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THE SOLDIERS' AND SAILORS' INSURANCE ACT.

With the entry of the United States into the great conflict now raging in Europe, the Federal Government adopted a new system of insurance and compensation for its soldiers and sailors and their families and dependents. The glaring inequalities of the pension system, together with its enormous expense, resulted in its own downfall, and the substitution of a more enlightened method of insuring those in its military and naval services who give up their lives and of caring for those who returned permanently disabled. In addition to its insurance and compensation features, the act provides for the establishment of a system of reeducating disabled soldiers and sailors to aid them in finding work suitable to their condition of disability at the conclusion of the war.

It will be of interest to the country at large to learn how the soldiers and sailors are applying for Insurance with the Government. At the close of "business" January 26th the number of applications received totaled 551,849, aggregating $4,663,420,500, being an average of $8,451 per man. These figures apply only to "boys" in this country and do not include those "over there;" in other words they do not include the overseas division.

The new law is public No. 90 and is popularly known as the Soldiers' and Sailors' Insurance Act. It was passed at the last session of Congress. The act was drafted by a committee headed by Judge Julian W. Mack, in cooperation with officials of the War and Navy Departments. The administration of the law was placed in charge of the Bureau of War Risk Insurance which was enlarged by the creation of a Division of Military and Naval Insurance. William C. Delanoy is Director of the Bureau.

Immediately following the passage of the act, a conference was held in Washington at which a number of officers and enlisted men of the Army and Navy were summoned to receive preliminary instruction in the provisions of the act and its practical administration. Officers and men from all the army and naval camps have been designated to have charge of applications for insurance and all other questions relating to the administration of the act at their respective stations.
The underlying purpose was to grant a measure of justice to the fighting forces on behalf of the whole people, and, secondly, in granting that measure of justice to do it in a way that would hearten the men by freeing them of the one great dread that every man has. Men who go out to battle, even though they are not in the slightest degree physical cowards, may have a fear of what may befall them. But that isn't the real fear that confronts most of them. The real terror for men is that their families may suffer or become objects of charity. That fear the Government aims to dispel by letting the men know in advance that their families are not going to become objects of charity; that while, of course, the Government can not keep each one of them in the comfortable situation in which many of you men maintain your families, it can and it will at least do this: It will save them from abject poverty—save them from having to go out and to ask others for the necessities of life.

"Now, some emphasis was placed in some of the talks this morning on compensation to the men. The contrast was made between pensions and compensation, and the analogy of the workmen's compensation act was referred to. All of that is true. I do not want, however, to overemphasize this thought of compensation. Rather I should like to have you feel that all of those who had anything to do with this act have always appreciated that, whatever the Government may do, it can not give real compensation for the services that soldiers and sailors render, and that their only compensation, their only real compensation, is the legacy that they are going to transmit to their children, the knowledge that they have stood up and done the fighting for the rest of us. But in some reasonable measure the rest of the country must give them a compensation, and we have used the word compensation in this act because pensions, rightly or wrongly—I am not now passing on the justice of it—but rightly or wrongly, pensions have come to have a secondary and none too pleasing connotation. When we come to the compensation section I will explain in more detail why that is so and what we have done to obviate that sort of thing, despite great likeness between the pension laws and the compensation section.

"In framing the law we started out with the consideration of what it was in a financial way that men were losing and risking, and that they could reasonably ask the Government to replace or compensate for."

On the insurance features of the law, Judge Mack continued:

"The thought underlying the insurance article was this, that after the loss of the ordinary income that is compensated for by the family allowance, and the risk of loss of life and limb in the
service that is compensated for by the disability and death provisions, which we have just considered, comes the loss of present insurability. Men ought to insure themselves against the inevitable; whether they do or do not is, of course, a matter of their own concern. But in ordinary peace times every man who is fit to be in the Army, or at least to enter the Army, can go out and buy insurance. The result of entering or being in the service is that he can not buy insurance. I say can not; I mean, practically speaking; literally you can, but at a prohibitive rate. From your standpoint, the rate is exorbitant, and therefore prohibitive, even though, from the standpoint of the insurance company, the rates may well be entirely reasonable. We do not know what the risk is going to be; we do not know to what extent the mortality or disability percentage is going to be increased. It’s really largely guesswork, even though we take the European experience as a basis; and because of this the insurance companies are adopting different rates. Some of them absolutely refuse to insure men against this hazard at all. Others are ready to insure them at the present time at an additional rate of from $37.50 per $1,000 to $100 per $1,000. That would mean for you from $375 to $1,000 a year extra on $10,000 insurance over and above the ordinary premium that we civilians would pay, just because you are in the service.

"Now, it was felt that it is utterly wrong for the people of this country to throw that burden upon the men in the service, and that that at least is a definite loss which the Government can replace. Further, it was believed that there is only one really adequate way of replacing it, of making it good, and that is by giving back in kind what has been taken away, by restoring your insurability and restoring it on at least as good a basis as the rest of us had. The only feasible way for the Government of the United States to restore the insurability of you men is to sell you the insurance that you could have gotten in private insurance companies, and therefore that is the plan that was adopted. It was urged that the Government pay this extra premium to the private insurance companies, and the private insurance companies were ready to be very fair and just and generous if that had been considered. Many were, and I think all of them would have been, entirely willing that this extra premium be set aside as a fund, and if there was anything saved out of it that it should be given back; but, on the other hand, if it was exhausted, and more than exhausted, the Government should pay the difference. That would have been one way of handling the matter. The Government could have said to you. 'Take any insurance you please in any company you please, and whatever extra premium is charged we will stand back of you for it.' But the Government of the United States is not in the habit of carrying its insurance in private companies; it carries its own insurance so far as fire is con-
cerned, and there is no reason why it should not carry it own in-
surance so far as your lives are concerned.

"Then, again, it was felt by many that to make such a proposi-
tion would be to give a general Government indorsement to every
insurance company or fraternal organization of which any of you
might be members, and the wisdom of the United States Gov-
ernment setting its stamp of approval indiscriminately upon all com-
panies was doubted, because, while most of the companies are
good and many of them excellent, the United States is not ready
to say that it will back up every company.

"No good reason was apparent against the United States itself
directly insuring you men. And there are many reasons in favor
of it. You are a limited class; but for the war you would be the
best class of insurance risks that could be found in the world.
The Government of the United States, if it went into the insur-
ance business, would not have the number of items of expense
that the private insurance companies have. In the first place,
it would not have the expense of commissions to agents, and
that's a heavy item of expense, because it has been demonstrated
up to now that men will not do the sane and the right thing for
themselves and their families by taking out insurance in private
companies unless they are driven to it by insurance agents
[laughter]—driven to a realization of their obligations to their
families and to themselves. But the United States Government
when it offers you the opportunity to buy this insurance at less
than peace rates does not need any insurance agents; this op-
portunity is so wonderfully attractive that a man must be a fool
or crazy and not fit to be in the service if he does not avail him-
self of it to the utmost extent of his financial ability.

