subject to prosecution if these duties are ignored." This is the only mention made of the possibility of other stockholders looking to the directors for payment of their share of the amount recovered. But where an action was brought by the remaining directors of a Russian insurance corporation, against a bank which was trustee of a sum deposited with it by the corporation in accordance with a statute for the benefit of creditors, the court held that because of the possibility of the defendant's being liable to the corporation's successors in foreign countries where the decrees of the Soviet government were recognized, the plaintiffs could not recover. *Russian Reinsurance Co. v. Stoddard* (1925) 240 N. Y. 149, 147 N. E. 703. The former case was distinguished from this one, in that in the first there was a legal liability, whereas in this case the liability was one enforceable in equity.

However, a further conjectural issue arises as to what would have been the status of the plaintiff in the instant case if the United States had recognized Russia at the time of this suit. Perhaps provisions for such situations would have been made by treaty. But if they were not and a suit were brought by the remaining directors, the Soviet decree might be disregarded upon the ground that it operated retroactively in the particular case.

T. L., '32.

MASTER AND SERVANT—INJURY OF CO-EMPLOYEE—SCOPE OF EMPLOYMENT.—Plaintiff was engaged in eating her lunch during the lunch hour at the place of her employment when another employee of the same concern jerked the chair from under her, causing her to fall. *Held,* the fellow servant's act was not in the scope of his employment, nor was there evidence sufficient to show a ratification by the employer of his conduct, sufficient to render the employer liable for the injuries sustained. *Gess v. Wagner Electric Mfg. Co.* (Mo. 1930) 31 S. W. (2d) 785.

Under the fellow-servant rule a master is not liable for the injuries to a servant caused by the negligence of a fellow servant engaged in the same general business where the master has exercised due care in the selection of his servants. *Martin v. Morrison* (1929) 32 F. (2d) 400; *Encarnacion v. Jamison* (1929) 251 N. Y. 218, 167 N. E. 422; *Walsh v. Eubanks* (Ark. 1931) 34 S. W. (2d) 762. The employee is held to have assumed the risks connected with the employment. But the doctrine does not apply when the servant has injured his fellow servant in a wilful, malicious, or reckless manner, provided he has acted in the scope of his employment. *Richard v. Amoskeag Mfg. Co.* (1919) 79 N. H. 380, 109 Atl. 88; *Alden Mills v. Pendergraft* (Miss. 1928) 115 So. 713.

The question of the scope of employment must be determined by what the servant was employed to perform and by what he actually did perform, rather than by the mere verbal designation of his position. *Marshall v. United Rys. Co. of St. Louis* (Mo. App. 1916) 184 S. W. 159; *Brayman v. Russell & Pugh Lumber Co.* (1917) 31 Idaho 140, 169 Pac. 932. Where some connection with the employment, or a motive for furthering and acting with reference to it is found, recovery has been allowed. Thus where

the employee is in the physical act of performing his duties, the fact that he does them in a reckless, malicious manner, even with an intention to cause the injury resulting, does not preclude recovery. *Hellriegel v. Dunham* (1915) 192 Mo. App. 43, 179 S. W. 763; *Landers v. Quincy O. & K. R. Co.* (1908) 134 Mo. App. 80, 114 S. W. 543.

But, as in the principal case, where the wilful, malicious act was entirely independent and separate, with no apparent connection existing between the required work and the act resulting in injury, the courts are inclined to hold that the act did not take place in the scope of the employment. *Pettigrew v. St. Louis Ore & Steel Co.* (1883) 14 Mo. App. 441; *Ferguson v. Rex Spinning Co.* (1929) 196 N. C. 614, 146 S. E. 597; *Merkouros v. Chicago, B. & Q. R. Co.* (1920) 104 Neb. 491, 177 N. W. 822. Thus, putting torpedoes on a track with intent to frighten co-employees is entirely out of the scope of the employment. *Goupiel v. Grand Trunk Ry. Co.* (1920) 94 Vt. 337, 111 Atl. 346. Playing with an air hose and thereby causing injury is likewise not included. *Rivenbark v. Hines* (1920) 180 N. C. 240, 104 S. E. 524. Nor is the act of paddling a fellow employee to initiate him into the service connected in any way with the serious purpose of the employment. *Medlin Milling Co. v. Boutwell* (1911) 142 Ky. 80, 133 S. W. 1042. Combats among the workmen, resulting in serious consequences, are not construed to be sufficiently connected with the scope of employment, even though they arise over disputes concerning the business. *Great Southern Lumber Co. v. May* (1925) 138 Miss. 27, 102 So. 854.

We find no departure by the Missouri Supreme Court from the traditional course of decisions. The court's strict construction of the scope of the servant's employment in the principal case is commendable both from the standpoint of stare decisis and the practical consideration of releasing innocent employers from the result of human tendencies and propensities over which they have no control. C. E., '32.

PARENT AND CHILD—DUTY OF SUPPORT OF PARENT—DESTITUTION AS BASIS.—At common law, a child was under no duty to support an indigent and needy parent, 46 C. J. 1279. The case of *Beutel v. State* (1930) 36 Ohio App. 73, 172 N. E. 838 enforces a statutory criminal liability for failure to support a destitute parent. The fact that other children contributed somewhat toward the destitute parent's support was held not to release the defendant from the statutory obligation, although the court specifically mentions the parent's partial destitution and indicates inferentially that such a condition, at least, is a necessary element in the violation of the child's duty. This case stands as the only reported case involving criminal liability for such a violation.

In dealing with a similar statutory duty, the majority of courts hold that it is no defense to a father, charged with failure to support his minor child, that the child was being cared for capably by others. *State v. Waller* (1913) 90 Kan. 829, 136 Pac. 215; *People v. Howell* (1920) 214 Ill. App.