

1893

Employers Contracts

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T H E S I S

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WHY CONTRACTS MADE BY THE EMPLOYER WITH HIS EMPLOYEES
RELIEVING THE EMPLOYER FROM ALL LIABILITY IN
CASE OF NEGLIGENCE ON HIS PART
SHOULD BE HELD VOID

-By-

Vernon Davis Stratton

For

The Degree of Bachelor of Law

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C o r n e l l U n i v e r s i t y

1893.

I N T R O D U C T I O N.

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At the present time one of the most important questions that is brought before the public mind is the labor question. The duty that the employer and the employee owe to each other, and the duty that both classes owe to the public. From the earliest times to the present day numerous questions have arisen as to how the law relating to the two classes should be laid down ; and numerous questions have been settled both by statutes and by the decisions of the court ; but still many and vital questions -are coming up to-day that affect not only the interests of the great capitalists, the freedom, wellfare and independence of the laborer ; but also the very existance of the well organized forms

of government under which both capital and labor derive their power to act and to do business. Not many years ago each laborer had the prospect of becoming the employer of the future, and therefore this was rarely heard of.

In those days a man could start on a small scale and increase his business slowly from year to year till he in his turn became the employer in the future ; but now all must admit that this is becoming more difficult as the age of science advances and to-day you have two distinct classes. One rich and powerful and the other weak and dependent ; but either class could not exist without the other, and to a certain extent they are friends for it is the aim and object of each class to produce wealth. In sharing it, however, their interests are antagonistic to each other then here we find all the

causes of trouble. Both classes have their organizations. The capitalists have organized together that they may by concentrating their capital secure a larger profit and use their powerful influence to secure their own ambitious designs; while on the other hand labor has organized that they may resist any oppression capital would force on them, and to secure fair remunerations for their services. Numerous questions come up as to how far either class can legally and justly go to accomplish their aims and ambitions and secure the benefits which would result in case of success. It is not my aim or object to treat of the general subject in all its phases for that would require not only a master mind, and one capable of judging the two classes impartially; but also years of labor. The question to which I shall

devote my labor is one that is both common and practical
and one on which there is a wide diversity of opinion.

Certain large corporations require their employees before entering into their employment to sign a contract releasing the employer from all liability in case the employee is injured through the negligence of the employer. Varying with the nature of the business the contracts are drawn to cover each case, but adopting one that will cover any case, and one that will contain all the material elements that are required in such kinds of contract,[§] I shall treat the question contained in it alone,
x
and my conclusion will apply with equal force to any contract of this nature. In a recent case the following contract which is the subject of my Thesis came up for consideration. " For and in consideration of employment to be furnished me by the --- Co., and on the

sum of one dollar to me in hand paid by said Co., I hereby agree that in no case shall the said Co. be liable to me for any damage or injury to my person or property by means of the negligence of the said Co., its agents, servant or employee." Contracts of this particular kind seldom come before the court but decisions have been rendered in nearly all the state and federal courts of this country, and from these we may draw our conclusions as to how this contract would be considered when it comes up ; and also we may turn to the decisions of courts of foreign countries and to statutes passed on the subject ; for statutes represent the expression of the will of the people, and by such will the law should be laid down. This contract contains the element of consideration therefore this point will not be consider-

ed ; but for other good reasons I shall show that such a contract is contrary to good morals and should be declared void and set aside on the broad ground of public policy. At the outset let us meet one reason given by those who would uphold contracts of this kind and this is their favorite argument "That men must be permitted to make their own agreements, and that it is no concern of the public on what terms an individual chooses to contract ; whether he assumes great risks either to his person or property. That any contract made by a competent party upon valuable considerations, when made freely and intelligently is valid." To say the parties have not a right to make their own contracts, and to limit the precise extent of their own respective risks and liability, in a manner in no way affecting the public morals or

conflicting with the public interest, would, in my judgment be an unwarrantable restriction upon trade and commerce and a most palpable invasion of personal right. Let us understand what is meant by public policy and we find that it is that principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good, which may be termed the policy of the law, or a public policy in relation to the administration of the law.