"Then the Government pays no taxation; it has no medical ex-
amination fees and medical inspection and supervision, because
it is going to take you all as you are. There are a few of you
who may not be insurable. Some who have been in the service
a long time might not be able to pass an examination now: and
yet, comparatively, their number is so small that it is a negligi-
ble quantity when you consider the million or two million or more
possible risks. The great mass has just undergone a careful
medical examination. They would not be in the service if they
were not insurable, and so the Government does not need to incur
the expense of medical examinations.

"And then the Government need not advertise or look for in-
vestments and employ high-priced and high-salaried men to con-
duct its business. Government salaries, as you know, are
ludicrously small. Men work for the Government at a quarter to
a tenth of what they could get in private life for the same amount
of work with the same ability. That is one of the advantages
the Government has, because it is the Government and because
men are patriotic or want the honor and are ready to serve the
Government for so much less."
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On the question of compensation, Judge Mack added:

"Compensation is very much like the present pensions, except in the fundamental underlying thought. The pension, especially the service pension, has been regarded by many as a gratuity. This bill is based on the analogy of the workman's compensation act. If a civil employee is injured or dies in and through his service, the United States or any other employer pays compensation to him or to his family for disability or death; similarly the military employee ought to get it.

"The bill strikes a new note, however, in one respect. The workman himself is the employee. He is the unit with whom the employer deals, and therefore in all the workmen's compensation acts, if a man is disabled, the amount of compensation that is paid to him depends upon his salary in the business and his family does not enter into the consideration. We felt in drafting this act, however, that the situation was different, particularly in view of conscription. Under the conscription law the family is conscripted when the breadwinner is taken away. The family in giving up its head is serving the country, and the family, therefore, ought to be looked at in determining the amount that the Government pays for disability or death; and so the amount that is paid, if a man becomes disabled in the service or, as the law puts it, in the line of duty, varies according to the size of his family; and, as a matter of justice, it was felt, and Congress indorsed the idea, that it should vary according to the size of his family from month to month. If the family status changes from month to month, from year to year, the amount of compensation payable monthly should change with it. If a man is a bachelor, he will get so much for total disability; 15 years from now, if he should have married and has children, the amount of his compensation will depend at that time upon his status then; and so, if he becomes a widower and has no children and no wife to look after, the compensation will be reduced to the same amount as that of a bachelor. Now, the amount of the compensation you will find fixed in the bill; the amount for total disability ranges from $30 for bachelors to a maximum of $75, maximum except for this, that if a man, whether bachelor or married, has a widowed mother dependent on him, $10 is added because of that fact; further, the bureau may allow him up to $20 a month if his condition is such that he needs the constant aid of a nurse or attendant.

"Congress put in one further provision, borrowed from the pension laws. It destroys the harmony and symmetry of the bill; but those of you who are injured will care very little for the harmony and symmetry of the bill as against the increased compensation that it is going to give you. It provides specifically that, regardless of family status, a bachelor and a man with seven children shall be treated alike; for the loss of both hands, both
feet, both eyes, total blindness, or for a permanently helpless, bedridden condition, $100 monthly shall be given.

"In addition to this, the man is going to get governmental medical and surgical treatment, and he is going to be supplied, subject to regulations to be made by the bureau so as to prevent abuse of it, with such appliances as he may need, not merely in the beginning but as long as his disability continues, artificial limbs and eyes and things of that kind."

Discussing family allowances, Judge Mack continued:

"Whatever replacement or compensation was to be given, we felt would have to be alike throughout the country, and would have to be alike at least as to all of the men in the same rank, irrespective of their actual personal financial condition. It is not necessary, of course, that the provisions should be alike, but it was the only practicable scheme. Take, for instance, the family allowance. The law might have been drafted in such a way that the amount of the family allowance would vary according to the cost of living in the particular community in which the family resided. And in England that is done to some extent. More is given to people who live in the large cities, but it was not deemed feasible for a Federal act. It was felt that even if it had been thought wise it would not have been practicable, because it would have been impossible to get such an act through Congress. Congressmen from the small towns would have felt there was an unjust discrimination as against their people, so no attempt of that kind was made. However, those of us who had to do with the drafting of the act did not lose sight of the fact that there is a real difference in the cost of living, and that the provisions that are made by the Federal Government may be extravagant in a hamlet of 500 people, and may be very inadequate in a city like Washington, Chicago, or New York. But we had to strike some fair average.

"Then, again, when it came to the amounts, we did not feel that the amounts given were large enough. Most of us coming from large cities thought that they were very small. Most of us having more than the average income of men throughout the country thought that they were pretty small. But again we had to be reasonable. We had to consider that whatever money is given is paid by the taxpayers of the country, and that the man having an average income would feel that there was an injustice to him if provisions were made for your families that would give them more than the average income, at least considerably more than the average income. And so again the amounts that were determined upon were based on what we thought was a fair and reasonable amount in view, first, of the conditions throughout the whole country, and second, the average earnings throughout the United States, the average of families throughout the United States."
On the problem of rehabilitating the soldiers and sailors injured during their war service, Judge Mack declared that the primary duty of the Government is to make provision for men who are injured, to adapt themselves to their disabled condition and to train them for industrial work for which they may be fitted notwithstanding their disability. He continued:

"The most important thing the Government can do is to rehabilitate the injured men; to reeducate those who because of their injuries are unable, after they get well, to follow their former occupations. The man who needed his hands for his job and has lost them must be trained to do something else without his hands. It is a tremendous job that this Nation and all the nations are facing. This particular law does not provide how it shall be done. It merely assumes that it is going to be done and that further legislation is going to be enacted when it shall have been determined fully after the most careful study how it can best be done. In the meantime the Surgeon General's Department has full power and authority and is making full preparations for the beginning of this sort of work, because as soon as the man is in the service he is subject to service regulations, and the service has full power to go ahead with this sort of thing. The Surgeon General's Department begins with the base hospital; it provides possibilities of employment right there.

