80 S. E. 1007. Consequently it would not be proper to bring forth the bald fact of addiction unless offering other evidence as required by the rule. *State v. Schuman* (1915) 89 Wash. 9, 153 Pac. 1084. But in *United States v. Wilson* (1913) 232 U. S. 563, the Supreme Court held that a witness can be cross-examined not only as to present dosage (partaking of the drug) at the time of the trial but also as to addiction alone as bearing on credibility. In order to reconcile these two views the court in the principal case audaciously construed the Supreme Court doctrine to permit cross-examination as to present dosage in order to attack credibility but to exclude questions concerning the "bald fact" of addiction. It was felt that knowledge of the bare fact of addiction would work an illegitimate injury to the testimony of the witness, since by popular presumption drug addicts are mendacious. *Kelly v. Maryland Insurance Co., supra,* 789. But in other jurisdictions bare addiction has been allowed as a ground of attacking the credibility of a witness. *State v. Tang Loon* (1916) 29 Idaho 248, 158 Pac. 233; *State v.* ——— (1901) 25 Wash. 327, 65 Pac. 534; *Beland v. State* (1919) 86 Tex. Crim. 285, 217 S. W. 147.

In the instant case the court intimates that in the absence of reliable and adequate scientific knowledge, the testimony attacking the witness should be ruled by the particular facts. This view is strengthened by the view that "Much of the moral deterioration attributed to narcotics in the past was not deterioration but an original nervous instability or moral obliquity. . . . No preparation of opium produces an appreciable intellectual deterioration." *Mental Hygiene* Vol. 9, Oct., 1925, 699-724. Intellectual deterioration, therefore, should be a subject of demonstration in each case.

J. G. G., '32.

WORKMEN'S COMPENSATION—SUBROGATION—NEGLIGENCE OF THIRD PERSONS.—Plaintiff while in the employ of a contracting company was injured through the negligence of the defendant. After receiving compensation from his employer under the Workmen's Compensation Act, he brought this action in his own name against the defendant. In Missouri deciding such a case for the first time the court held that although the statute provides that the employer be subrogated to the rights of the employee upon payment of compensation, the employee was not precluded from maintaining a separate action against the negligent third party. *McKenzie v. Missouri Stables* (Mo. 1930) 34 S. W. (2d) 136.

Common-law rights against negligent third parties were not destroyed by the Workmen's Compensation Act. *Fox v. Dallas Hotel Co.* (1922) 111 Tex. 461, 240 S. W. 517. To hold otherwise would in a sense be to relieve reckless persons negligently injuring an employee under the Compensation Act, from liability, though a similar injury to another party would create a liability. *Moeser v. Shunk* (1924) 116 Kan. 247, 226 Pac. 784. Consequently a statute providing for subrogation after payment by an employer will not bar a subsequent action by the employee against the third party. *O'Brien v. Chicago City Ry. Co.* (1922) 305 Ill. 244, 137 N. E. 214, 27 A. L. R. 479. Even where the statutes give the employee a right to recover

under the compensation act, or sue the third party, the courts still reach the same conclusion. *Haynes v. Bernhard* (Tex. Civ. App. 1925) 268 S. W. 509; *McArthur v. Dutee W. Flint Oil Co.* (1929) 50 R. I. 226, 146 Atl. 484; *Jacowicz v. Delaware L. & W. R. Co.* (1915) 87 N. J. L. 273, 92 Atl. 946.

However, if the employee recovers more than the sum paid by the employer, he is a trustee for the latter as to the amount already received from him. *Chesapeake & O. Ry. Co. v. Palmer Stables* (1927) 149 Va. 560, 140 S. E. 831; *McKenzie v. Missouri Stables*, above. In some states the employer is a necessary party to the action, because of his claim to the fund by subrogation or indemnification. *Book v. Henderson* (1917) 176 Ky. 785, 197 S. W. 449. *Kinney v. Philadelphia R. R. Co.* (1915) 26 Pa. Dist. R. 502.

Some courts in construing the same types of statutes reach opposite results. Where the act provides for an election of remedies, an acceptance of compensation will constitute a waiver of the common-law rights against the third party. *Hunt v. Gako* (1923) 243 Mass. 567, 137 N. E. 728. *Albrecht v. Whitehead & Kales Iron Works* (1918) 200 Mich. 109, 166 N. W. 855. Where it is provided that the employee shall assign his rights to his employer after payment under that act, such assignment is a bar to any subsequent claim against the third party. *Sabatino v. Thomas Crimmins Construction Co.* (1917) 102 Misc. 172, 168 N. Y. S. 495, (affirmed in 1918) 186 App. Div. 891, 172 N. Y. S. 917. If payment is taken in lieu of any claim against any party whomsoever the same result follows. *Hagerstown v. Schreiner* (1920) 135 Md. 650, 109 Atl. 464. Where the injured party elects to sue the real tort feasor, the employer is liable if such recovery is less than that permitted by the compensation act. *Sabatino v. Thomas Crimmins Construction Co.* (*supra*). If a workman's right of recovery is barred as to the third party, having received payment, and the employer maintains an action against the negligent person, any recovery in excess of the amount already paid is held for the benefit of the employee. *Marshall-Jackson Co. v. Jeffery* (1918) 167 Wis. 63, 166 N. W. 647.

In construing a statute similar to that in the present case, the court held that the injured person could not maintain an action against the wrongdoer unless it were shown that the employer failed or neglected to do so. *O'Donnell v. Baker Ice Machine Co.* (1925) 114 Neb. 9, 205 N. W. 560. The ruling, however, was overcome by a subsequent amendment to the act. *Amended Laws of Neb.* (1929) p. 489 c. 135.

Since the Workmen's Compensation Act in Missouri did not intend to destroy common-law rights against negligent third parties, the instant case can hardly be criticized. It protects the third party from double liability and gives to the employer all the rights that he himself would have had, had he instituted the suit. T. L., '32.