ous to society. In such instances there should be no necessity for inquiry into the deliberation or premeditation in the accused's mind. The mere fact that he committed the homicide in the perpetration of a felony should suffice.

R. M., '35.

CONTRACTS—ILLEGALITY OF CONSIDERATION—COMPOUNDING A CRIME.—Plaintiff insurance company indemnified the defendant for the loss by robbery of bonds which were kept in safety deposit vaults. Agents of both parties negotiated with the "underworld" and effected the return of the bonds after the payment of a ransom by the defendant. The plaintiff sought to recover the amount of the loss paid by it. The defendant filed a counterclaim asserting that the bankers' bond obligated the plaintiff to pay the cost and expenses of making a recovery of the property. *Held:* The implied agreement which the agents of the parties made with the "underworld" against criminal prosecution, although not necessarily a compounding of a felony, was decidedly against public policy to such a degree as to be insufficient to support a claim by either of the parties to this action. *Fidelity & Deposit Co. of Maryland v. Grand National Bank* (D. C. E. D. Mo., 1933) 2 Fed. Supp. 666.

Compounding a crime, an agreement not to prosecute when the party so agreeing knows the crime has been committed, is itself an indictable offense. The underlying principle is that the prerogative of prosecution belongs exclusively to the state and it is a criminal offense for an individual to appropriate this prerogative to his private uses. *Case v. Smith* (1895) 107 Mich. 416, 65 N. W. 279.

It is an equally established principle that no contract is enforceable so long as it interferes or tends to interfere with the public interest and duty respecting the apprehension and conviction of a criminal. 6 R. C. L. 765; 2 Restatement of Contracts (1932) sec. 548. The limitation is usually added that a crime must have actually been committed or prosecution begun. *Columbia Lodge v. Manning* (1895) 57 N. J. E. 338, 38 Atl. 444; 3 Williston, Contracts (1931) 3006; *contra, Koons et ux. v. Vauconsant* (1902) 129 Mich. 260, 88 N. W. 630. This unenforceability does not extend to agreements involving offenses that are not strictly against the public when a settlement between the parties is less injurious to the public than the litigation. *Jangraw v. Perkins* (1905) 77 Vt. 375, 60 Atl. 385; 2 Wharton's Criminal Law 12th ed., (1932) 2221 et seq. It has also been held that the mere hope that criminal prosecution will be suppressed is not sufficient to render the contract void. 3 Williston, Contracts (1931) sec. 1718. The principle has been extended to include the suppression of evidence or the securing of the absence of witnesses from the trial. *Josephs v. Briant* (1913) 108 Ark. 171, 157 S. W. 136; *Small v. Lowrey* (1912) 166 Mo. App. 108, 148 S. W. 132. Even an agreement to intercede with the court or prosecutor for the accused will not sustain an obligation. *Aycock v. Gill* (1922) 183 N. C. 27, 111 S. E. 342, 24 A. L. R. 1449. The agreement to conceal the crime need not be express; if the circumstances are such that it may reasonably be implied it can be used as a successful defense to an action on a contract of which it is the consideration. *Schirm v. Wieman* (1906) 103 Md. 541, 63 Atl. 1056; *Mississippi Valley Trust Co. v. Begley et al.* (1923) 298 Mo. 684, 252 S. W. 76.

There is no difficulty in the statement of the principles involved in an action based upon an agreement to suppress, stifle or stay a criminal proceeding. Application is the problem. Whether a particular agreement was made with the intent of concealing a crime or obstructing prosecution is generally a factual one. The cases, factually, point to the conclusion that the agreement upon which the action is brought must be based directly upon an illegal consideration before recovery will be refused. *Folmar v. Siler* (1902) 132 Ala. 297, 31 So. 719; *Jones v. Henderson* (1920) 189 Ky. 412, 225 S. W. 34; *Case v. Smith* (1895) 107 Mich. 415, 65 N. W. 279; *Aycock v. Gill* (1922) 183 N. C. 27, 111 S. E. 342, 24 A. L. R. 1449. In these cases, it should also be noted, the parties to the suit are in the relation of obligor and obligee with respect to the agreement to suppress the crime. There is the further feature that the agreement which is sued upon was made after the commission of the crime and with it in the contemplation of the parties. These elements are not found in the principal case. Here the basis of both the action and the counterclaim is the bankers' bond, a contract of insurance, of which the agreement to compound the crime was entirely independent. Thus, strictly speaking, the court possibly erred in its application of legal principles. From the social point of view, however, the result is laudable because of the reprehensible conduct of both parties in their negotiations with the criminals. N. P., '34.

INTERSTATE COMMERCE—STATE POWER TO FORBID USE OF HIGHWAYS BY TRUCKS.—The plaintiff desired solely to do an interstate business as a common carrier by truck. The Ohio Public Utility Commission denied him a permit to use the route he desired on the ground that it was already congested by other traffic and that the presence of the applicant's trucks would affect highway safety. *Held:* Such state regulation is proper even though the carrier was to engage exclusively in interstate commerce. *Bradley v. Public Utilities Commission of Ohio* (1933) 53 S. Ct. 577.

The growth of motor transportation has given rise to many novel problems. The courts in the earlier cases did not always realize this and hence their adjudications give the appearance of being uncertain and wavering. George, State Regulation of Interstate Motor Carriers (1929) 14 ST. LOUIS L. REV. 136; note (1933) State Control over Contract Motor Carriers 18 ST. LOUIS L. REV. 228. The states originally claimed the power to grant or withhold certificates of convenience and necessity from interstate carriers and to require that all common carriers should have such certificates. *People v. Barbuas* (1923) 230 Ill. App. 560; *Interstate Transit Co. v. Derr* (1924) 71 Mont. 222, 228 Pac. 624; *Northern P. R. Co. v. Schoenfeldt* (1923) 123 Wash. 579, 213 Pac. 26. The Supreme Court of the United States denied this power on the ground that the primary reason for its exercise was a desire to control competition rather than "to promote safety on the highways and conservation in their use", which were proper objects for state regulation of interstate carriers. *Buck v. Kuykendall* (1925) 267 U. S. 307; *Bush & Sons Co. v. Malloy* (1925) 267 U. S. 317. The result of these decisions was to produce confusion and conflict in the law as the various courts attempted to decide what regulations were primarily designed to promote highway safety or