People v. Clink, 216 Ill. App. 357; *People v. Anderson,* 310 Ill. 389, 141 N. E. 727. In Mo., our statute, R. S. Mo. 1919, Sec. 3262, provides that an "assault or beating of another with a deadly weapon or any other means or force likely to produce death or great bodily harm etc.;" a general provision such as this incorporating a construction of the disputed term virtually deprives the court of its function and resolves the question into one solely for the jury. Prior to such statute however, Missouri followed the general rule of construction and held that if the wound were dangerous, the weapon need not be deadly *per se;* and conversely that if the weapon were deadly, the wound need not be dangerous, *Carrico v. State,* 11 Mo. 579.

Thus it would seem that the question of what is a dangerous weapon as a matter of law is well settled and practically has virtually resolved itself into a question for the jury to determine under the peculiar facts in each particular case; and when the broad definition of a deadly weapon and the ever increasing use of the automobile with its attendant, potential power to harm are considered, the finding of the jury in this case is neither startling nor illogical but on the contrary is wholly sound. E. L. W. '28.

AUTOMOBILES—VIOLATION OF STATUTE HELD NEGLIGENCE AS A MATTER OF LAW. —Plaintiff's intestate who was riding home from work in a car, alighted, and in crossing the street to his home, received injuries from the defendant's speeding car, which caused his death. Instruction by the trial judge that violation of statute which sets a speed limit was evidence of negligence, *held* to be error that such violation was negligence as a matter of law. But it was for the jury to decide whether such negligence was the proximate cause of the injury. *Sandhofner v. Calmenson,* (Minn., 1927) 212 N. W. 11.

It is a general rule that liability for damages because of a violation of a statute or ordinance imposing some duty on a person is not affected by the fact that it is made a misdemeanor. *Parker v. Barnard,* 135 Mass. 116. But there is a great conflict of opinion as to how great weight such violation should have to show negligence. Many courts hold that a violation of a statute when an injury occurs is negligence as a matter of law, or negligence *per se,* while others say that it is only evidence of negligence, or prima facie evidence. Prof. Thayer sets down a very convincing reason for the former holding in an article in 27 HARV. LAW REV. 317, from which we quote, "And when eminent courts, using familiar phraseology, state that the breach of an ordinance is not 'negligence *per se,*' but only 'evidence of negligence,' and leave the question of negligence as a fact for the jury, they are doing nothing less than informing that body that it may properly stamp with approval, as reasonable conduct, the action of one who has assumed to place his own foresight above that of the legislature in respect of the very danger which it was legislating to prevent." But most courts that adopt the rule that it is negligence *per se,* add that it is not actionable negligence. In other words, it is negligence as a matter of law if the other elements of actionable negligence exist. *Steinkrause v. Eckstein,* 170 Wis. 487. The violation must be the proximate cause of the injury. *Hopkins v. Droppers,* 184 Wis. 400. *Conrad v. Railroad Co.,* 240 Ill. 12, 88 N. E. 180, holds that if the violation is the proximate cause, proof of the ordinance is negligence *per se.* See also *Oregon Box Co. v. Jones Lumbar Co.,* 244 Pac. (Ore.) 313.

The other class of cases on this subject holds that a violation of a statute is merely evidence, competent evidence, or prima facie evidence, to be considered along with the other elements and facts, and that it is for the jury to decide. States holding to this doctrine are, Maine, Massachusetts, Minnesota, New York, Ohio, and Pennsylvania. See *Ubelmann v. American Ice Co.,* 209 Pa.

398, which holds that the violation is only evidence to be considered with the rest of the facts, and that the rule is limited to cases in which the ordinance relates to the alleged negligent act under investigation. Here it was admissible not as substantive proof of negligence, but as an expression of municipal opinion that the defendant was negligent and is to be taken into consideration with all the other facts in the case. See also *Riegert v. Thackery,* 212 Pa. 86, where a charge was approved that if the jury find that a reasonably prudent man would not have given any warning or erected sheds in accordance with the provisions of the ordinance, then the defendant was not liable notwithstanding the ordinance. See *Bergen v. Morton Amusement Co.,* 95 Misc. Rep. 647, 159 N. Y. S. 935; *Deane v. Stegherr,* 160 N. Y. S. 1079 which holds it was some evidence of negligence; and *R. Guthman Transfer Co. v. McGuire,* 234 Ill. 125, 84 N. E. 723; *Alexander v. Industrial Board,* 281 Ill. 201, 117 N. E. 1040.

For Missouri cases, see *Owens v. R. Co.* 58 Mo. 386, which holds that negligence is to be passed upon by the court; *Karle v. Kansas City etc. R. Co.,* 55 Mo. 476, which holds that the negligence must cause the injury. Also *Blyston-Spencer Co. v. R. Co.,* 152 Mo. App. 118, 132 S. W. 1175, which holds that driving over fifteen miles per hour in violation of a statute is negligence *per se.* But see also, *Schlinshi v. City of St. Joseph,* 170 Mo. App. 280, 156 S. W. 823, and *Cabanne v. St. L. Car Co.,* 178 Mo. App. 718, 161 S. W. 597, which hold it to be prima facie negligence. C. H. L. '28.

CONSTITUTIONAL LAW—RIGHT OF A STATE TO DICTATE TERMS OF EMPLOYMENT OF ITS AGENTS AND EMPLOYEES DOES NOT INTERFERE WITH A CITIZEN'S CONSTITUTIONAL LIBERTY OF CONTRACT.—The State of Tennessee passed a statute prohibiting the teaching in the public schools of the theory of evolution or any theory denying the story of creation as taught in the Bible and teaching that man was descended from a lower order of animals. The defendant contended that the statute took away his liberty of contract. *Held,* the statute was valid, as neither the 14th Amendment of the United States Constitution nor Article 1, Section 8 of the Tennessee Constitution applied to the state as an employer.

The case of *The People v. Crane,* 214 N. Y. 154, laid down the doctrine that where it served a public purpose, it was competent for the legislature to discriminate as to who should be employed by the State. *In re Dalton,* 61 Kans. 257, declares that such restrictions are direction from a principal (the State) to its agent (a municipal corporation) and concerned no one else, and did not violate constitutional rights in that no one was compelled to bring himself under its provision by contracting with the State. *The State v. Atkins,* 64 Kan. 174, held that the paving of streets by a municipality was an act of the State through its agent and the State could lay down the terms of the contract. This view was upheld by the Supreme Court of the United States in *Atkin v. Kansas,* 191 U. S. 207, 48 L. Ed. 148. Tennessee had previously held in *Leeper v. State,* 103 Tenn. 500 that the adoption of a uniform series of school text-books was a public purpose which the State had a right to regulate.

Ohio has taken a directly contrary view, and held that the State had no right to interfere with the contracts of municipalities, and such a restriction would be discrimination between citizens and therefore unconstitutional. *Cleveland v. Construction Co.,* 67 Ohio St. 197. This view was also taken by Washington in *Seattle v. Smith,* 22 Wash. 327; and by California in *Ex parte Kuback,* 85 Cal. 274. However, the fact that these two latter cases involved municipal ordinances enacted by a body with granted, limited powers and not a statute of the legislature may have influenced the courts in those decisions. This was the ground, at least, on which a city ordinance requiring a union label on all city printing was overturned in *Marshall etc. Co. v. Nashville,* 109 Tenn. 495.

A sharp distinction is drawn between these cases in which the State is an