It is true that the public interest is not affected by individual contracts of the kind referred to ? Is not the whole business community affected by holding such contracts valid ? If held valid the advantageous position of the employer in the exercise of his business is such that it places it in their power to change the law

regulating the relief afforded in cases of negligence by introducing new rules of obligation. The employer and his employee do not stand on a footing of equality.

The employee must have employment to support his family, and in the large majority of cases, he must follow the manner of work or kind of employment that he has learned and is competent to do ; for they have not the means to support their families while they journey from place to place seeking a new employer or learning a new kind of business, to say nothing about the anguish and hardship of being compelled to leave their old homes with all its pleasant memories, to leave their families dependent and suffering while they journey to a strange land seeking the means whereby they may earn their livelihood.

Every employee knows that his position may easily be filled by others equally competent to take his place.

He knows that he is only one out of a million that must have employment and he cannot afford to higggle as to the terms of the contract or seek redress in the courts.

His means will not admit such a course. He prefers rather to accept any terms and conditions that his employer may force on him and often, indeed, without knowing what those terms or conditions mean. I say in most cases he has no alternative but to do this or endure the hardships and chances of getting other employment.

For example, say the employer pays \$50.00 per month to those that sign such contracts and only \$20.00 per month to those that do not. Of course no man can live and support a family on the latter sum and he would

rather take the risk and abide the consequences than accept it and thus would, in case he was injured, become a burden upon the public, or in case of his death, leave his family without redress for the injury they had sustained through the fault and negligence of another, and without means of support whereby they are either thrown upon the charity of their friends or bounty of the public. This fact is adverted to for the purpose of illustrating how completely in the power of the employer the employees are ; and how necessary it is to stand firmly by those principles of law by which the public interests are protected. This dependence of the employee is most clearly shown when we look at the great railway corporations of the land, who employ their men by thousands and by reading the history of the unsuccessful attempts of

such men to secure their rights by means of strikes, and also how the interests of the public are affected if such contracts were allowed to stand. The strength of every contract lies in the power of the promisee to appeal to the courts of public justice for redress for its violation. The administration of justice is maintained at the public expense. The courts should never, therefore, recognize any transaction which, in its object, operation or tendency is calculated to be prejudicial to the public welfare. Judge Wilmot, in 5 Denio, 434, says "It is the duty of all courts of justice to keep their eyes steadily upon the interests of the public even in the administration of commutative justice ; and when they find an action is founded upon a claim injurious to the public, and which has a bad tendency to give no

countenance or assistance in foro civili. The rule that contracts and agreements when contrary to public policy when properly understood and applied, is one of the great preservatives of the state. Sound morality is the corner stone of the social edifice. Whatever disturbs that, is condemned under the fundamental rule". Therefore we may take it as well settled that, in the law of contracts, the first purpose of the courts is to look to the welfare of the public ; and if the enforcement of the agreement would be inimical to its interests, no relief could be granted to the party injured, and even though it might result beneficially to the party who made and violated the agreement. Let us consider some of the duties that the employer owes to his employees. The law says that he shall select and employ careful and

competent employees, furnish safe tools, machinery and appliances, make and enforce suitable rules and regulations and provide a safe and suitable place for his employees to labor. Now, what will be the effect if he is allowed to make contracts releasing himself from liability in case he is negligent in these duties and fails to perform what the law requires him to do. We must arrive at the inevitable conclusion that if he is allowed to be relieved from these duties and from all liability in case of his negligence that he will be more careless as to furnishing safe tools, machinery, etc., and thereby causing the lives and safety of his employees to be placed in positions of greater danger, and in the case of public carriers of passengers the danger to the travelling public would be increased. In support of these proposi-

tions, I will refer to what has been said on the subject by courts of high standing whose reason seems to me to be not only just and equitable, but practical and in accordance with good morality. In 20 Ohio, 434, the Court says : "It is a matter of universal observation that in any extensive business where many persons are employed, the care and prudence of the employer is the surest guaranty against mismanagement of any kind. The employer would, we think, be much more likely to be careless of the persons of those in his employ when he would understand that he was not pecuniarily liable." In 44 Ohio St., 471, in Railroad Co. v. Spangler, the Court held : "That the liabilities of Railroad Companies for injuries caused to their servants by the carelessness of other employees who are placed in authority and con-

trol over them, is founded upon considerations of public policy and it is not competent for a Railroad Company to stipulate with its employees at the time and as part of their contract of employment that such liabilities shall not attach to it." The Court continuing, says :

