Sanborn (1861) 1 Allen (Mass.) 389; *Servel v. Corbett* (Idaho 1930) 290 Pac. 200. But in Missouri the injured owner cannot maintain a statutory interplea in an attachment unless he can identify the goods. *Kelly-Goodfellow Shoe Co. v. Sally* (1905) 114 Mo. App. 222, 89 S. W. 889.

In relatively few cases courts have treated the former owners as tenants in common of the whole mass. *Davis v. Krum* (1882) 12 Mo. App. 279; *First National Bank of Rogers v. Tribble* (1922) 155 Ark. 264, 244 S. W. 33. This seems to be the prevailing rule in England. *Sandemen & Sons v. Tyzack & Branfoot Steamship Co. Ltd.* (1913) A. C. 680; *Spence v. Union Marine Insurance* (1868) L. R. 3 C. P. 427. It is submitted that the analogy is not perfect as tenancies in common normally arise through the consent of the tenants. Where a statute exists, as in Missouri, for the partition of tenancies in common of personalty at the request of either party, calling the relationship a tenancy in common would make little difference if the other owner was vigilant to protect his rights. R. S. Mo. (1929) secs. 1606-1608.

The decision in the case under review is unduly technical, for range cattle in a single herd are necessarily closely similar in quality and value and the action of replevin under the Codes was designed to give the claimant a way to recover property in specie when he wished and could do so without injuring the defendant. G. W. S., '33.

CRIMINAL LAW—PUNISHMENT—BANISHMENT.—Defendant, convicted of a violation of the liquor law, was fined and sentenced to leave the State of Michigan within thirty days and not return for a period of five years. *Held,* the sentence was unauthorized and contrary to public policy. *People v. Baum,* (Mich. 1930) 231 N. W. 95.

Very few cases of banishment by state courts have arisen. This type of punishment, so frequently resorted to at common law, seems to have been considered only by the Supreme Court of South Carolina in *State v. Baker* (1900) 58 S. C. 111, 36 S. E. 501, holding that a sentence of perpetual banishment from the state may not be imposed.

Banishment, which was first known in England as "adjuration," where a party accused fled to sanctuary, confessed his crime, and took an oath to leave the kingdom and not return without permission, was not considered at that time as a punishment, but as a conditional pardon. 4 BLA. COM. 333. It was well recognized at common law; and banishment as a condition of pardon has been sustained in the United States. *People v. Potter* (1895) 1 Park. Cr. (N. Y.) 47.

Banishment is not a cruel or unusual punishment, and does not constitute a violation of the guaranty against cruel and unusual punishments. *Legarda v. Valdez,* 1 Philippine 146. The Michigan court in the instant case did not place its decision on constitutional grounds but pointed out that this method of punishment was not authorized by statute and was contrary to public policy. To sustain its view of public policy the court says, " . . . to permit one state to dump its convict criminals into

another would entitle the state believing itself injured thereby to exercise its police and military power, in the interests of its own peace, safety, and welfare, to repel such an invasion." Such action on the part of one state would obviously result in chaos, each state seeking to cast its convicts into the other states, causing the others to retaliate. The decision in the principal case is therefore consonant with sound reason.

F. E. F., '31.

PARENT AND CHILD—LIABILITY OF PARENTS FOR CHILDREN'S TORTS.—Plaintiff brought action to recover damages for injuries sustained by her minor child who had been struck and beaten by defendant's sixteen-year-old child. The complaint alleged, and it was admitted by demurrer, that defendants had knowledge of their son's vicious disposition and a habit of persuading smaller boys into secluded places and beating them, and that defendants failed to make efforts to restrain him. *Held*, judgment on demurrer was properly rendered for the plaintiff. *Ryley v. Lafferty* (D. C. N. D. Idaho 1930) 45 F. (2d) 641.

The established common-law rule is that parents are not liable for the torts of their minor children committed without their knowledge or consent. *Tifft v. Tifft* (1847) 4 Denio (N. Y.) 175; *Bahe v. Haldman* (1857) 24 Mo. 219; *Paul v. Hummel* (1868) 43 Mo. 119; *Wilson v. Garrard* (1871) 59 Ill. 51; *Ritter v. Thilodeaux* (Tex. Civ. App. 1897) 41 S. W. 492.

But a parent may be liable for an injury caused by the child if the parent contributed directly to the child's negligence. *Hoverson v. Noker* (1884) 60 Wis. 511, 19 N. W. 382; *Stewart v. Swartz* (1914) 57 Ind. App. 249, 106 N. E. 719; *Meers v. McDowell* (1901) 110 Ky. 926, 62 S. W. 1013. A petition alleging that parents furnished a velocipede to a child who was irresponsible and unqualified to use the velocipede on account of his tender years and that they knowingly permitted him to ride in a negligent manner, stated a cause of action against the parents. *Davis v. Gavalas* (1927) 37 Ga. App. 242, 139 S. E. 577. *Contra: Hagerty v. Powers* (1885) 66 Cal. 368, 5 Pac. 622; *Figone v. Guisti* (1919) 43 Cal. App. 606, 185 Pac. 694. Thus most courts are unwilling to hold that a parent is guilty of a breach of duty in a case of this sort unless he knew of the particular situation creating a likelihood of injury and failed to remedy it. *Baker v. Haldeman* (1857) 24 Mo. 219; *Paul v. Hummel* (1868) 43 Mo. 119.

In *Haunert v. Speier* (1926) 214 Ky. 46, 281 S. W. 998, in which it was sought to hold the parents for an assault committed by their minor son on the ground that they had knowledge of previous assaults upon other children, the defendants were held not liable. The court declared that if the boy was "an intelligent responsible human being possessed of sufficient discretion to appreciate the probable results of his own acts," the assault was his and not that of his parents.

But other courts have given effect to the view which was applied in the principal case. *Gudziewski v. Stemplesky* (1928) 263 Mass. 103, 160 N. E. 334; *Norton v. Payne* (1929) 154 Wash. 241, 281 Pac. 991.

H. H. G., '33.