DECISIONS NOTED

Banks and Banking—Allocation of Loss as Between Bank and Depositor Resulting From the Theft of Check Signed in Blank—The plaintiff signed a check in blank, drawn on defendant bank in which she was a depositor. The check was stolen from her, filled in with the name of a fictitious payee and the amount of $250, and presented to the bank for payment. The bank paid the amount of the check to a holder who was unknown to the bank, but who indorsed in the name of the fictitious payee. In an action to recover the $250 from the bank, the trial court decided as a matter of law, without letting the case go to trial, that the plaintiff had been negligent in facilitating the fraud perpetrated by the thief, and could not recover. On appeal, the Superior Court held that the case had been properly withheld from the jury, and affirmed the judgment on the basis of the maxim that, as between the two innocent parties, the loss should be borne by the one who made it possible. [*Weiner v. Pennsylvania Co. for Insurances, etc.,* 160 Pa. Super. 320, 51 A. 2d 385 (1947).]

The relation between a depositor and his bank is contractual, giving rise to a duty on the part of the bank to pay out the money which it owes the depositor only on the order of the depositor, and on the other hand, raising a duty on the part of the depositor to use due care in the drawing of checks so as not to mislead the bank into paying wrongly. [*Pavilis v. Farmers Union Livestock Commission,* 68 S. D. 96, 298 N. W. 732 (1941).] Where, therefore, as in the instant case, a stranger presents himself to the drawee bank and demands payment of a check actually bearing the depositor's signature, and the bank pays on the faith of that signature, the problem arises as to which of the conflicting duties shall control. The ground upon which many courts have attempted to justify their allocation of such loss has been the promotion of free circularization of commercial paper, but circularization will be effected no matter where the loss is made to fall. [Abel, *The Impostor Payee,* (1940) WIS. L. REV. 362, 375-385.] More properly, the loss ought to be placed in the manner which will best reduce the possibility of a recurrence of this situation. This court has reached this result by placing the loss on the depositor.

It is important, however, not to engender a rule which would relieve a bank whenever it pays a check of any possible liability to the depositor, for it is well settled that a bank pays at its peril. The factor to be established, then, is the degree of negligence on the part of the depositor which ought to be required before the bank is relieved of the consequences of a wrongful payment. The cases are in conflict on this point. [Britton, *Negligence in the Law of Bills and Notes,* 24 COL. L. REV. 695, 713 (1924).] One group of cases supports the proposition that any act of the drawer resulting in the leaving of signed blank checks in places where the commission of a fraud by a third person is facilitated, is sufficient negligence to estop him from setting up any defense given him by the Negotiable Instruments Law, [*World Tire Corp. v. Mutual Bank & Trust Co.,* 174 S. W. 2d 230 (Mo. App. 1943)], for example, the defense of non-delivery. [N. I. L. § 15.] Other courts hold that to require a drawer to anticipate the commission of a crime or fraud is too high a degree of care to justly raise an estoppel against him. [*Heinberg v. Lincoln National Bank,* 115 N. J. Law 76, 172 Atl. 528 (1934).] Still others lay the burden entirely on the bank. [*Citizens' National Bank of Evansville v. Reynolds,* 72 Ind. App. 611, 126

N. E. 234 (1920).] Such disagreement only strengthens the conclusion that the question of the amount of negligence necessary to raise an estoppel against the drawer is one which properly ought to be left to a jury. [*Brown v. Reed,* 79 Pa. 370, 373 (1875).] By permitting the plaintiff's conduct in the instant case to be called negligent as a matter of law, this court, although coming to a proper conclusion, has made the dogma that a bank pays at its peril the exception, rather than the rule.

Constitutional Law—Validity of the Lea Act Under the Fifth Amendment—The President of the Chicago Federation of Musicians was indicted under the Lea Act, [60 Stat. 89 (1946), 47 U. S. C. § 506], which provides a criminal penalty for *wilfully* coercing or attempting to coerce a radio station operator to hire any person or persons in excess of the number of employees needed to perform actual services. The trial court held the statute void in that it was directed against radio station employees only, thereby denying equal protection of law, and in that the use of the phrase "excess of the number of employees needed" rendered the act void for indefiniteness. On direct appeal the Supreme Court reversed and remanded. [*United States v. Petrillo,* 67 Sup. Ct. 1538 (1947).]