"If pecuniary liability for negligence promotes care in providing safe machinery and the like, the same liability will promote care in providing safe rules, appliances, regulations and all possible diligence in protecting its employees from harm. In 31 Maine, 228, the Court says in regard to common carriers making such contracts, "The very great danger to be anticipated by permitting them to enter into contracts to be exempt from losses occasioned by misconduct or negligence can scarcely be over-estimated. It would remove the principle safeguard

for the preservation of life and property in such conveyances. In 17 Wall. 357, the Court held that a common carrier cannot lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law. That it is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants. In 8 Fed. Rep., 782, that able and eminent man, Judge Gresham, in a case where by a contract of this kind came up, said "When the defendant's negligence in supplying his employees with unsafe machinery has caused the death of the latter, the law will not allow the defendant to say 'as in effect he does say in his answer' it is true that my machinery was defective and unsafe and my negligence caused the death

of my employee, but I am not liable to those who have suffered from the loss of his life because I had a contract with my employee which secured to me the right to supply him with defective and unsafe machinery and to be negligent. Such a contract is void as against public policy. If there was no negligence the defendant needed no contract to exempt him from liability, if he was negligent, the contract set out in his answer will be of no avail. Such is also the holding of Judge Roger A. Pryor, in the case of Runt v. Herring, 49 N. Y. S., 126. In 50 Fed. Rep., 561, Monroe v. The Iowa, the Court held, "It is the settled law of the federal courts that an express stipulation exempting a common carrier, whether foreign or domestic from liability for losses caused by the negligence of himself or his servants is contrary

to public policy and void." In *Jacobus v. Railroad Co.*, a case where a person was injured by the negligence of the Railroad Company while riding on a free pass containing a stipulation releasing the company from all liability in case the plaintiff was injured, the Court, in a very able opinion decided that such contracts ought to be held void, and their reason aptly applies to a contract of this nature. The Court said : "There are two distinct considerations upon which the stringent rule as to the duty and liability of carriers rest. One is a regard for the safety of the passenger on his own account, and the other is a regard for his safety as a citizen of the State. The latter is a consideration of public policy growing out of the interest which the State or Government as *parens patriae* has in protecting the lives and limbs of its subjects. So far as the consid-

eration of public policy is concerned, it cannot be overridden by any stipulation of the parties to the contract of passenger carriage since it is paramount from its very nature. No stipulation of the parties in disregard of it or involving its sacrifice in any degree can then be permitted to stand. Whether the contract is one based upon consideration or not, the interest of the State in the safety of the citizen is obviously the same. The more stringent the rule as to the duty and liability of the R.R. Co. and the more rigidly it is enforced, the greater will be the care exercised and the more approximately perfect the safety of the passenger. Any relaxation of the rule as to the duty or liability naturally, and it may be said inevitably, tends to bring about a corresponding relaxation of care and diligence upon the part of the carrier. It is true that the greater the

sense of responsibility, the greater the care and that any relaxation of responsibility is dangerous. It is the enforcement of the rule and of the liability imposed thereby the mulcting of the carrier for his negligence which brings home to him in the most practical, forcible and effectual way, the necessity for strictly fulfilling his obligations."

Judge Davis in *Stinson v. the New York Central R. R. Co.*, 32 N. Y., 337, speaking of the New York decisions which allowed common carriers to exempt themselves from liability for their own negligent acts, said: "The fruits of this rule are already being gathered in increasing accidents through the decreasing care and vigilance on the part of these corporations and they will continue to be reaped until a just sense of public pol-

icy shall lead to legislative restriction upon the power to make this kind of contracts." And this language was quoted with approval by the Supreme Court of the United States in *Railway Co., v. Lockwood*.

