

life.¹⁵ The majority rule, on the other hand, recognizes the practical convenience of giving to life policies some characteristics of property.¹⁶ It also recognizes the fact that assignments are generally made to a "roughly selected class of people, who by their general relations with the person whose life is insured, are less likely than criminals at large to attempt to compass his death."¹⁷ It has been suggested that this statement of Mr. Justice Holmes be limited to situations in which the person whose life is insured consents to the assignment and then only when the consent is a "real and an intelligent consent."¹⁸

S. F.

LABOR—FAIR LABOR STANDARDS ACT—TIPS AS WAGES—[Federal].—Plaintiff, as a representative of defendant's "redcap" employees, sued for minimum wages under the Fair Labor Standards Act.¹ Defendant had offered to pay the difference between tips actually received and the minimum wages required under the Act. *Held*: Tips cannot be regarded as part of the minimum wages prescribed under the Act; the defendant was liable for the prescribed wages without deduction for tips. *Pickett v. Union Terminal Co.*²

There seem to be several possible bases for this decision, which is the first to hold that under the Fair Labor Standards Act tips are not a part of wages. The court relied to some extent upon two earlier decisions holding that tips belong to the employee, not to the employer.³ These cases were suits by shoe-shine boys to recover tips which they had paid over to their employers. The court in the instant case found in the supposed Congressional intent underlying the Fair Labor Standards Act a basis for interpreting the word "wages" strictly.⁴ This construction is supported by the court's view that tips are a gratuity rather than wages, and also by the fact that the Act uses the mandatory phrase "shall pay" in describing the duty of the employer.⁵ In reaching its result the court refused to follow

15. *Warnock v. Davis* (1881) 104 U. S. 775.

16. *Grigsby v. Russell* (1911) 222 U. S. 149; *St. John v. American Mut. Ins. Co.* (1885) 13 N. Y. 31.

17. *Grigsby v. Russell* (1911) 222 U. S. 149, 155.

18. *Patterson*, supra note 5, at 392.

1. Fair Labor Standards Act (1938) 52 Stat. 1060, c. 676, 29 U. S. C. A. (Supp. 1939) sec. 201.

2. (D. C. N. D. Tex. 1940) 33 F. Supp. 244.

3. *Zappas v. Roumeliote* (1912) 156 Iowa 709, 137 N. W. 935; *Polites v. Barlin* (1912) 149 Ky. 376, 149 S. W. 828, 41 L. R. A. (N. S.) 1217. See *Manubens v. Leon* (1918) 1 K. B. 208, in which tips were included in damages for wrongful discharge.

4. Fair Labor Standards Act (1938) 52 Stat. 1060, c. 676, 29 U. S. C. A. (Supp. 1939) sec. 203(m). "Wage paid to any employee includes the reasonable cost, as determined by the administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees."

5. Fair Labor Standards Act (1938) 52 Stat. 1060, c. 676, sec. 6, 29 U. S. C. A. (Supp. 1939) sec. 206.

decisions in social security and workmen's compensation cases which included tips in computing wages or remuneration.⁶

Against the decision in the principal case it can be argued that the policy of the Act—establishment of minimum wages sufficient to enable all persons engaged in interstate commerce to maintain a decent standard of living—would be effectuated if tips were considered a part of wages, so long as the employer made up the difference between tips received and the minimum wages established under the Act.⁷ Moreover, the word "wages" could well be construed to harmonize with this result, for in many cases tips have, in fact, become part or all of the employee's remuneration, and are paid with knowledge of that fact.⁸ In hat-check concessions, for example, it is well known that the "employees" often pay for the right to receive tips from the public. Thus, remuneration paid in this way by the public which the employee directly serves could be held to be "wages" within the Act. It is at least possible that this result would be reached if the employer and the employee were to contract that tips were to be the property of the employer and applied in part-payment of wages. The court expressly leaves open this question.⁹ *Quaere*, whether there would be consideration to support the contract, since the employer is already under a duty to pay the fixed minimum wage.¹⁰

The decision as it stands will affect all persons engaged in interstate commerce who receive tips,¹¹ and it may have interesting practical results. Already some railroad terminals have substituted for the familiar tip a flat service charge for carrying parcels, which goes to the employer. If tips cannot be applied in reduction of wages, employers may end by discouraging the practice altogether, thus reducing the direct charge to the public for such services. This result would be in accord with the ideas of those courts, legislatures, and writers that have condemned the custom of tipping.¹²

D. L.

LABOR LAW—INJUNCTION UNDER SHERMAN ACT—EFFECT OF NORRIS-LA GUARDIA ACT—[United States].—Plaintiffs were two dairies, a cooperative association selling milk, and a C. I. O. union of vendors or retail peddlers. The dairies bought milk from the cooperative, processed it, and "sold" it

6. Federal Underwriters Exchange v. Husted (Tex. 1936) 94 S. W. (2d) 540; Sloat v. Rochester Taxicab Co. (1917) 177 App. Div. 57, 163 N. Y. S. 904. See: Note (1931) 75 A. L. R. 1223, 1224; Note (1935) 67 U. S. L. Rev. 548.

7. On the other hand, it is probable that Congress did not intend to take from employees in interstate commerce any advantages which they already enjoyed.

8. Note (1937) 71 U. S. L. Rev. 365.

9. Pickett v. Union Terminal Co. (D. C. N. D. Tex. 1940) 33 F. Supp. 244, 247.

10. Glendale v. Coquat (Ariz. 1935) 52 P. (2d) 1178; Larsen v. Rice (1918) 100 Wash. 642, 171 Pac. 1037.

11. E. g., Pullman porters, airline and busline employees.

12. See: Note (1937) 71 U. S. L. Rev. 365; Jhering, Trinkgeld and Tips (1916) 32 L. Q. Rev. 306; Comment (1917) 3 Va. L. Reg. (N. S.) 206.