court. *Hard v. Splain* (1916), 45 App. D. C. 1; *Lee v. People* (1912), 53 Colo. 507, 127 P. 1023; *In re Peck* (1903), 66 Kan. 693, 72 P. 265; *State v. Farrar* (1860), 41 N. H. 53; *Burns v. Commonwealth* (1889), 129 Pa. St. 138, 18 A. 756. Thus a parent could not be guilty under the statute for taking a minor child out of custody of his other parent where there is a mere agreement of separation. *State v. Beslin* (1911), 19 Idaho 185, 112 P. 1053; *Hard v. Splain, supra; State v. Dewey* (1912), 155 Ia. 469, 136 N. W. 533, 40 L. R. A. (N. S.) 470; *State v. Parol* (1914), 107 Miss. 770, 66 S. 207, L. R. A. 1915 B 189. Nor, by the weight of authority, can one working in behalf of a parent be convicted of kidnapping if the parent could not be. But the fact that the accused, in enticing a child away from its father, acted as agent for the mother, the parents living apart, did not prevent his conviction under a statute applying to the taking of children under twelve years of age. *State v. Brandenburg,* (1911), 232 Mo. 531, 134 S. W. 529, 32 L. R. A. (N. S.) 845. The contrary view seems the better, however, since the agent should not be convicted of any crime for which another conspirator cannot be guilty.

In kidnapping, as in false imprisonment, fraud or fear may supply the place of force. *Payson v. Macomber* (1861), 3 All. (Mass.) 69; *Haddon v. The People* (1862), 25 N. Y. 373. In the absence of statute, a mistake of fact does not excuse a kidnapping. *State v. Tillotson* (1911), 85 Kan. 577, 117 P. 1030. There is no authority directly in point with the principal case, but it was decided on the general rule taken in conjunction with the doctrine asserted in the last cited case. G. N. B., '29.

FEDERAL COURTS—RULES OF DECISION IN ACTIONS AT LAW.—Plaintiff taxicab company sued defendant taxicab company and a railroad company in the United States District Court for the Western District of Kentucky for interference with the carrying out of a contract made with the railroad company, by which plaintiff company was given the exclusive privilege of entering certain depot grounds and soliciting patronage. Although no statute of Kentucky covered the contract, the Supreme Court of Kentucky, by interpretation of the common law operative in that state, had held such contracts void and contrary to public policy because they were discriminatory and monopolistic. *Held* (with dissent by Holmes, J., Brandeis and Stone, J J., concurring), that the validity of the granting by a railroad company of exclusive privileges at its station to one transfer company is a question of general law upon which the Federal courts are not bound by state decisions. *Black & White Co. v. Brown & Yellow Co.* (1928), 48 S. Ct. 383.

The principal case follows a settled rule in the Federal courts which had its origin in *Swift v. Tyson* (1842), 16 Pet. 1, the decision being based on interpretation of section 34 of the Judiciary Act of 1789 (1 Stat. 92). This section provided that "the laws of the several states shall be regarded as rules of decision in trials at common law in courts of the United States." In construing this provision Mr. Justice Story distinguished between state statutory law, which is mandatory on the Federal courts, and matters of

general law in which the Federal courts may use their own independent judgment. This distinction between statutory and general common law has been made consistently in a long line of decisions. *B. & O. R. R. Co. v. Baugh* (1893), 149 U. S. 368. In *Mobile Shipbuilding Co. v. Fderal Bridge Co.* (1922), 280 F. 292, it was held that the Federal court in an action brought therein is not bound, in determining the rights of the parties, by the interpretation placed upon the common law by the courts of the state where a contract was made, but will determine the common law independently of the state. However, in a question of general law, if possible, the Federal courts will decide in harmony with state decisions. *Sturtevant Co. v. Fidelity Company of Maryland* (1922), 285 F. 367.

A definitely recognized exception to the rule of independence of the Federal courts in matters of general law exists in cases whre state rules of property are involved. *Jackson v. Chew* (1827), 12 Wheat. 153; *Swift v. Tyson, supra.* Thus in *Keene Five Cent Sav. Bank v. Reed* (1903), 123 F. 221, it was held that the proper interpretation of a private contract presents a question of general law, concerning which the Federal courts are entitled to express an independent judgment, unless the contract is one relating to the sale or conveyance of real or personal property and contains words and phrases which, in virtue of local decisions, have acquired a definite meaning and have thus become rules of property as distinguished from rules of construction within the state.

The rule of the principal case, although never departed from, has been vigorously criticized, both by dissenting opinions in many of the decisions and by writers. See dissenting opinion in *B. & O. R. R. Co. v. Baugh, supra; Kuhn v. Fairmount Coal Co.* (1910), 215 U. S. 349, and note on principal case, 37 YALE L. J. 88.

In the dissenting opinion in the principal case Mr. Justice Holmes holds that the doctrine is based on the fallacious and unwarranted distinction between the statutory and common law rules of states made in *Swift v. Tyson, supra.* He further states: "The common law so far as it is enforced in a state, whether called common law or not, is not the common law generally but the law of that state existing by the authority of that state without regard to what it may have been in England or elsewhere." Certainly, if a state would declare one of the disputed rules of general law by statute the Federal court in the state would have to follow it. The view of the dissenting opinion appears to be the more realistic one and to be based upon sounder legal theory. Certainly in matters of local policy, such as that involved in the principal case, there is nothing to be gained from having the Supreme Court override the judgments of the state courts and, as in the principal case, foist a monopoly upon an unwilling community.

S. E., '30.

FIXTURES—MORTGAGES—CONDITIONAL SELLER'S RIGHTS AGAINST THOSE OF PRIOR MORTGAGEE OF REALTY.—One Pointer and wife mortgaged their real estate and dwelling house to plaintiff. Later, they purchased on conditional sale a heating plant from defendant, but the contract was signed