Greenhood on Public Policy, rule 445, says :A contract whereby an employee relieves his employer from responsibility for the latter's negligence, or that of his other employees when he is responsible for their negligence is void." It has been urged by some courts that if the employer was held liable for negligence, that this would cause the employee to be more careless of his person and property, but says the court, in *Railroad Co. v. Ross*, 112 U. S., 383 : "We have never known parties more willing to subject themselves to dangers of life or limb because if losing the one or suffering in the other,

damages could be recovered by their representatives or themselves for the loss of injury. The dread of personal injury has always proved sufficient to bring into exercise the vigilance and activity of the servant". The theory that public policy requires that servants should have no remedy against their masters in such cases because the absence of any remedy will make them more careful of their own safety than they would otherwise be reminds me of nothing so much as the opinion of Chief Justice Ruffin in the days of slavery that the law denied any remedy for any amount of fortune to a slave short of immediate murder out of humane regard to the best interests of the slaves themselves. Also the idea that a servant will expose himself to injury for the sake of getting damages is overcome by the law of contributory

negligence. Now let us see if such contracts do not effect the public."The safety of the people should be the supreme law" says Montesquieu in his treatise on the law of nations. The state as *parens patriae* has a duty to perform in protecting the lives of its citizens. The life of one man says an eminent senator in the legislature of the United States is worth many railroads. In my opinion contracts of this nature ought to be held void on this ground alone, and that no court of law or justice ought to enforce them. The correct principal is in my judgment that the state is interested in preserving the lives of its citizens and hence will not permit a railroad company or any other person or corporation to stipulate against civil responsibility for homicides committed through its own negligence. This bill still

becomes more clear and strikes the mind with much force when it is considered that the state punishes such negligent homicides as felonies. I doubt whether any part of such a contract which stipulates against liability for the consequence of the negligence of such corporations or persons ought to be sustained. If considerations of public policy will supervene to prevent a common carrier from stipulating against the consequences of his own negligence in respect to the care of inanimate merchandise, may not such considerations be much more strongly urged where a master endeavors by contract to stipulate against responsibility for the killing or injuring of a servant ? In those exceptional cases where a recovery is permitted against a master by a servant for an injury caused by a fellow servant, it is upon the theory

that the master as well as the servant has been negligent-- that is, that the master has been negligent in selecting an unskilled servant. So far, therefore, as the above contract seeks to change any existing rule of law, it seems clear that it is against public policy and void. The idea that a state will permit one of its citizens for an increase of wages to contract away his life or personal safety by a stipulation with another citizen, which in effect says "If you injure me or kill me through your negligence, neither I in the one case, nor my personal representatives in the other will hold you responsible, is monstrous". Besides to sustain such contract as valid cannot fail to have a tendency to diminish the care exercised by the employer in the selection of his servants, nor can it fail to increase the

number of reckless and irresponsible servants in his employ, and in both of the ways the danger to the public is increased. Conceding that special contracts, made by the employer with his employee, limiting their liability, are good and valid so far as they are just and reasonable to the extent, for example of excusing them for all losses happening by accident without any negligence or fraud on their part, when they are asked to go still further, and to be excused for negligence, an excuse so repugnant to the law of good morals and the public good, they have no longer any plea of justice or reason to support such a stipulation, but the contrary ; and such a rule would never have been entertained by the sages of the law. In the last four years, there has been 9,153 men killed and 88,712 injured in the employ-

ment of the railway companies alone. Does not this terrible loss of life and injury to person justly and rightfully appeal to the courts to take every step that will induce the employer to use all possible means to ensure the safety of his employees ? It is the opinion of those who favor the rich and powerful that the courts ought to hold such contracts valid, and then if the rule of law prove too great a hardship to the laborer, that he should seek his remedy in the legislature by means of statutes. This argument, in my opinion, has no sense of reason or justice to support it. The law, as it is now, providing no contract of this kind is made, gives the laborer a remedy in case he is injured through the fault or negligence of his employer, and if the courts would allow the employer to take advantage of the situ-

tion of his employees and enforce such contract, then the laborer is without a remedy till he is able to overcome the powerful influence of the rich and secure the passage of necessary laws to protect himself. They would allow the powerful to take advantage of the weak and change the already existing rules of law that give the laborer the little protection and benefit he now has. The courts are not organized for the benefit of the rich. They are sustained by the public and it is their paramount duty to decide each case according as justice and a high sense of morality shall dictate, and above all, they should consider the public welfare and the duty the governing power owes to its subjects. If contracts were allowed to stand, then the old Latin maxim (UBI JUS IBI REMEDIUM) should be wiped from our law

