing*, 19 Beav. 459, affirmed in the House of Lords under the title *Wing* v. *Angrave*, 8 H. L. C. 183 (1860). In this case one Underwood and his wife left England on a ship which was wrecked, all being lost except one man, who testified that Underwood and his wife were washed overboard by the same wave. A contest having arisen over Underwood's will, one of the provisions of which made a certain disposition of property "in case my said wife shall die *in my lifetime*," the question was fairly presented to the court. Although a strong effort was made by counsel to show that the survivorship of the husband must be presumed, on the authority of the cases cited above, together with the fact that Underwood was an active man, a strong swimmer, etc., yet the Master of the Rolls refused to so decide, laying down the rule that where there is no evidence of survivorship then no presumption arises that either party died first, but the person who comes into court basing his claim on survivorship must affirmatively prove that survivorship. This rule has been universally followed in all the courts of the United States except those of California and Louisiana.

The case of *Underwood* v. *Wing* did not decide that, in the absence of all evidence to the contrary, a presumption arose that the man and wife perished at the same moment. "This," says Mr. Best in his work on Evidence, Am. Ed., p. 395, "would be establishing an artificial presumption against manifest probability. The practical consequence is, however, nearly the same; because, if it cannot be shown which died first, the fact will be treated by the tribunal as a thing unascertainable, so that, for all that appears to the contrary, both individuals may have died at the some moment." Moreover, the rule will not be applied unless evidence on the question is *wholly* lacking. Very slight evidence will be

regarded as sufficient, such as the position of the victims when the disaster occurred; in short, all relevant facts except those which show merely the physical condition of the parties and their ability to resist death: *Newell* v. *Nichols*, 12 Hun, 604, affirmed 75 N. Y. 78 (1878); *Ehle's Est.*, 73 Wis. 445 (1889).

NATURAL GAS; "MINERALS FERÆ NATURÆ"; CONSTITUTIONAL LAW; PUBLIC POLICY. In *Townsend* v. *State*, 47 N. E. 19 (Indiana) May 18, 1897, it was decided that an act punishing the burning of natural gas in flambeau lights as a wasteful use thereof, does not deprive the owner of property without due process of law, nor does it take property by law without just compensation. This marks another successful attempt on the part of the legislature to control the use of natural gas. *State* v. *Gas Company*, 120 Ind. 575, 22 N. E. 778 (1889) declared unconstitutional a law prohibiting the piping of natural gas to any point without the state. This law was said not to be a legitimate exercise of police power, but an attempt to regulate interstate commerce. *Jamieson* v. *Oil Company*, 128 Ind. 555, 28 N. E. 76 (1891) (Olds, J., dissenting,) held constitutional an act prohibiting a pressure of more than 300 pounds to the inch, which was designed to accomplish, and did accomplish, indirectly, the same end as that to which the former statute was directed. *People's Gas Company* v. *Tyner*, 131 Ind. 277 at 281, 282 (1892), quoting *Westmoreland, etc., Gas Co.* v. *De Witt*, 130 Pa. 235, 18 Atl. 724 (1889), classes water, oil and gas as minerals *feræ naturæ* subject to the same public control as wild animals.

The principal case follows this and finds justification for state regulation of natural gas and oil in the admitted right to pass game laws. On game and game laws, see 8 Am. & Eng. Ency. Law 1024, *et seq.* In *Commonwealth* v. *Gilbert*, 160 Mass. 157 35 N. E. 454 (1893) a statute imposed a penalty on every person who "sells or offers or exposes for sale or has in his possession a trout" except alive, during the close season. This statute was decided to apply constitutionally to trout artificially propagated and maintained. In *Gentile* v. *State*, 29 Ind. 409, at 415 (1868) a statute was decided to be constitutional which forbade the taking of any fish in any way for two years, even by an owner of the lake or stream.

The police power of the State over property has not been confined to things *feræ naturæ*. *Rideout* v. *Knox*, 140 Mass. 368, 19 N. E. 390 (1889) held constitutional an act declaring that any fence unnecessarily exceeding six feet in height maliciously erected or maintained for the purpose of annoying adjoining property holders or owners is a nuisance, and granting an action to anyone injured by such fence. In *Commonwealth* v. *Tewksbury*, 11 Metc. (Mass.) 55 (1846) the statute imposed a penalty on "any person who shall take, etc., any stones, gravel or sand, from any of the beaches in the town of Chelsea." This was held to apply to the

owners of the soil as well as to strangers and was constitutional, although it provided no compensation for the owners, since preservation of the sea wall was essential to the public.

