questioned whether the daily newspaper published by the plaintiff in the instant case suffered harm under any of these tests, since its claim upon public interest is merely temporary. Nevertheless, the court had difficult issues of fact before it and acted correctly in reserving to the plaintiff the right of cross-examination and other safeguards given in a trial for the purpose of determining the facts. N. B. K.

EVIDENCE—INFERENCE UPON AN INFERENCE—[Missouri].—Plaintiff sued defendant insurance company on a double indemnity, or accidental death benefit, provision in a life insurance policy. Plaintiff contended that the insured died as a result of an accidental fall from a stepladder which caused a rupture of the spleen. Although there were no eyewitnesses to the fall, there was evidence to the effect that on the night of the alleged accident, the insured had been putting up colored bulbs in front of his house with the aid of a stepladder. The stepladder was found the next day with one of the legs broken off. A splinter of wood, allegedly from the ladder, was taken out of the insured's leg. Plaintiff testified that on the day after the fall, insured showed her bruises on his chest, over his heart, and on his leg and that there were also bruises along his left side, and discoloration over his abdomen. Insured's doctor testified, that in his opinion, insured died as a result of a rupture of the spleen. Insured had been active, energetic, and in apparent good health for some time prior to the injury. Defendant contended that the evidence presented was insufficient; that plaintiff could not establish her case without building an inference upon an inference,[1] which defendant contended was not permitted. *Held:* That the rule against building an inference upon an inference has been modified to the extent that it is now permitted in order to arrive at a conclusion, so long as the result is not too remote. *Krug v. Mutual Life Insurance Co. of New York.*[2]

Until very recently, the Missouri court has refused to recognize that an inference might be based upon an inference in order to prove an ultimate fact.[3] Rather, it has invariably said that the "piling" of inferences would not be permitted. On the other hand, there seems to have been no limit to

1. The defendant contended that plaintiff must show (1) that insured was standing on the ladder on the particular night, (2) while thereon he was caused to fall by the accidental breaking of the ladder, (3) that he sustained bodily injuries as a result of the breaking of the ladder and the fall, (4) that the bodily injuries were evidenced by visible contusions or wounds on the body as required by the insurance policy, and (5) that as a result of such bodily injuries, and independently and exclusively of all other causes, the insured died. It was argued by the defendant that each of these steps was an inference and had to be proved by fact and not established by inferences drawn from previous inferences.

2. (Mo. App. 1941) 149 S. W. (2d) 393.

3. Wright v. Order of United Commercial Travelers of America (1915) 188 Mo. App. 457, 174 S. W. 833; Atherton v. Railway Mail Ass'n (Mo. App. 1920) 221 S. W. 752; Phillips v. Travelers' Ins. Co. (1921) 288 Mo. 175, 231 S. W. 947; Cardinale v. Kemp (1925) 309 Mo. 241, 274 S. W. 437; Harding v. Federal Life Ins. Co. (Mo. App. 1931) 34 S. W. (2d) 198;

the number of inferences which could be drawn in a single case or from a single group of facts, so long as each inference was based independently of all other inferences, upon those facts.[4] The rule seems to have been applied in all types of cases, civil and criminal.[5]

The applicability of the rule was apparently questioned by the Missouri court for the first time in *Wills v. Berberich's Delivery Co.*[6] In that case the supreme court held that the rule against basing an inference upon an inference should no longer be regarded as a strict rule to be followed in all cases, but as a rule of reason governing only when the proven facts and their reasonable implications were insufficient for a reasonable conclusion of fact; that the underlying and all important question was not whether an inference had been based upon an inference, but whether the ultimate conclusion could fairly be drawn from the proven facts by reasonable minds.[7] Although the decision in the *Wills* case was the first open recognition of the fallacy in the rule, it is doubtful whether the rule has ever served any purpose except to afford the courts a convenient method of disposing of evidence which they regarded as too remote or uncertain to prove the ultimate facts in issue.[8] Such a limitation is, by its very nature, incapable of consistent application.[9] Although the rule was apparently discarded in the

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Hasenjaeger v. M. K. T. R. R. (1932) 227 Mo. App. 413, 53 S. W. (2d) 1083; Bollinger v. St. Louis-San Francisco Ry. (1934) 334 Mo. 720, 67 S. W. (2d) 985; Raw v. Maddox (1936) 230 Mo. App. 515, 93 S. W. (2d) 282; Morris v. E. I. Du Pont de Nemours & Co. (1937) 341 Mo. 821, 109 S. W. (2d) 1222.

4. Morris v. E. I. Du Pont de Nemours & Co. (1937) 341 Mo. 821, 109 S. W. (2d) 1222.

5. Phillips v. Travelers' Ins. Co. (1921) 288 Mo. 175, 231 S. W. 947; State v. Capps (1925) 311 Mo. 683, 278 S. W. 695.

6. (1939) 345 Mo. 616, 134 S. W. (2d) 125.