books and considered a relic of barbaric days. Green-
hood on Public Policy says : "If any contract bind the
maker to do something opposed to the public policy of
the State or Nation or conflicts with the wants, inter-
ests or prevailing sentiment of the people, or our obli-
gations to the world, or is repugnant to the morals of
the time, it is void, however solemnly the same may be
made." I think I have conclusively shown that such a
contract is against the policy of a well regulated form
of government, that it is against good morals, and con-
flicts with the wants and interests of the mass of the
people. Now, let us see what the prevailing sentiment
of the people is. To this we will look at the statutes
of our different states, and also the laws of foreign
countries. In Prussia, up to June 7th, 1881, the law

as it stood recognized the doctrine of the non-liability of the employer, but says an eminent writer, "These rules are not sufficient to meet the exigencies of modern life, especially in the case of such great industrial undertakings as railways, shipping, carriers, factories, mines, etc., for says he, the profit gained and the risk incurred by the employer would be out of all proportion to each other, and almost the whole risk would be transferred to the public and the workmen." For this reason the German Commercial Code has in the case of carriage by land and by water, and especially in the case of railways, introduced a general liability on the carrier from which vis major is the only exception, and has gone so far as to prohibit contracts in derogation of this liability. In France by the civil code, Art. 1384, the

law is laid down as follows : "A person is liable not only for the damage which he occasions by his own act, but also for that which is caused by the acts of persons for whom he must answer, or for the things which he has in his keeping", and this rule of law is strictly enforced. The Italian follows the French Code.

In England the courts adopted the abnormal rule of law allowing common carriers and employers to exempt themselves from liability in case of their gross negligence, misconduct or fraud ; but statutes were soon passed because the companies took advantage of those decisions to evade altogether the salutary policy of the common law and the laborer was given a remedy. But in construing the statutes, some of the lower courts have followed the law as previously laid down and allowed em-

ployers to contract against the spirit and intent of the law. These statutes show the sentiment of the people there in regard to contracts of this kind, and, as the higher courts have yet to pass on the question, it cannot be said that those cases must be considered as conclusive law on this question. In nearly all states of this country numerous statutes have been passed to protect the safety of the laborer. Acts regulating the working and operation of mines, factories, railroads, etc. All jurisdictions give a party who is injured through the fault of another adequate remedy. These statutes are passed in the interest of the public, and says the court in 29 Kansas, 169, "It is a familiar principle of law that a contract made in violation of law or the statutes, is void, and also that agreements

contrary to the policy of statutes are equally void."

Surely contracts of this nature are clearly against the intent of the law for it has always been the policy of the law to grant relief to the injured party. This point is sustained by numerous authorities and is the case whether the law is statute or common. It is another well settled rule of law that employers cannot shift the liability which the law has imposed upon them, so as to make their agents liable and be themselves relieved from all responsibility. Let us turn for a moment to some of the courts that hold such contracts valid. In 50 Ga., 465, Railroad Co., v. Bishop was a case where the employee was working for the corporation for the munificent sum of \$1.25 per day. The company on condition of allowing him the privilege of earning

his livelihood, reduced his wages to \$1.00 per day and made him sign a contract such as is mentioned above, and the court upheld it on the ground that every person ought to be allowed to contract freely. The very facts of the case lead any one to see the injustice of the decision ; but it has been followed by later decisions in that State. Thompson says, in Thompson on Negligence, page 1025, Vol. II, "These decisions do not do credit to the jurisprudence of that State. They ignore the unequal situation of the laborer and his employer. They depart from the analogy of the rule of law which denies to carriers the right to enter into contracts with those whom they serve, stipulating against liability for their own gross negligence and in so doing they place the life of a man upon a lower footing than the proprietary

interests which a man may have in a chattel. In *Griffith v. Dudley*, 9 Q. B. D., 357, the Court held the same as the Georgia cases, and Justice Field said : "That workmen as a rule were perfectly competent to make reasonable bargains for themselves", but says an eminent author, "If this be so, it does not appear why any statute was needed", referring to the statute allowing the servant to recover in case he was injured through the fault of the master. I think the reasoning advanced by these courts and these are the leading cases that uphold such contracts, is clearly against good morals and against the sentiment of the mass of the people.