"We start out with this thought, that there is grave danger when men go through the frightful experiences that some will have to go through in the trenches and then the hospital experiences that they will have to go through, that they may lose all their stamina. This is particularly liable to happen when they know that the Government is going to give them something for the rest of their lives; there is grave danger that they will be content to go on with that minimum. But life, of course, is not static. If men do not go up they will go down, and the last men the Government and the people want to see go down are these men. Therefore the only thing to do is to see that they go up. They must be stimulated, and this bill provides two stimulants—one negative and one positive. The negative is this, that a man must take the treatment, must take the course of education that the Government will provide or procure to be provided, under penalty of suspension of his compensation during any period of unreasonable refusal. But that is negative; there is something better, there is something positive. It is not only in the interest of the man himself that he should be kept from going down, that he should be discontented with the dead level of the Government minimum compensation; it is equally in the interest of the State. It is in the common interest that every latent power of the man should be developed, that he should strive for the highest economic level that it is possible for him to attain; and in order
to stimulate him still more to strive for that, it is expressly pro-
vided in this bill that the compensation which the Government
gives him, let us say for the loss of his legs, is not going to be
taken away from him because he has attained an even higher
economic position than he had before the war. The compensa-
tion will be continued as long as the physical disability continues,
regardless of the economic recuperation. After a man's dis-
charge he can be reenlisted compulsorily under some form of re-
enlistment, if he needs reeducation; but, of course, until he is
discharged he does not come within the provisions of the com-
ensation articles, because while a man is in the service and get-
ting his pay he does not get the disability provision. Moreover,
as you know, officers in the Regular Army are not apt to take
these disability provisions, because they may be retired and get
three-fourths of their regular pay on retirement. That does not
apply, however, to the enlisted men and it does not apply to the
officers in the National Army."

In conclusion, Judge Mack said:

"On behalf of my associates as well as myself, of course, I
acknowledge your expression and I want to repeat what I think
I said—if I did not say it, I ought to have said it at the outset of
my remarks on Tuesday—that I can never be thankful enough
for the real privilege that came my way in having been given
this sort of an opportunity, an opportunity that accords so fully
with my personal wishes. If I had been asked to choose the
sort of war service that I should like to perform, it would have
been just this sort of service. No man deserves, no man wants
thanks for what he is doing in connection with this war. Each
one of us is endeavoring to do the best he can, ought to be en-
deavoring to do the best he can in whatever field he has been
called or has volunteered or has been drafted into the service of
his country. We are all fellow workers for the same cause.
One is doing one thing, the other is doing the other. Our end
and object is the same—to make our side prevail, in order that
civilization may be bettered, in order that the opportunity for
every man on the face of the earth may be increased, in order
that democracy may prevail. And the full spirit or democracy
at home would never prevail if the whole people failed to give
at least a reasonable measure of justice to each one within his
sphere. This act is intended, as I said at the outset, to grant
that reasonable measure of justice to those of you who are
going to encounter the risks that you are facing, that you will
face on behalf of your fellow citizens and on behalf of the world.
It has been a very great pleasure to me, a tremendous inspiration
for me to be able to be with you, and I am sure that I shall be
excused for departing from my official duties on the bench, the
position in which I am appointed primarily to serve my fellow
citizens, in order that I might be able to help along in the understanding and in the administration of this particular act.

"I express to you thanks on behalf of the Treasury Department, although I am not authorized to speak for it. I have nothing to do with the Treasury Department, except as a volunteer. I wish, on behalf of your fellow citizens generally, to express to you their thanks for the work that you are going to do for your fellows in the Army and Navy as the result of the information that you will take with you from these three days of conference here."

The Bureau has handed down several decisions supplementing the text of the act relative to the interpretation of Section 22, defining what persons in the military and naval service can take advantage of its provisions. Treasury Decision No. 7 names the following persons as included within the terms of the act:

1. **Field clerks, Quartermaster's Corps.**—Field clerks, Quartermaster's Corps, are within the terms of the act as enlisted men.

2. **Army field clerks.**—Army field clerks have the same military status as field clerks, Quartermaster's Corps, and are within the terms of the act as enlisted men.

3. **Members of training camps.**—Members of training camps authorized by law are within the terms of the act.

4. **Students in aviation camps.**—Students in aviation camps who are enlisted men are within the terms of the act.

5. **Medical officers Public Health Service.**—Officers of the Public Health Service when detailed for duty with the Army or Navy are within the terms of the act as officers in the active service of the United States.

6. **Male nurses, enlisted.**—Male nurses who are enlisted men of the Medical Department are within the terms of the act.

7. **Retired officers or men ordered to active duty.**—Officers and men on the retired list who are ordered to active duty by the War Department or Navy Department are in active service and are within the terms of the act.

8. **Personnel of Lighthouse Service.**—The personnel of the Lighthouse Service transferred to the service and jurisdiction of the War and Navy Department by Executive order pursuant to the act of August 29, 1916, are within the terms of the act of October 6, 1917.

Another decision of the Bureau, known as Treasury Decision No. 8, excludes certain other persons from participation under the law. They are as follows:
(1) **Cadets at West Point and midshipmen at Annapolis.**—Cadets at West Point and midshipmen at Annapolis who are not assigned to active service are not within the terms of the act.

(2) **Cadets and cadet engineers, Coast Guard.**—Cadets at the Coast Guard Academy and cadet engineers in the Coast Guard who are not assigned to active service are not within the terms of the act.

(3) **Russian Railway Service Corps.**—Men in the Russian Railway Service Corps are not within the terms of the act.

(4) **Draftsmen in Engineer Corps.**—Draftsmen in the Engineer Corps are civilian employees in the Military Establishment obtained by the department through the civil service and are not within the terms of the act.

(5) **Field clerks, Engineer Corps.**—The so-called field clerks in the Engineer Corps are civilian employees who have no military status. They are not within the terms of the act.

(6) **Civilian field clerks, Signal Corps.**—Civilian field clerks, Signal Corps, are civilian employees in the Military Establishment, and are not within the terms of the act.

(7) **Postal agents serving in France.**—Postal agents sent to France by the Post Office Department to handle field mail for the troops are civilian employees and are not within the terms of the act.

(8) **Contract surgeons.**—Contract surgeons are civilians under employment by the United States by contract for their personal services as medical attendants to the troops and are not within the terms of the act.

(9) **Contract nurses.**—Civilians employed as "contract nurses" in the Army or Navy are not within the terms of the act.
TRENCH WILLS.

The history and development of the law of wills is always interesting, for the reason that it strikes home to all of us. But at this time, the law of wills is the more important, due to the fact that some of its technicalities, are being dispensed with in order that the last wishes of the soldiers in this great conflict being waged upon the European battle fronts, may be carried into effect. It is possible that a brief history of the development of this branch of the law will serve to show how it has ever expanded to meet the needs of the age.

