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Master and Servant—Workmen's Compensation Law—Accident Arising out of Employment

Judge Hines' dissenting opinion should be the weight of authority but such is not the case. That one may not recover margins deposited in buying futures although there are statutes similar to those in the instant case is held in *Isaacs v. Silverbery, Parry & Co.*, 87 Miss. 185, 39 So. 420; that a broker could not recover for winnings which he paid, though there were statutes which provided that transactions in futures were void, *Sawers Grain Co. v. Teagarden,* (Ind.) 148 N. E. 205; that transactions in futures where there is a settlement based on difference in prices are not within meaning of "game" as used in the statutes, *Boyce v. Odell Comm. Co.,* (Ind.) 109 F. 758; but see, *Kruse v. Kennett,* 181 Ill. 199, 54 N. E. 965; *Williamson v. Majors,* (Tenn.) 169 F. 754. Missouri also has statutes on this subject providing that "any person who shall lose any money or property at any game or gambling device may recover the same by civil action," R. S. Mo. 1919, sec. 5742, that such action must be commenced within three (3) months is provided in R. S. Mo. 1919, sec. 5750. In construing the meaning of the former section, the Missouri courts have held that money lost on margins or dealing in futures is not lost at a game or gambling device within the meaning of the statute, *Connor v. Black,* 132 Mo. 150, 33 S. W. 783; *See v Runzi,* 105 Mo. App. 435, 79 S. W. 992.

From this short discussion, it would seem that the Georgia court was in line with the weight of authority when it held that the parties being *pari delicto* in the violation of a positive law and there being no express statute authorizing a recovery in this particular case, the legislature contemplated leaving the parties where it found them and there should be no relief granted to either party.

E. L. W. '28.

MASTER & SERVANT—WORKMEN'S COMPENSATION LAW—ACCIDENT ARISING OUT OF EMPLOYMENT—An employee, while at work, was shot in a holdup. His occupation was not one which made it peculiarly likely that he would come in contact with robbers, except for the fact that there was money on the premises. *Held,* the shooting was an accident arising out of the employment, compensable under the Workmen's Compensation Law of the State. The court took judicial notice of the prevalence of holdups at the present day as a factor making the danger one of the risks of the employment. *Willner v. Katz,* (N. J. 1926) 134 A. 611.

Heretofore the cases in which compensation has been allowed under the various Workmen's Compensation Laws for injuries caused by the criminal assaults of third persons have been cases in which the nature of the employee's occupation was such as to require his exposure in a peculiar degree to such risks, *Ohio Building Safety Vault Co., v. Industrial Board et al., 277* Ill. 96, 115 N. E. 149 (1917) (watchman), *Pinkerton National Detective Agency, v. Walker,* 157 Ga. 548, 122 S. E. 202 (1924) (private detective), *Spang v. Broadway Brewing & Malting Co.*, 182 App. Div. 443, 169 N. Y. S. 574 (1918) (collector); or the business was held to be one exposed to special risks from holdups, *General Accident, Fire & Life Assur. Corp. et al. v. Industrial Accident Commission et al*, 186 Cal. 653, 200 P. 419 (1921) (garage); or the injury was sustained by the employee in an attempt to defend or recapture property of the employer from the criminals, *Nevich v. Delaware, L. & W. R. Co.*, 90 N. J. Law 228, 100 A. 234 (1917); or the assault was provoked by a justifiable act of the employee within the scope of his duties or reasonably connected therewith, *Emerick et al. v. Slavonian Roman Greek Catholic Union,* 93 N. J. Law 282, 108 A. 223 (1919) (bartender killed in dispute over price of drink), *Delassandro v. Industrial Commission of Ohio,* 110 Ohio St. 506, 144 N. E. 138 (1924) (street-cleaner assaulted for reproving a person for sweeping dirt into a street, in violation of a city ordinance); or the assault was made by a subordinate discharged by the injured employee, *San Bernardino County v. Industrial Acci-*