Whether a contract shall be avoided on the ground of public policy does not depend upon the question whether it is beneficial or otherwise to the contracting parties.

Their personal interests have nothing to do with it, but the interests of the public are alone to be considered. the State is interested not only in the welfare, but in the safety of its citizens. To promote these ends is the leading object of government. Parties are left to make whatever contracts they please provided no legal or moral obligation is thereby violated, or any public interest impaired, but when the effect or tendency of the contract is to impair such interest it is contrary to public policy and void. Contracts in restraint of trade are void because they interfere with the welfare and convenience of the State, yet the State has a deeper interest in protecting the lives of its citizens. The uniform policy of the law has been to protect the safety of the citizen who has to have recourse to any dangerous

mode of employment to gain a livelihood and to hold the employer to the exercise of the utmost foresight even as to possible dangers and the utmost prudence in guarding against them. This policy is dictated both by a desire to protect the citizen and because the public is interested in his safety. For example, let us consider what would be the effect to allow the employer to contract out of the spirit of the laws passed to protect the interests of the many thousands that labor in the mines. Just think of it ; the laws made for the proper ventilation of mines, being neglected by the corporations, explosions dealing death and injury to the men occur, and hundreds of families are thrown upon the public with no means of support and thereby become a public expense, and then, would you say that the courts

ought to sustain such contracts and allow the company to hold them as a bar to suits for damages and that it is no concern of the public ? Surely any one with a true sense of justice would look with horror upon the thought. Puffendorf says : "The first rise of servitude is owing to the voluntary consent of the poorer and more helpless persons and is founded upon the common form of contract." Thus showing that the greatest of obstacles in the way of civilization and liberty is based upon the right to contract freely. Therefore all contracts must be construed by looking at the interests of the public first. Numerous classes of contracts are declared void by the courts on the ground of public policy and it is not necessary for the party to seek relief by the aid of statutes.

The courts have in numerous cases changed the settled rules of law when the true interest of the public dictates that they should, therefore there is no reason in the argument that it is always the duty of the legislature to make the needed reforms. If this had been so we should never have heard of the just rules that the Equity Courts have promulgated. When the laws deny to the laborer their just rights, then comes trouble and strife and with that hardship and suffering. But when laws protect those rights, and the laborer gets a fair share of the profits he helps to earn, then we will hear no more of strikes and bloodshed that cost the public millions of money and interrupt the progress of civilization. In every strike we read of wrongs committed by the strikers or those in sympathy with them, but this

is one way they show their sense of the injustice done them and they should not be blamed too much, but it is the laws that should be judged harshly, for a law that does not recognize the true interest of the workingmen drives them to disobey it and using the words of Senator Vorhees who says, "When the strong arm of the law interposes between the laboring man and the laboring woman and their last chance for bread by honest toil, their sins for self-preservation are less odious to their Merciful Father than the prayers of the oppressors who have driven them to ruin." Therefore, for the reasons above set forth, and for the injustice that would ensue, and in the interest of good government, I am strongly of the opinion that such contracts should be held void.

Cases cited in support of the propositions above
set forth :

