in such cases, negligence is not a matter presumed by the court, but rather a question of fact *for the jury. Ivins v. Jacob,* 245 Fed. 892. This view is correct on principle, for mere skidding is not of itself evidence of negligence. Berry on Automobiles, 4th Ed., 231 and cases there cited. And in *Bloom v. Allen,* 61 Cal. App. 28, 214 Pac. 481, it was held that skidding may or may not be negligence, and, it is a question for the jury to decide.

All in all, no fault can be founded particularly with the mere consideration of the *res ipsa loquitur* maxim in a case of this sort, for it has been logically and rationally applied in many instances. See *Lazarowitz v. Levy,* 194 N. Y. App. Div. 400, 185 N. Y. S. 359, and *Green v. Baltuch,* 191 N. Y. S. 70. But it is submitted that there has been a misapplication of the doctrine here, insofar as the judge's instruction amounted to a peremptory instruction of negligence, if the jury merely found that the defendant did skid onto the sidewalk, regardless of the reason of the skidding. Such an instruction is not within the spread of *res ipsa loquitur.* A. E. M., '29.

CONSTITUTIONAL LAW—POLICE POWER—REGULATION OF SALE OF PATENT MEDICINE.—Defendant was indicted for wrongfully selling certain patent medicines, under a statute making it unlawful for any person other than a registered pharmacist to retail, compound, or dispense drugs, medicines, or poisons. Defendant claims that the statute was repugnant to the fourteenth amendment to the United States Consitution, and to Sec. 18, Art. 6 of the South Dakota constitution. *Held,* that the statute in quesion is unconstitutional, and defendant discharged. *State v. Wood,* 215 N. W. 487 (S. D., 1927).

Undoubtedly, the regulation and protection of the health of the public is a legitimate exercise of the police power of a state. But the courts have laid down the doctrine that the means employed must have a reasonable relation to the objects sought to be accomplished. *Lawton v. Steele,* 152 U. S. 133, 38 L. ed. 385, 14 Sup. Ct. 499; *California Reduction Co. v. Sanitary Reduction Co.,* 199 U. S. 306, 50 L. ed. 204, 26 Sup. Ct. 100. And that is the basis of the court's opinion in the principal case.

The court arrives at its conclusion by a process of reasoning that appears sound. There is, in South Dakota, no liability imposed upon registered pharmacists in selling patent medicines, there being no law compelling them to know the contents of the article. And at common law there being no liability for damages resulting from their sale. *West v. Emanuel,* 198 Pa. 180, 47 Atl. 965, 53 L. R. A. 329; *Wilson v. Faxon,* 138 App. Div. 359, 122 N. Y. S. 778. The main point in the court's reasoning, and the one upon which the decision really rests, is that the exclusion of all others but druggists from selling proprietary medicines, and then not regulating their sale by druggists, is a law giving to the druggists an exclusive privilege that will not produce the result that is the objective of the statute.

There are few cases to be found on this identical question, but one court has arrived at the opposite conclusion on the same line of reasoning. *State v. Wheelock,* 95 Iowa 577, 64 N. W. 620, 30 L. R. A. 429. In that case the court comes to the conclusion that the exclusion of sales by itinerant vendors, probably the strongest competitors of the pharmacies in the rural communities, would benefit the public health. It was held that the knowledge that the pharmacist would have of the contents of patent medicines, whether legally required or not, would have its effect as a benefit to the public.

The principal case is supported by a case quite similar in facts, and much the same reasoning is applied. *State v. Donaldson,* 41 Minn. 74, 42 N. W. 781. A brief filed by *amicus curiae* on behalf of the State Board of Pharmacy and

the South Dakota Pharmaceutical Association contended that the licensing of pharmacists tended to raise the average moral character, that pharmacy is a profession with its code of ethics, and that pharmacists have knowledge of the effects of elements in patent medicines. The court attacks each point with the arguments that others than druggists also have good moral characters, that other professions have codes of ethics, and that knowledge of the contents of proprietary medicines is not required of those who become registered pharmacists. H. B., '28.

PARENT AND CHILD—LIABILITY OF PARENT FOR TORTS OF MINOR CHILD.—Action for personal injuries against the parents of a child five years of age, for knowingly permitting their child to ride a velocipede upon the public sidewalk, at night. The child while riding upon the velocipede collided with the plaintiff, and caused the injuries complained of. *Held,* that the parents were negligent in permitting the child to ride the velocipede upon the sidewalk at night, and that the parents were liable. *Davis v. Gavalas et al.,* 139 S. E. 577 (Ga., 1927).

It is undoubtedly the universal common law rule that the parent is not liable for the torts of his minor child on the basis of relationship. *Baker v. Haldeman,* 24 Mo. 219; *Johnson v. Glidden,* 11 S. D. 237; *Schultz v. Morrison,* 154 N. Y. S. 257; *Ringhaver v. Schlueter,* 155 N. E. 242 (Ohio).

In *Ringhaver v. Schlueter, supra,* the defendant's son injured the plaintiff's son by throwing a rubber automobile casing against the plaintiff's son. The court in rendering judgment for the defendant, stated that a parent is not liable for the torts of his minor child on the basis of relationship; that in order for the parent to become liable for the torts of his child, there must be some knowledge on the part of the parent with respect to the act, or some act of the parent that connects him with the circumstances which are the basis for recovery. Illustrative of a number of cases in which the defendants had purchased rifles or guns for their children, and the children carelessly injured the plaintiffs, is the case of *Fleming et al v. Kravitz,* 103 At. 831 (Pa.). In that case, the defendant's son, six years of age, discharged a toy air rifle which contained in its barrel a match, and injured the plaintiff's son. The negligence of the defendant was charged by the plaintiff to have consisted of being notified by a number of persons that defendant's child was inexperienced and immature, and that it was dangerous for a child of such tender years to use a toy air rifle. The court in affirming a non-suit laid stress upon the fact that the injury sustained by the plaintiff's child was very slight. It seems that the true reason for the court's decision was that it is not negligence to purchase a toy air rifle for a young child, and the decision further rests upon the circumstance that the method by which the match found its way into the barrel of the rifle was unknown.

The parent may become liable for the torts of his child if he knows that the child is negligent with respect to the use of an instrument purchased by the father. *Johnson v. Glidden,* 11 S. D. 237.

The doctrine of the principal case is sound and in accordance with established rules for the foundation of legal liability. The case must be considered upon its particular facts. The tender age of the child, and the fact that it was riding upon the velocipede at night, are the facts which ultimately establish the legal liability of the parent. The test for determining whether or not a parent is liable for the torts of his minor child, must be, (1) was the parent negligent in permitting child to use the instrument causing the injury? This must depend of course upon the degree of control the parent can exercise over the child. (2) Could the parent reasonably have anticipated that the injury would occur? The negligence of the parent and not the negligence of the child is then the basis