dent Commission et al., 35 Cal. App. 33, 169 P. 255 (1917). It is a generally recognized rule that no compensation will be allowed where the assault results from a motive of personal hostility to the employee, *Scholtzhauer v. C. & L. Lunch Co.,* 233 N. Y. 12, 134 N. E. 701 (1922); or the assailant's purpose is to rob the employee only, and not the employer, *Bryden v. Industrial Accident Commission et al.,* 62 Cal. App. 3, 215 P. 1035 (1923). Some states recognize an exception to the latter rule where the employee is required to be at a lonely spot at night and the fact that he has just received his wages offers an additional temptation for his robbery. *Lanni v. Amsterdam Bldg. Co.,* (N. Y. 1926) 216 N. Y. S. 763; *Vivier v. Lumbermen's Indemnity Exchange et al.,* (Tex. Com. of App. 1923) 250 S. W. 417. *Contra: Walther v. Amer. Paper Co.,* 89 N. J. Law 732, 99 A. 263 (1916). Where there is no evidence, or a conflict of evidence, as to the motive of the assault, the employee is usually given the benefit of the doubt. *Mechanics' Furniture Co. v. Industrial Board of Ill.,* 281 Ill. 530, 117 N. E. 986 (1917). And in certain cases where the person inflicting the injury had no intent to harm either the employer or the employee, compensation was allowed on the ground that the employee's duties exposed him to "street risks" or placed him in a "zone of special danger." *Katz v. Kadans & Co. et al.,* 232 N. Y. 420, 134 N. E. 330 (1922) (employee stabbed by insane man while delivering goods for employer); *Heidemann v. Amer. Dist. Telegraph Co. et al.,* 230 N. Y. 305, 130 N. E. 302 (1921) (watchman accidentally shot by policeman pursuing one who had committed a crime unrelated to the employer or employee). But in other cases, where the injury was somewhat more closely connected with the employment, no recovery was allowed. *De Salvo v. Jenkins et al.,* 205 App. Div. 198, 199 N. Y. S. 843 (1923) (watchman injured by accidental shot of boy he was trying to prevent from trespassing on employer's premises); *In re Harbroe,* 223 Mass. 139, 111 N. E. 709, L. R. A. 1916 D, 933 (watchman, while in pursuit of persons who had stolen from employer, shot by mistake by member of another party searching for the same criminals). A good abstract statement of the rule as to when an injury is to be deemed one arising out of the employment is found in *Sure Pure Ice Co. v. Industrial Commission et al.,* (Ill. 1926) 150 N. E. 909; but, of course, the difficulty is in applying the general rule to particular facts. F. W. F. '27.

PARENT AND CHILD—RIGHT OF PARENT TO RECOVER FOR ALIENATION OF AFFECTIONS OF MINOR CHILD.—This was action by a mother to recover damages for the alienation of the affections of her minor son. The plaintiff in her petition alleged that for more than ten years there had been an effort on the part of the defendants to "poison the mind of said son" against plaintiff and to destroy his natural filial regard, esteem, love and affection for her. It is further alleged that as a result of this effort on the part of the defendants, the natural filial love, esteem, affection and regard of the son for his mother have been wholly destroyed and alienated. It was not alleged that the mother had been deprived of services, custody, control or companionship of her son. A demurrer to the petition was sustained. *Held,* on appeal that a mother cannot recover merely for alienation of a minor son's affections. *Pyle v. Waechter et al.,* (Iowa 1926) 210 N. W. 926.

The case is of interest in that it seems to be without precedent directly in point. Adjudicated cases, analogous to the instant case, which throw light upon its decision evidently indicate that the instant case has been correctly decided. In *Kaufman v. Clark,* 141 La. 316, 75 So. 65, a mother could not maintain an action for injury to her feelings resulting from the betrayal of a daughter. *Quinn v. City of Pittsburgh,* 243 Pa. 521, 90 A. 353, was a case in which loss of companionship was not allowed as an element of damage in an action by a mother for injuries to her minor child. In *Miles v. Cuthbert,* 122