119 N. Y., 468, *Donnegan v. Erhardt*.

124 N. Y., 493, *Ford V. Ry. Co.*

92 N. Y., 640, *Dana v. Ry. Co.*

91 N. Y., 332, *Sheehan v. Ry. Co.*

49 N. Y. S., 126, *Runt v. Herring*

27 Ohio St., 240, *Gill v. Ry. Co.*

44 Ohio St., 471, *Ry. Co. v. Spangler*.

19 Ohio St., 1, *Ry. Co v. Curran*.

54 Ind., 39, *Ry. v. Ridge*.

84 Ind., 194, *Ry. Co. v. Thomas*.

38 Ind., 341, *Goff v. Hutchinson*.

21 Ind. 48, *Ry. Co., v. Mundy*.

47 Ind., 471, *Ry. Co. v. Selby*.

6 Ind. 416, *Wright v. Goff*.

13 Ind., 518, *Ry. Co. v. Remmy*.

28 Kans., 622, *Ry. Co. v. Curl*.

29 Kans., 169, *K. P. Ry. Co. v. Peavey*.

19 N. H., 122, *Mayall v. Ry. Co.*

8 New Zealand, L. R. 513, *Threlkeld v. White*.

39 Iowa, 246, *Rose v. Ry. Co.*

112 U. S., 383, *Chicago & Mil. Ry. Co. v. Ross*.

- 14 How., 468, Ry. Co. v. Derby.
- 95 U. S., 660, Ry. Co. v. Stevens.
- 107 Mass., 108, Wilton v. Ry. Co.
- 51 Pa. St., 315, Ry. Co. v. Henderson.
- 31 Me., 228, Sager v. Ry. Co.
- 62 Me., 488, Willus v. G. L. Ry. Co.
- 26 Grat., 328, V. & P. Ry. Co. v. Sayers.
- 17 Wall., 357, Ry. Co. v. Lockwood.
- 20 Minn., 110, D. Jacobus v. St. P. & C. Ry. Co.
- 41 Ala., 486, Ry. Co. v. Hopkins.
- 52 Ala., 606, Ry. Co. v. Henlein.
- 56 Ala., 368, Ry. Co. v. Henlein & Barr.
- 63 Mo., 318, Roice v. K. P. Ry.
- 7 Colo., 43, Express Co. v. Carroll.
- 3 Colo. 281, Despatch Co. v. Cornforth.
- 14 W. Vir., 180, Maslin v. B. O. Ry. Co.
- 65 Texas, 640, V. C. & S. F. Ry. Co. v. McGown.
- 19 Ill., 136, Ry. Co. v. Morrison.
- 8 Fed. Rep., 782, Roesner v. Hermann.
- 50 Fed. Rep., 561, Monroe v. The Iowa.
- 51 Fed. Rep., 562,
- 17 Fed. Rep., 67, Miller v. U. P. Ry. Co.
- 20 Fed. Rep., 87, Crew v. St. L.K. & N. W. Ry. Co.

44 Conn., 333, Rockwell v. Newton.
2 Head, 517, Memphis Ry. v. Jones.
30 P. 372, Kelly v. Courter.
50 N. W., 481, Peck v. Levinger.
9 So. 339, City Council v. Water Co.
16 N. Y. S., 154, Brinkman v. Eisler.
22 W. Vir., 600, Trans. Co. v. Pipe Line Co.
1 Cent. Law Jour., 485,
32 Cent. Law Jour., 186.

The following text books have also been consulted.

McKinney on Fellow Servants, Sec. 1.
Deering on The Law of Negligence, Secs. 198-9-206.
Campbell on Negligence,
Schouler on Bailments and Carriers, Secs. 652-3-4-5.
Greenhood on Public Policy, Rules 1, 2, 443-5-9-50
Story on Bailments, Sec. 549.
Thompson on Negligence, Vol. II, p. 1025.
Lawson's Contracts of Carriers, p. 273-8-9.
Sherman & Redfield on Negligence, Sec. 294.
Wharton on Negligence, 589-92-641.
2 Kent's Com., 607.
2 Redfield on Rys., 82-98.
2 Parsons on Contracts, 240-251.

Anson on Contracts, p. 223.

Cases that should not be followed.

50 Ga., 465, Ry. Co. v. Bishop.

52 Ga., 461, Ry. Co. v. Strong.

57 Ga., 513, Galloway v. Ry. Co.

9 Q. B., 157, Griffiths v. Earl of Dudley.

8 Q. B., 57, McCowley v. Ry. Co.

10 Q. B., 437, Hall v. Ry. Co.

10 Q. B., 212, Gallin v. Ry. Co.

33 Upper Can., Q. B. 474, Alexander v. Ry. Co.

24 N. Y., 181, Wells v. N. Y. C. Ry. Co.

108 N. Y., 80, Ulrich v. N. Y. C. & H. Ry. Co.