Before the Norman conquest we find that a man had the power, regulated by customs and sanctioned by the usage of the times, to dispose of his property by will. But when the feudal system became firmly rooted into the law of England this power was revoked, and wills were no longer "in style." The basis of this change was the greed of the Feudal Lords, who were jealous of their right of Escheat, Wardship and Primer Seisin. We will recall that under this system, where the right to dispose of one property by will was not known, the lord became entitled to the land of a deceased tenant who had died without leaving any heirs. The lord received this land shorn of the burdens of the tenure, the land being said to "escheat" to the lord. Wardship was the right by which, upon the death of a tenant, the lord became entitled to the custody of the land and the body of the heir, until the heir became of age. During this time the lord was not bound to account for the profits of the land. The right of Primer Seisin was the right of the King to take possession of land held of him on the death of his immediate tenant, and to take the profits therefrom for a certain period, usually a year. So realizing that such disposition of property to take effect immediately upon the death of the tenant, that is by way of a will, would work a great "hardship" upon them, these avaricious feudal lords did away with wills.

This right of disposing of property by will kept working for a legal outlet to overcome the hard and fast feudal law, and accordingly, when uses came into being they were quickly hailed as the means to the ends. By this method the person would convey his property to A for the use of certain other persons to be designated by his will, thereby actually, yet not theoretically, making a disposition of his property by a will. This method was of but short duration for the Feudal Lords once more interfered, and by the passage of the Statute of Uses (27 Hen. VII)
destroyed this privilege. By virtue of this statute the legal title followed the equitable title, and in the example given above, A, to whom the property was first conveyed, would be considered merely as a conduit of title, and as the person to be named in the will would thereby obtain the legal title, the courts decided that in the light of the Statute of Uses, this roundabout method must now be considered a theoretical disposition of property by will, which being adverted to the spirit of the feudal laws could not be tolerated.

So the law of wills having enjoyed a brief existence was doomed to exile. However, after a lapse of some five years, the Statute of Wills (32 Hen. VII) was passed, and this for all time settled the right to devised lands by will. This statute in substance provided that all persons being seised in fee simple, except feme coverts, infants, idiots, and persons of nonsane memory, might by will devise to any other person, except to bodies corporate, two-thirds of their lands, tenements and hereditaments held in chivalry, and all those held in socage. A subsequent statute (12 Car. 11) extended this right to all lands except copyholds.

The element of fraud is continually present wherever any human agency is at work, and in the course of time, it made itself felt in this new law of wills. It then became necessary to pass more stringent laws in order to cope with the situation, and to really make the will the last wishes and desires of the testator. To this end a certain section of the Statute of Frauds was passed, which in substance provided that all wills devising lands and tenements should be in writing, signed by the testator, or by some other person in his presence and by his direction, and that it must be subscribed in the presence of the testator by three or four credible witnesses. This statute did away with nuncupative wills as far as they related to devises of realty, and subsequent statutes limited even the amount of personalty which could be thus disposed of by word of mouth to take effect upon the death of the owner, and operating as a valid will.

The Statute of 1 Victoria, which has been almost universally adopted even in form by our American States, provided that no nuncupative will should be good unless made by a soldier or mariner, and then only in case it was proved by the oath of three witnesses, who had been called to witness the will by the deceased. So if any of these witnesses die, the will is void, for the statute expressly provides that the will must be "proved" by all of them, and not that they merely bear witness of its execution as they do under a written will. In order to be provable
later than six month after the making, such a will must have been reduced to writing by a witness thereto within ten days of its making.

And finally we find ourselves at the threshold of America’s entrance into this great war, and considering the law of wills as it stands today, we learn that wills made by soldiers or sailors in actual duty are the only cognizable kinds of nuncupative wills, and that these are only valid when proved by the oath of three witnesses who have been expressly called by the testator to bear witness to the world that the disposition he is about to make is intended by him to be his last will. It can be readily understood how the law as it now stands is inadequate to cope with the present situation, and that in order to do full justice and to carry out to the letter the last wishes of our heroic sons who may die upon that European battle filed it is necessary to modify the law in this respect, as everything else has been modifield “for the duration of the war.” For under the conditions surrounding modern trench warfare it is often impossible for a soldier to quietly gather three of his comrades about him and make known to them his last will. This for the reason that one is often isolated in some listening post in No Man’s Land, and also for the reason that being in an allied army one may not be able to converse in the language of his comrades. And again it would possibly be many months before the three could jointly prove the will before the proper tribunal. In such case if the verbal expressions had not been reduced to writing by the witness within ten days of its making, they would be of no effect and could not be proved. Then, too, if any one of the three was killed previous to such hearing; or if at the hearing one disagreed as to what the testator said; or if one had forgotten what was said—if any of these or other things happened to defeat the united proving of the will, the same would be null and void. We naturally ask ourselves this question: What is to be done? And from across the waters the answer comes, the technicalities of the law of wills shall expand and give way to the exigencies of the hour, and the courts shall do all in their power to carry into effect the last wishes and desires of our soldiers and sailors who heroically have given their lives for their country.

Upon examination I find that such is actually being done in England and although we have no actual decision to which to point, yet from very reliable source I have obtained the following facts which might be of some importance and interest.

Wills made in the trenches are legal and valid even though they are not witnessed as is required by the existing laws on the subject. All that is necessary is the signature of the testator, and in some cases the
courts have accepted wills to which no signature has been added, where it was possible to ascertain the testator, and learn from surrounding circumstance that such was in reality his will. In every case the courts, aided by the war office, go far from the beaten path of precedents to carry out the soldier's wishes however crudely they are expressed, or however fantastic they may be. Some of these wills have been found written in dialect; some in phonetic spelling; and some in cipher have taxed the war office experts to solve. But wherever possible these wills are being carried out to the very letter. Nuncupative wills have not been of such frequent occurrence, but after the court has satisfied itself that no fraud exists, it at once lends its aid to carry these verbal wishes into effect as a will of the deceased soldier.

Many of these trench wills are written in rhyme, and some contain touches of Tommy Atkin's humor. A few examples will serve to show that in a trench will mere matters of ad legal technicalities have been dispensed with. In the following the testator took a novel method in which to name his beneficiary:

"Whoever first sets eyes on this
   Gets everything I leave,
   For my kith and kin are dead and gone.
   There's a tidy sum in the bank you'll find,
   And my army pay though small.
   So stranger breathe one sigh for me,
   You're welcome to it all."

It is said that this was found by a young sergeant, who later took it back to England, where it was duly probated, and the officer received the "tidy sum," and also this soldier's last army pay.