7. In State ex rel. Mulcahy v. Hostetter (1940) 346 Mo. 65, 139 S. W. (2d) 939 dismissing certiorari of Mulcahy v. Terminal R. R. Ass'n (Mo. App. 1939) 123 S. W. (2d) 235, the court, although it disposed of the case upon a different ground, approved the principle laid down in the *Wills* case.

8. If the cases are examined upon their facts it will be seen in nearly all of them that what the court was really determining, was whether or not all of the evidence taken together would justify the desired conclusion. If so, then whether or not it was necessary to base an inference upon an inference in order to reach that conclusion, the court would say in one way or another that there was no necessity of piling inferences upon each other. For example, in Freeman v. Kansas City Public Service Co. (Mo. App. 1930) 30 S. W. (2d) 176, the court, in an action for wrongful death of the plaintiff's husband, allowed a recovery on the basis of evidence as to the position of the deceased's body as later found, and the condition of the fender of the street car which might have indicated that the body had been dragged along after having been hit. There were no eye witnesses. From these circumstances it was inferred that the deceased was struck by the car, that the accident was caused by the motorman's negligence in not having seen deceased on or near the track, that the motorman could have avoided the accident had he seen the deceased, and that death was caused by deceased's having been struck by the car. True, the circumstances pointed to this conclusion, but it seems obvious that it was reached by a series of inferences, one upon the other.

9. Wigmore has said that there can be no such rule against basing an inference upon an inference. He reasons that if there were such a rule, very few trials could be adequately prosecuted. Every chain of reasoning

Wills case, it is to be noted that the St. Louis Court of Appeals in two recent cases,[10] again said, without qualification, that an inference might not be based upon an inference to prove a fact. Neither the *Wills* case nor the principal case was referred to in the opinions.

The court in the principal case, in holding that the plaintiff's evidence was sufficient to make a *prima facie* case, even though the jury might have to base an inference upon an inference in reaching the ultimate conclusion, recognizes the rule set out in the *Wills* case. It is hoped that in the future this attitude toward the prohibition of an inference upon an inference will prevail over the older idea. Regardless of the fact that the rule against inferences is probably not given any real effect in most cases, its mere repetition without explanation or basis is bad, and can lead to nothing but confusion and uncertainty in the law. The limitation prescribed in the *Wills* case will insure litigants against inferences based upon evidence which is too remote or speculative, without the necessity of resorting to the untenable "slogan" that an inference may not be based upon an inference. The decision in the *Wills* case and that of the principal case seem to be in line with other improvements in the application of the rules of evidence by the Missouri Supreme Court, such as the ruling on expert testimony in *Scanlon v. Kansas City*,[11] and the elimination of impeachment of witnesses by reputation for morality in *State v. Williams*.[12]

J. W. F.

EVIDENCE—PRIVILEGE AGAINST SELF-INCRIMINATION—REFUSAL OF ACCUSED TO ANSWER QUESTIONS AFTER ARREST—[Missouri].—Defendant was indicted for felonious assault but was not found and arrested for more than a year after the indictment was returned. After his arrest, defendant refused to answer questions until he consulted his attorney. At the trial, the chief of police, in response to questions put by the prosecutor, testified to certain questions which had been asked the defendant after his arrest and to the defendant's refusal to answer. Defendant was convicted, and on appeal the court held that while the testimony ought not to have been admitted, it was not incriminating, and the error was not reversible. On rehearing, *held:* reversed, and new trial granted. The introduction in evidence of defendant's statement that he would not talk until he consulted his lawyer was reversible error as an infringement of defendant's right against self-incrimination. *State v. Dowling*.[1]

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may be broken down into a string of inferences, each drawn from former inferences. 1 Wigmore, *Evidence* (3rd ed. 1940) 434, §41. He says at page 436, "The judicial utterances that sanction the fallacious and impracticable limitation, originally put forward without authority, must be taken as valid only for the particular evidentiary facts therein ruled upon." For an analysis of the cases of all jurisdictions, see Note (1935) 95 A. L. R. 162.

10. Mendenhall v. Neyer (Mo. App. 1941) 149 S. W. (2d) 366; Pape v. Aetna Casualty & Surety Co. (Mo. App. 1941) 150 S. W. (2d) 569.

11. (1930) 325 Mo. 125, 28 S. W. (2d) 84.

12. (1935) 337 Mo. 884, 87 S. W. (2d) 175, 100 A. L. R. 1503.

1. (Mo. 1941) 154 S. W. (2d) 749. The first opinion was withdrawn by the court, but some of the reasoning of that case is given by the court in the instant case at page 754.