Courts have repeatedly announced that the equal protection clause of the Fourteenth Amendment is limited in its application to the state legislatures. Federal statutes contested on the ground of equal protection under the due process clause of the Fifth Amendment have generally been held valid unless the classification is arbitrary. Nevertheless, if a classification be valid under the equal protection clause, it would *a fortiori* be valid under the due process clause of the Fifth Amendment. [*Steward Machine Co. v. Davis,* 301 U. S. 548, 584 (1937).] It is uniformly held that a statute need not be all-embracing to satisfy the equal protection clause. But, as here, a statute imposing restrictions upon the employees of one industry only, might well be considered arbitrary. However, in order to be valid, legislation striking at an evil where it is most felt need not be so broad as to prevent similar activity in other areas not covered by the statute. [*West Coast Hotel Co. v. Parrish,* 300 U. S. 379 (1936).] Particularly in light of the special control exerted over the radio industry by the federal government, the validity of a classification singling out radio station employees and restricting their union practices only is not surprising.

As to the question of definiteness, statutes have been upheld where the words or phrases challenged as indefinite have acquired a well-settled definition through common usage. The courts, however, are disinclined to hold that a particular word has acquired a sufficiently definite meaning through common usage; as where a statute imposed a criminal penalty for activity resulting in the "waste" of oil, [*Champion Refining Co. v. Corporation Commission of Oklahoma,* 286 U. S. 210 (1932)], or for providing an "insufficient" number of street cars in the District of Columbia. [*United States v. Capital Traction Co.,* 34 App. D. C. 592 (1910).] The present decision on "the number of employees needed" thus seems to be a rather large stride. Nor should the inclusion of the word "wilfully" in an otherwise indefinite statute cure the defect, [*See Screws v. United States,* 325 U. S. 91, 105 (1945)], for the mere intention to violate the statute does not aid in defining the prohibited act. But since the general employment practices of the industry would

be the only standard of definiteness under the statute to which the jury could look in arriving at a verdict, the practical effect of holding the statute sufficiently definite depends not as much on a determination of "the number of employees needed" as on the intention of the union to force the employment of additional members where it has reason to know they are not actually needed.

Interstate Commerce—Rate Discrimination Against Connecting Carriers—The Interstate Commerce Commission ordered an increase of 3½ cents per cwt. in the *proportional* (through shipment) rail rate on ex-barge wheat between Chicago and the East. The ex-rail and ex-lake rate on wheat for the same service remained unchanged. Thus the shipper by barge to Chicago was required to pay 3½ cents more for the haul from Chicago to the East than was the shipper whose wheat came to Chicago by rail or by lake steamer. The Supreme Court affirmed the District Court's ruling that the new rate was unjust and discriminatory. [*Interstate Commerce Commission v. A. L. Mechling,* 330 U. S. 567 (1947).]

The renaissance of water transportation in the past two decades has renewed vigorous competition between rail and water carriers. Traditionally, water carriers have quoted lower rates and have been relatively free from governmental administrative control. [Comment, *Regulation of Water Carriers by The Interstate Commerce Commission,* 50 YALE L. J. 654 (1941).] Water carriers were not effectively brought within the domain of the Interstate Commerce Commission until the Transportation Act of 1940. [54 STAT. 898, 49 U. S. C. § 1 *et seq.*] In order to overcome the legislative fear that a rail-minded commission might give unfair advantage to rail carriers, [84 CONG. REC. 5879, 9862 (1940)], specific provisions were incorporated into the Act placing on the Commission the duty of maintaining rates sufficient to enable the water carriers to stay in business, and stating conclusively that lower rates for water carriers were not to be deemed an unfair competitive practice. [54 STAT. 934, 937; 49 U. S. C. § 905 (c), § 907 (f) (1940).] Prior to the Act the Supreme Court had held that the commission could approve rates offering ruinous competition to barge transportation so long as the rates were not lower than the cost of providing the service. [*Mississippi Valley Barge Co. v. United States,* 292 U. S. 282 (1934).] Since the Act the Commission has ruled that a mere difference in all-rail and rail-water rates does not violate the policy provisions of the Act, [*Soda Ash from Baton Rouge, La. to Cantonment, Fla.,* 248 I. C. C. 231 (1941)], and that competitive rates of rail carriers must not be so low as to unduly prejudice or destroy competition over water routes. [*Lumber from North Carolina to New York,* 245 I. C. C. 231, 235 (1941).] Previous attempts of rail carriers to force a shift of traffic by discriminatory rates have been blocked by judicial disapproval. [*A. T., and Santa Fe Ry. Co. v. United States,* 279 U. S. 768 (1929).] The decision in the instant case buttresses these rulings and guarantees that the rate structure of interstate transportation will not be rail dominated.