Another soldier designated his beneficiary, by writing his will upon the back of a picture, and stating that the "girl on the other side" should receive all of his property. Another will was written by a private who had been cut off from his company for three days in No Man's Land without food or drink. In this condition, as his will would seem to indicate, the greatest desire of his life was "a drink." Here is his will:

"If I'm knocked out by a bullet or bomb,
   When over the top we go,
   A gallon of beer I leave to Tom,
   Another to 'Squint Eyed' Joe."
We've borne the worst of a soldier's thirst
Through days and nights of woe.
Give my dad the rest, but if I go west,
There's a drink for Tom and Joe."

Even this humorous article found place in the probate court, and the father took under it. There was some difficulty in carrying out the "beverage clause," for the reason that over half of the company claimed to have been called either Tom or Joe by the deceased. The court however left it to the father to carry this part into effect.

G. W. Atmore, Jr., '18.
AN UNUSUAL PROCEEDING IN THE U. S. SUPREME COURT.

For the first time in the history of the Federal Judiciary, the Department of Justice several weeks ago instituted proceedings in the United States Supreme Court to have a Federal District Judge cited for contempt for his alleged refusal to comply with a mandate of the Supreme Court. The proceeding was begun by Carroll G. Todd, Assistant Attorney General, who filed an information on behalf of the Department of Justice alleging that John M. Killits, judge of the District Court for the Northern District of Ohio, sitting at Toledo, had failed to comply with the mandate of the court ordering him to revoke an order previously made on March 15, 1915, in the District Court at Toledo, indefinitely suspending sentence upon James J. Henahan, who pleaded guilty to an indictment charging embezzlement of banking funds in violation of Section 5209 of the Revised Statutes. The proceedings grew out of the position taken by Judge Killits, who contends that as a Federal judge he has authority to indefinitely suspend sentence. The Department of Justice however instituted mandamus proceedings in the Supreme Court which held (242 U. S. 27) that a federal judge has no such power; that Judge Killits' order was null and void because it the pardoning power conferred by the Constitution upon the President.

In view of the unusual character of the case, the Journal herewith reproduces in full the information filed in the case:

IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1917.

Ex Parte, The United States, Petitioner.  
No. —, Original.

MOTION FOR LEAVE TO FILE AN INFORMATION FOR CONTEMPT.

Now comes the United States, by Thomas W. Gregory, its Attorney General, and moves the court for leave to file an information for contempt against John M. Killits, judge of the District Court of the United States for the Northern District of Ohio.

THE UNITED STATES,
By Thomas W. Gregory,
Attorney General.

John W. Davis,
Solicitor General.

January, 1918.
IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1917.

Ex Parte, The United States, \{ No. —, Original.\}
Petitioner.

INFORMATION.

To the honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes the United States, by Thomas W. Gregory, its Attorney General, and informs the court as follows:

1. On March 15, 1915, and in the October, 1914, term of the District Court for the Northern District of Ohio, one James J. Henahan pleaded guilty to an indictment in the cause of United States v. James J. Henahan, criminal No. 1558 on the docket of said court, charging embezzlement of banking funds in violation of section 5209 of the Revised Statutes of the United States; and thereupon, and upon the same day and in the same term, an order was made by the court in said cause that the said Henahan be imprisoned in the penitentiary at Leavenworth, Kans., for a period of five years.

Subsequently, on March 15, 1915, and in the same term, the court entered an order suspending the execution of the sentence aforesaid during the good behavior of the defendant, and providing that the term of the court be kept open, for the purpose of the case, for five years.

2. Thereupon the United States applied to this court for a writ of mandamus directing that the said order suspending the execution of the judgment against Henahan and keeping open the term of court be vacated and set aside. The matter having been submitted to the consideration of this court, it was decided that the said order of the District Court was in excess of its authority and null and void, and that it usurped the pardoning power conferred by the Constitution of the United States upon the President. (242 U. S. 27.) Having so determined, this court concluded as follows (p. 52):

While the conclusions just stated inevitably exact that the rule which is before us be made absolute and that the mandamus issue, nevertheless we are of opinion that the exceptional conditions which we have described require that we exercise that reasonable discretion with which we are vested to temporarily suspend the issue of the writ, so as to afford ample time for executive clemency or such other action as may be required to meet the situation. And for this purpose the issue of the writ will be stayed
until the end of this term, unless the United States otherwise requests, when it will go as a matter of course.

Rule made absolute.

All of which more fully appears in the record of cause No. 11, Original, of the October term, 1916, of this court, entitled Ex parte United States, Petitioner.

3. The United States never requested an earlier issuance of the writ of mandamus, and accordingly the same was made absolute as of course at the end of the October term, 1916, of this court.

4. On December 11, 1917, a letter was written by the Attorney General of the United States to the United States Attorney for the Northern District of Ohio instructing him that, as the mandate of this court requiring the said John M. Killits to set aside the aforesaid order of suspension had been issued at the end of the last term of this court, and as no reasons had been found why the original judgment of the court should not be enforced, immediately to proceed on Monday, December 17, 1917, to enforce it. On or about December 15, 1917, the said letter of instruction was shown to the said John M. Killits by the United States Attorney, and the said John M. Killits stated that no mandate from this court had yet been received, and that no court would be held at Toledo on December 17, giving these as the reasons why the original judgment of the District Court should not be enforced as directed by the Attorney General and as decided by this court.

Whereupon, on the 15th day of December, 1917, an original writ of mandamus issued out of this court to John M. Killits, Judge of the District Court for the Northern District of Ohio, commanding him immediately after the receipt of the writ and without delay to vacate and set aside said order entered on March 15, 1915; and on or about the 18th day of December, 1917, the said writ was presented to the said John M. Killits, but instead of setting aside and vacating said order of March 15, 1915, the said John M. Killits, ordered said writ to be filed with the clerk of the court. An order of commitment and capias for Henahan's arrest was issued by the court and placed in the hands of the United States Marshal for the Northern District of Ohio for execution.

5. Thereafter, on the 26th day of December, 1917, and in the October, 1917, term of said court, the said James J. Henahan, through his attorney, filed a motion in the cause of the United States v. James J. Henahan aforesaid, in which said judgment of imprisonment had been entered, alleging that since the entry thereof the said Henahan had been
given a full and unconditional pardon by the President of the United States by proclamations issued June 16, 1917, and August 21, 1917, respectively, and that an application for pardon had been made by the said Henahan and delivered to the Attorney General of the United States, and that said application had never been denied or disposed of by the President of the United States. It was prayed in said motion that an order be entered suspending the execution of the judgment against the said Henahan, and directing the United States Marshal not to make service of the writ of commitment in his hands. A certified copy of said motion is attached hereto and marked Exhibit "A."