But the most striking instances of the exercise of such power have been game laws. In *Lawton* v. *Steele*, 152 U. S. 133, 14 Sup. Ct. Rep. 499 (1894) (Fuller, C. J., Brewer and Field, JJ., dissenting,) the statute in question, declared nets, etc., used in violation of game laws, public nuisances which the official game protectors were authorized to destroy. The act was held constitutional. See *Smith* v. *Maryland*, 18 How. (U. S.) 74 (1855); *McCready* v. *Virginia*, 94 U. S. 395 (1876). In *Geer* v. *State of Connecticut*, 16 Sup. Ct. Rep. 600 (1896), not cited in the principal case, it was held that the ownership of game within the limits of a state, so far as it is capable of ownership, is in the State for the benefit of all its people in common, and that the police power authorizes a State to forbid the killing of game to be transported beyond its limits. Harlan and Field, JJ., dissented. Mr. Justice White, delivering the majority opinion, refers to Pothier's treatise on Property. Pothier classes among *res communes* air, water which runs in rivers, the sea and its shores, and animals *feræ naturæ;* and the learned justice shows that property in wild beasts is regarded as common or in the state over all the continent of Europe. In 2 Blackstone's Commentaries, at pages 14, 394, 410, wild animals are classed with air, light and water as peculiarly subject to governmental authority.

The ownership, then, of gas and oil in their natural condition, as well as that of wild animals, being in the State, the latter can make such regulations concerning them as it sees fit. If this decision arrived at by the Supreme Court of Indiana be carried to its logical end, it would appear that the State may prescribe the exact manner in which the owners shall use the gas they have drawn from their own land, or even forbid absolutely the use of gas in any form.

CONSTITUTIONAL LAW; EXCLUSION FROM OFFICE; POLITICAL OPINION. A frequent provision in state constitutions, after providing a form of official oath, is that "no other oath, declaration, or test shall be required as a qualification for any office or public trust." The kind of "test" meant is generally believed to be a mental condition, such as religious or political opinion: 2 Story Const. §§ 1147, 1149. It is plain that where the constitution provides qualifications for holding office any legislative enactment conflicting therewith is void.

The question has been raised as regards the right of the legislature to require certain political affiliations as a qualification, in face of the above constitutional clause. This question was decided in *Pearce* v. *Stephens*, 45 N. Y. Suppl. 422 (May 18, 1897). In that case the statute in question provided that the two police commissioners of a certain district should not belong to the same

political party, nor be of the same political opinion on state and national politics. The act was held to be constitutional on the authority of *Rogers* v. *Common Council of Buffalo*, 123 N. Y. 173 (1890). In the latter case the court held that no person was excluded by reason of his political opinion, inasmuch as the act did not compel the selection to be made from any certain party or parties, but that all were equally eligible until two should be chosen from any one party. The act provided that no more than two of the board should be taken from the same party. The Supreme Judicial Court of Massachusetts sustained a similar statute: *Commonwealth* v. *Plaisted*, 148 Mass. 375 (1889).

In Michigan it is held that such an act is unconstitutional, because it makes party affiliation a condition to holding the office, and thus requires another "test" contrary to the constitution: *Attorney-Gen'l* v. *Detroit Common Council*, 58 Mich. 213 (1885). In Indiana the same view is taken: *Evansville* v. *State*, 118 Ind. 426 (1889); *State* v. *Blend*, 23 N. E. 511 (1890).

The better opinion seems to be that such provisions are discretionary only, and the statute valid: *State* v. *Seavey*, 35 N. W. 228 (Neb. 1887); *State* v. *Bennett*, Id. 235; *Baltimore* v. *State*, 15 Md. 376; *McDermott* v. *Lapham*, 27 Atl. 220 (R. I. 1894); *Comm.* v. *Plaisted* (*supra*). See *State* v. *McAllister*, 18 S. E. 770 (W. Va. 1894); *Rathbone* v. *Wirth*, 40 N. Y. Suppl. 535 (1896).

