

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

employer or principal and prescribes the terms of its contract with its employees and agents, and those statutes in which it attempts to regulate contracts between private individuals. These latter clearly come within the constitutional prohibition, and are well illustrated in *Truax v. Raich*, 239 U. S. 33, 60 L. Ed. 131.

All the cases holding that such a statute is constitutional point out that some public purpose must be served by the restriction and that the legislature is the judge of the wisdom of the restriction. The cases on both sides agree that the restriction cannot be justified under the police power, as public safety, morality, or convenience is not involved.

It would seem that Tennessee had but followed a line of authority, which if not unanimous, is of respectable authority. W. T. '27.

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CONTEMPT—POWER OF SENATE TO PUNISH FOR.—This was an appeal by defendant, McGrain, from a judgment of a district court discharging in a habeas corpus proceeding a witness attached by order of the Senate for refusal to attend and give evidence before a Senate investigating committee. The witness, Daugherty, had been subpoenaed by a committee appointed to investigate the department of justice and upon his refusal to appear had been held under process of attachment by defendant, a deputy sergeant-at-arms of the Senate; thence followed the habeas corpus proceeding, its decision, and this appeal. *Held*, that the power of inquiry with its incident powers to subpoena and compel the attendance of witnesses is an essential and appropriate auxiliary to the legislative function and as such is impliedly conferred upon the Senate by the constitution of the United States which expressly confers the power to legislate and hence the lower court's order discharging the witness was reversed, *McGrain v. Daugherty*, (U. S., 1927) 71 L. Ed. 371.

The power of the Senate or any legislative bodies to punish for contempt is one which has been regularly exercised for some time. Such a power was used by the British Parliament and in our colonial legislatures before the American Revolution; also in both Houses and in most of the state legislatures. UNIV. OF PENN. LAW REVIEW, Vol. 74, No. 7, p. 691 and No. 8 p. 780. (This article by Prof. Potts gives a rather extended and very able comment upon the Power of Legislative Bodies to Punish for Contempt, both from a historical and a legal viewpoint.) As to the exercise of this power there is little, if any, doubt, but as to the legality of such exercise we must look further. English authority on this subject is of little value to us since their use of the writ of habeas corpus is a great deal more limited than ours in matters pertaining to action by Parliament. Our state courts, including Missouri, quite generally have held that the power to legislate carries with it by necessary implication ample authority to obtain information needed in the rightful exercise of that power and to employ compulsory power process for that purpose, *Burnham v. Morrissey*, 14 Gray 226, 239, 74 Am. Dec. 676; *Wilckens v. Willet*, 40 N. Y. (1 Keyes) 521, 525; *State ex rel Rosenheim v. Frear*, 138 Wis. 173, 119 N. W. 894; *Lowe v. Summers*, 69 Mo. App. 637, 649, 650. Besides the above state decisions, there are four outstanding findings of the U. S. Sup. Court on the point involved in this case. In the first, a plea of justification by the sergeant-at-arms of the House in an action of trespass against him was held good, the court saying that the House has power to attach and punish a person other than a member for contempt of its authority, namely, an attempt to bribe one of its members, *Anderson v. Dunn* (1827), 6 Wheat. 204, 5 L. Ed. 242. In the second case, and one which has proved somewhat of a thorn in the side of proponents of the power in question, a plea of justification similar to that in the previous case was held not good, the court saying that the House did not have jurisdiction to make the particular inquiry and hence had no authority to imprison one Kilbourn, for refusal to testify at such inquiry; note that the court did not deny the