Whereupon, on the 26th day of December, 1917, the said John M. Killits, Judge of the District Court of the United States for the Northern District of Ohio, acting upon said motion, ordered that the execution of the judgment in said cause be suspended until January 31, 1918, and that the United States Marshal be directed to hold in his hands and not to make service of the writ of commitment issued to him. A certified copy of said order is attached hereto and marked Exhibit "B."

Your informant alleges that the proclamations of the President of June 16, 1917, and August 21, 1917, respectively, referred to in said motion, were matters of public record of which the said John M. Killits was bound to take notice, and that neither of them could by any possible construction be taken to grant a pardon to said Henahan.

6. In consideration whereof of the United States, petitioner herein, by its Attorney General, prays that there be issued by this Honorable Court a rule directed to the said John M. Killits, Judge, as aforesaid, requiring him upon a day certain to be named to appear and show cause, if any there be, why he should not be punished as for a contempt of this Honorable Court.

THE UNITED STATES,
By THOMAS W. GREGORY,
Attorney General.

JOHN W. DAVIS,
Solicitor General.

CITY OF WASHINGTON,
District of Columbia, ss:

Personally came before me the subscriber, John W. Davis, Solicitor General, attorney for the complainant, who, being duly sworn, says that the foregoing information is true in point of fact.

Sworn and subscribed to before me, a notary public in and for the District of Columbia, this twelfth day of January, 1918.

CHAS. B. SORNBORGER,
Notary Public.
In the District Court of the United States for the Northern District of Ohio.
Western Division.

THE UNITED STATES OF AMERICA, plaintiff,  
v.  
JAMES J. HENAHAN, defendant.

Now comes James J. Henahan, and respectfully shows the Court that a writ has been issued out of this Court for the purpose of carrying into execution the judgment of the Court, in the above entitled suit, and said writ is now in the hands of the United States Marshal.

That since the entry of the judgment of this court in the above entitled suit, the defendant, James J. Henahan, was given a full and unconditional pardon by the President of the United States.

That since the entry of the judgment in the above entitled suit the defendant has been pardoned by two certain Proclamations issued by the President of the United States, dated respectively June 16, 1917, and August 21, 1917, reference to which is hereby made.

That a certain application for the pardon of this defendant was made by him and delivered to the Attorney General of the United States, and that said application conformed in all respects to the rules and regulations issued by the Department of Justice, and the application of this defendant for pardon was recommended by the Honorable Isaac R. Sherwood, all the Common Pleas Judges of Lucas County, Ohio, the Probate Judge of Lucas County, Ohio, the officials of the bank mentioned in the indictment against this defendant and many prominent citizens of the City of Toledo; that said application has never been denied or disposed of by the President of the United States, and this defendant is advised that until said application is denied, or disposed of by the President of the United States, it is within the power and discretion of this Court to suspend the execution of the judgment herefofore entered.

That defendant's counsel is about to leave the city for a period of approximately three weeks, and that the defendant can not procure other counsel to present the matters set forth herein and to otherwise represent defendant.

WHEREFORE: defendant prays that an order may be entered by this Court, staying or suspending the execution of the judgment against
this defendant in the above entitled case pending the determination of the matters herein set forth that the United States Marshal having the writ aforesaid may be directed to hold said writ in his hands and to make no service thereof, until the further order of this Court, or the determination of the matters herein set forth; that the Court may fix a reasonable time for the hearing of this motion, giving due regard to the absence of defendant’s counsel from the city, and upon the hearing of this motion this Court may adjudge that this defendant has been pardoned and may order his discharge; and that the Court may enter such further orders as justice may require.

James J. Henahan, 
By E. J. Marshall, 
His Attorney.

United States of America,

Northern District of Ohio, ss:

I, B. C. Miller, Clerk, of the District Court of the United States within and for said district, do hereby certify the foregoing to be a true copy of the motion filed in the above entitled cause in said court, and that the same is correctly copied from the original now on file in my office.

Witness, my official signature, and the seal of said court at Toledo, in said district, this 4th day of January A. D. 1918, and in the one hundred and forty-second year of the Independence of the United States of America.

[seal.]

B. C. Miller, Clerk. 
By E. I. Dean, 
Deputy Clerk.


EXHIBIT “B.”

The United States of America,

Northern District of Ohio, Western Division, ss:

At a stated term of the District Court of the United States, within and for the Western Division of the Northern District of Ohio, begun and held at the City of Toledo, in said district, on the last Tuesday in October, being the thirtieth day of said month, in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States of America, the one hundred and forty-second, to-wit, on Wednesday, the 26th day of December, A. D. 1917.
Present: Honorable John M. Killits, United States District Judge.

Among the proceedings then and there had were the following, to-wit:

October Term, A. D. 1917, to-wit, December 29, 1917.


THE UNITED STATES OF AMERICA vs. JAMES J. HENAHAN

Order

Criminal No. 1558

Upon the application of James J. Henahan and for good cause shown, it is ordered that the execution of the judgment of this Court in the above entitled suit be, and the same hereby is, suspended until January 31, 1918, and the United States Marshal is ordered and directed to hold in his hands and not make service of the writ now in his hands for the purpose of carrying said judgment into effect.

It is further ordered that the motion of James J. Henahan this day filed, shall be heard on January 31, 1918, at ten o'clock A. M. or as soon thereafter as counsel can be heard.

UNITED STATES OF AMERICA,

Northern District of Ohio, ss:

I, B. C. Miller, Clerk, of the District Court of the United States within and for said District, do hereby certify the foregoing to be a true copy of the Order filed in the above entitled cause in said Court, and that the same is correctly copied from the original now on file in my office.

Witness, my official signature, and the seal of said Court at Toledo, in said District, this 4th day of January, A. D. 1918, and in the 142nd year of the Independence of the United States of America.

[SEAL.] B. C. MILLER, Clerk.

By E. I. DEAN, Deputy Clerk.