BOND; LIABILITY OF CUSTODIANS OF PUBLIC FUNDS. *Bosbyshell* v. *United States*, 16 U. S. C. C. A. 474 (1897). In the above case the Circuit Court of Appeals has lately passed upon the question of the liability of the custodians of public funds, for money stolen from them without any fault or negligence on their part. The defendant was the Superintendent of the United States Mint at Philadelphia. The condition of the bond sued upon was as follows: "Now, therefore, if the said B. shall faithfully and diligently perform, execute and discharge all and singular the duties of said office according to the laws of the United States, then this bond to be void and of no effect." Section 3506 of the United States Revised Statutes, which it was agreed should be read into the bond, is as follows: "The superintendent of each mint shall receive and safely keep until legally withdrawn all moneys or bullion which shall be for the use or expenses of the mint. He shall receive all bullion brought to the mint for assay or coinage; he shall be the keeper of all bullion or coin in the mint, except when the same is legally in the hands of other officers." The main question of law raised in the case was on the defendant's position that the bond in suit imposed upon him a liability only for the faithful and diligent performance of the duties of the office of superintendent and not a liability for a felonious taking of bullion without any fault or negligence on his part. The Court declined to take this position and cited the cases of *United States* v. *Prescott*, 3 How. 578 (1845); *U. S.* v. *Dashiell*, 4 Wall. 182

(1866); *Boyden* v. *U. S.*, 13 Wall. 17 (1871) in support of their decision that the obligation was to keep safely without qualification or exception. The defendant relied on *United States* v. *Thomas*, 15 Wall. 337 (1873), in which it was decided by a majority of the Court that the forcible seizure of public property by the public enemy, without fault or neglect of the officer in charge, excused compliance with the condition of the official bond, the Court thus distinguishing this case from *U. S.* v. *Prescott* (*supra*), and the subsequent cases affirming it. That decision was based on two grounds. 1. That the ordinary circumstances which would discharge a bailee for hire, were not sufficient to absolve a depositary of public funds, on account of an imperative necessity of public policy, viz., the prevention of collusive defenses. 2. That the depositary, having given a bond to pay or deliver, was bound by that contract, according to the rigid terms annexed by law to such covenants. From the decision in the latest decided case, *U. S.* v. *Thomas*, there was a strong dissent by Mr. Justice Miller, protesting against the attempted distinction in the facts of the cases, and the inevitable weakening of the principles underlying the rule by allowing an exception in the case of funds seized by public enemy. He believed in an entire abandonment of those principles as being incorrect, and said "on sound principles the bond should not be construed to extend the obligation of the depositary beyond what the law imposes upon him, though it may contain words of express promise to pay over the money. The true construction of such promise is to pay when the law would require it of the receiver if no bond had been given, the object of the bond being to procure sureties for the performance of the obligation." In this contention there is much force, and the near future may see it adopted as the rule.

Many of the state courts have reached a different conclusion from that of the United States Court of Appeals in this case: *York* v. *Watson*, 15 S. C. 1 (1879); *Cumberland* v. *Pennell*, 69 Me. 357 (1879). A well-considered case so holding is *People* v. *Wilson*, 19 Colo. 199 (1893), fully annoted in 22 Lawy. Rep. Ann. 449. See also *State* v. *Houston*, 78 Ala. 576 (1885).

The two following cases, both decided in 1896, go over the whole ground exhaustively, and conclude that to hold an officer to absolute insurance is neither equitable nor in accordance with the best precedent: *State* v. *Copeland*, 34 S. W. 427 (Tenn.); *Healdsburg* v. *Mulligan*, 45 Pac. 337 (1896), (Cal.).

LESSOR AND LESSEE; DEFECTIVE PREMISES; LESSOR'S LIABILITY TO STRANGERS. The Supreme Court of Rhode Island held in a recent case that a lessor who retains no control of the leased premises, the lessee being under covenant to repair, is not liable for an injury to one entering by the lessee's invitation, by falling into an unguarded opening between the freight elevator and the outer wall of the shaft; the building in such respect being neither a nuisance,