Few instances have occurred in which it has been necessary to resort to forcible measures to enforce its decrees. The most recent contempt case was the punishment of Sheriff Joseph F. Shipp, and five of his deputies, growing out of the lynching near Chattanooga, Tenn., of Ed Johnson on March 19, 1906, after a stay of execution had been granted by the U. S. Supreme Court pending a review of the case. The opinion of the Court is found reported at 214 U. S. 203 and the sentence of imprisonment in 215 U. S. 581. In presenting the case to the Court,
Charles J. Bonaparte, then Attorney General of the United States, said:

"Never in its history has an order of this court been disobeyed with impunity. A few attempts to disregard its decrees have been made, but always without ultimate avail. In 1779, the Continental Congress, through its Standing Committee in Cases of Capture, reversed the judgment of the Court of Admiralty of the State of Pennsylvania and made an award in favor of Olmstead, a claimant, in a prize case. The State resisted the enforcement of the decree and Congress yielded. Olmstead thus found the decision of the appellate tribunal in his favor useless to him. With the adoption of the Constitution, the jurisdiction of appeals formerly exercised by the Continental Congress, became vested in this court and in 1808 Olmstead sought redress here in the same matter. United States vs. Peter's, 5 Cranch, 115. In one of his powerful opinions the great Chief Justice made it clear that the court's decree in favor of Olmstead must be obeyed. Nevertheless the State for a time defied the order. This resistance, however, was unable to withstand the unswerving determination of this court and finally disappeared. Members and officers of the state militia who had interfered with execution of the decrees were tried and sentenced to fine and imprisonment. This court then declared and established a supremacy which has ever since been maintained and which will always be a priceless heritage to the American people."

After a full hearing, Sheriff Shipp and his deputies, were sentenced to imprisonment in the District of Columbia Jail. Shipp and two of his deputies received terms of ninety days, and three other deputies were confined for sixty days.

Alfred L. Geiger, '17.
WAR WORK OF THE UNIVERSITY.

The service flag of the Georgetown University has approximately nine hundred stars. This is an increase of about three hundred since the beginning of the present scholastic year, and includes only those Georgetown men who have entered the military service of the Government. There is a large number, in addition, who are engaged in war work of a civil character. Since the beginning of the year the attendance at the Law School has dwindled until the classes at present are about one-third lower than at this time last year.

Since the last issue of the Journal, the new building of the Law School has been taken over by the Division of Personnel of the Quartermaster's Corps of the Army, and a rearrangement of classes was necessary in order to accommodate the classes to the reduction in classroom space. This has been accomplished, however, without much confusion.
NOTES.

INTERSTATE COMMERCE—STATE RAILROAD COMMISSION CANNOT INTERFERE WITH OPERATION OF INTERSTATE TRAINS—TEXAS LAW REGULATING TRAIN SCHEDULES.—In a decision handed down several weeks ago the United States Supreme Court held that the State of Texas, acting through its Railroad Commission, cannot interfere with the interstate operation of trains. The state brought suit to recover penalties from the Missouri, Kansas and Texas Railroad for alleged violation of an order of the State Railroad Commission which required passenger trains in Texas to start from their point of origin and from stations on their line within thirty minutes of their advertised schedules.

In its decision, the Supreme Court said:

"The only question with which we have to deal is whether the State Commission could intermeddle in this way, especially when there was sufficient accommodation for local traffic independent of the through trains. The defendant in error attempts to open this last matter, because the opinion of the Court of Civil Appeals in which the fact was stated was reversed by it for a different reason, and that of the Court of first instance was the other way. But we regard the decision of the intermediate and the Supreme Court as proceeding upon the assumption that we have stated and that we see no reason to disturb. Again, the question is not what the State Commission might require of a road deriving its powers from the State, with regard to local business, Missouri Pacific Ry. Co. v. Kansas, 216 U. S. 262, 283, but whether the order if applied to this case would not unlawfully interfere with commerce among the States.

"On its face the order as applied was an interference with such commerce. It undertook to fix the time allowed for stops in the course of interstate transit. It was a serious interference, for it made the defendant liable for an interstate train not starting on schedule time, when the train did not come into the defendant's hands, from another company in another State, until too late. This, as we understand the facts, was the train to which the advertised schedule applied, and if so, the mere statement of the result is enough to show that the burden imposed not only was serious but was unwarranted as well as unjust. The suggestion that compliance with the order could have been secured by having an extra train ready to run if the regular one was not on time hardly is practical, and is not an adequate answer, even in form. For the defendant advertised, or at least had the right to advertise, the interstate train, and, if it did so, would not free itself from liability for a delay on the part of that train by offering another. We think

Habeas Corpus Granted in Advance of Trial—Constitutionality of Selective Draft Law.—The United States Supreme Court, in a supplemental case involving the constitutionality of the Selective Draft Law, decided that in the absence of exceptional circumstances, the writ of habeas corpus should not be granted in advance of a criminal trial. Albert Jones, the appellant, was arrested in the Southern District of Georgia for alleged failure to register under the Selective Draft Law, and after a hearing before a United States Commissioner was committed to await trial. He petitioned the District Court for that District for a writ of habeas corpus, alleging that the Selective Draft Law was unconstitutional and that he was unlawfully deprived of his liberty. The petition was denied by the District Court, and in affirming its decision, Chief Justice White, of the United States Supreme Court, said:

"It is well settled that in the absence of exceptional circumstances in criminal cases the regular judicial procedure should be followed and habeas corpus should not be granted in advance of a trial. Riggins v. United States, 199 U. S. 547; Glasgow v. Moyer, 225 U. S. 420; Johnson v. Hoy, 227 U. S. 245. If that rule applied, therefore, our duty would be to affirm unless this case could be treated as coming within the exceptional class. But we do not deem it necessary to enter into that consideration because even if it were found to be embraced in such class every constitutional question relied upon has been decided to be without merit. Because of this situation, therefore, without departing from the general principle, we think it suffices in this case to apply the ruling made in the Arver case and for the reasons stated in the opinion therein, to affirm."

Passenger Standing on Platform—Negligence.—In an action for damages against an interurban railway brought by a passenger for being thrown from the platform to the paved roadway and injured, the court said:

"It is the duty of a passenger to go inside of the car, and if he is injured while standing upon the platform the burden is upon him to show that there was no unoccupied room inside of the car, or, if there was such room, that it was impracticable for him to
reach it because of the crowded condition of the passageway leading thereto. Failing to meet that burden, he is chargeable with contributory negligence and cannot recover. Panek v. Scranton R. Co. (Pa.), 102 Atl. 274."

**LIVE STOCK CONTRACT—CONSTRUCTION.**—A contract for the transportation of cattle from Ulysses, Pa., to Philadelphia contained a "thirty-six-hour limitation," and bore a memorandum, "Put off at Lancaster, Pa., for feed and water." The railroad company carried the car over its own line and a connecting line, the Philadelphia & Reading, to Philadelphia without going through Lancaster, and without apparent delay or any injury from delay. The shipper ordered the cattle sent to Lancaster, where they were sold. The shipper subsequently sued the railroad company for breach of contract, claiming that the shipper was entitled to feed charges in Philadelphia, freight charges from Philadelphia to Lancaster, a loss because of a decline in the market price of cattle at Lancaster, yard charges at Lancaster, and feed charges pending the sale. The Pennsylvania Superior Court held that a compulsory non-suit was properly entered. The carrier was not responsible for a loss caused by the transfer of the stock from the point of destination to another market where loss occurred. Staufer v. New York Central R. Co., 66 Pa. Sup. Ct. 208.

**RAILROADS—INJURY TO TRESPASSER—SUFFICIENCY OF EVIDENCE.**—In an action against a railroad for wanton injury to a trespasser on its right of way, evidence that the servant of the railroad operating its train had knowledge that a piece of timber was protruding from a car, one of the dangerous elements of the situation, was held insufficient to justify submission to the jury of the question whether the injury was the result of reckless indifference to consequences or intentional wrongful omission of some duty. Shepard v. Louisville & Nashville R. Co. (Ala.), 76 So. 850.

**CARRIERS—INJURY TO PERSON AT STATION BY FELLOW-PASSENGER—NON-SUIT.**—Where one intending to board a train at a station stood on the side of the track opposite the station platform between the main track and standing freight cars, and was knocked down by one attempting to board the train, and fatally injured, there should have been a non-suit or a directed verdict for defendant carrier. Kalleberg v. Raritan R. Co. (N. J.), 102 Atl. 350.
Demurrage—Tariff Applicable.—Coal was shipped to a lake port at a time when the railroad tariff provided for free storage in the cars at the port for a certain period. After the shipments moved, however, a new tariff was published and became effective reducing this period. The court held that the railroad company was entitled to collect demurrage under the latter tariff on all cars held after it became effective. The court distinguishes a demurrage or storage tariff from a rate tariff on the ground that storage is not strictly a transportation service but rather an accommodation which the carrier is not legally bound to furnish. *Chesapeake & Ohio C. & C. Co. v. Toledo & O. C. Ry. Co.*, (C. C. A. 4th Ct.), 245 Fed. 917.

Crossing Accident—Contributory Negligence.—In an action for injuries by a train to the driver of a taxicab at a crossing where, from the physical facts established, the plaintiff, had he looked and listened, must have observed the approach of a train, the California Court of Appeal held that the fact that he testified that he looked for the train and did not see it until he was on the track did not absolve him of contributory negligence. The mere fact that telegraph poles obscured his vision at one point did not absolve the plaintiff of contributory negligence when for 30 feet immediately before he drove upon the track the view was unobstructed, since one crossing a railroad track must look for a train where such looking would be effective. *Jones v. Southern Pac. Co.* (Cal.), 168 Pac. 586.

Hours of Service—Rainfalls Causing Washouts.—Where rainfalls affect the track and bridges of a railway company so that trains were delayed and it could not be accurately estimated how long a certain trip would take, this does not relieve the company from the penalty of the Hours of Service Act for excessive service of its train crew.

The cause of the delay was known when the train left the terminal, and it was only the duration of the delay that was unknown. The delay was not caused by a “casualty” or an “unavoidable accident” or by an “act of God.” *United States v. Southern Pacific Company*, 245 Fed. 722.

Railroads—Derailment of Train at Crossing—“Res Ipsa Loquitur.”—Where derailment of a train was caused by a pile of sand on tracks at a crossing, the railroad is not liable for injury to fireman caused thereby where the evidence failed to show how the sand and
gravel came to be there, or that it had been there any length of time before the accident. The doctrine of *res ipsa loquitur* does not apply and in such case there is no inference of negligence on the part of the railroad. *McGillivray v. Great Northern R. R.* (Minn.), 164 N. W. 922.

**Statute Requiring Stop at State Line Held Void.**—Chapter 283 of Laws of 1915, Kansas, required the Public Utilities Commission to compel interstate passenger trains to stop at or near the state line for a reasonable time. The Kansas Supreme Court holds that this requirement was not in exercise of the police power, undertook to regulate interstate commerce in a matter already regulated by proper federal authority, placed an unwarranted burden on interstate commerce, deprived interstate railroads of their property in lawfully established interstate passenger fares, and was therefore unconstitutional and void. *State v. Dickinson, Receiver Chicago, R. I. and P. R. Co.* (Kan.), 168 Pac. 838.

**Railroads—Crossing Accidents—Imputed Negligence.**—A person riding in a buggy as a guest or by favor must exercise all care which ordinary caution requires when his companion drives upon a railroad crossing, and, in this case, the plaintiff was held contributorily negligent in allowing his companion to drive on a railroad crossing without protest or investigation, when an electric bell was ringing and standing box cars obscured an approaching train. *Burton v. Pryor et al.* (Mo.), 198 S. W. 1117.

**Master and Servant—Heavy Loads—Assumption of Risk.**—A railroad company is not bound to warn or instruct its section men as to their duty in moving and piling ties 8 or 9 inches square, 12 feet long, and weighing approximately 150 pounds, and the servant assumes the risk of injury from strains in lifting same; it being assumed that he should be the best judge of his own lifting capacity. *Rook v. Davenport, etc., R. Co.* (Ia.), 165 N. W. 419.

**Explosion of Torpedo—Evidence of Negligence Insufficient.**—The explosion of a torpedo placed on the track of a railroad by unknown persons resulted in the death of a freight conductor. The torpedoes were shown by the evidence to be the same kind as those kept by the railway company in its locked storeroom a short distance from the scene of the explosion. It was further shown that the storeroom in which the torpedoes were kept was not always securely fastened, and that the
key was accessible to the company's employes. Plaintiff rested her case in an action for the death of her intestate upon these facts, it being her theory that it was sufficient for her to show that the torpedoes were thus negligently kept where some thief might have stolen them and placed them on the track, where by explosion they killed the employe. The Kansas Supreme Court held that a demurrer to the evidence was properly sustained. Norman v. Atchison, T. & S. F. R. Co. (Kan.), 168 Pac. 830.

**INTERSTATE COMMERCE—PUMPER.**—A railway employe engaged in running an engine which pumped water into a tank for the use of locomotive engines engaged in interstate commerce is engaged in such commerce, or his work is so closely connected therewith as to be a part of it, and he is entitled to sue under the Federal Employers' Liability Act. Collins v. Erie R. Co., 245 Fed. 811.

**HOURS OF SERVICE—RELEASE OF HOUR AND A HALF.**—Where employes are relieved from duty for a period of an hour and a half, but were required to hold themselves in readiness for service and to be within reach in case they were needed prior to the expiration of the hour and a half, such a release is not sufficient to break the continuity of the service and the time they are off is included in computing their 16 hours of service. United States v. Southern Pacific R. Co., 245 Fed. 722.