court to instruct concerning the law applicable to the evidence presented. *Schwaninger v. McNeeley & Co.* (1906) 44 Wash. 447, 87 Pac. 514; *Aubrey v. Jonson* (1932) 45 Ga. Ap. 663, 165 S. E. 846; *Clark v. Monroe County Fair* (1927) 203 Iowa 1107, 212 N. W. 163; *Mahoney v. Gooch* (1923) 246 Mass. 567, 141 N. E. 605; *Blue Valley Bank v. Melburn* (1930) 120 Neb. 421, 232 N. W. 777; *Merrihew v. Goodspeed* (1929) 102 Vt. 206, 147 Atl. 346; *Milyak v. Phila. Transit Co.* (1930) 300 Pa. 457, 150 Atl. 622.

It is submitted that Missouri has placed a duty upon the court not to submit cases without proper instruction to the jury, and the further duty upon the attorney for the plaintiff to request such direction of the judge. Although *Dorman v. East St. L. Ry.*, supra, aims to correct the evil of submitting a case on the single instruction defining the measure of damages, nothing in the opinion seems to be limited to such cases. It would seem that the rule operates in favor of all appellants who have been prejudiced by any non-direction. It is well to note, nevertheless, that the court interpolates the dictum that "What and to what extent the same duty (to request instructions) devolves on the defendant need not now be discussed."

H. A. G. '35.

WORKMEN'S COMPENSATION—WORK RELIEF EMPLOYMENT.—The claimant, a resident of Columbus, Ohio, applied to the municipality for relief and received relief grocery orders. Subsequently he was given a "work card" by the division of charities, placed on a special payroll of relief workers and required to perform labor on an hourly basis beofre more food orders would be given. Sec. 3493 G. C. Ohio provides that a recipient of relief must work if able or will be declared a vagrant. Remuneration by weeks alternated between cash and food orders, and such payments were charged to a poor-relief bond fund. While engaged, under this arrangement, in working for the street cleaning department the claimant was injured and applied for compensation under the state Workmen's Compensation Act. *Held*, the claimant was an employee of the municipality within the meaning of the act, the court thus overruling the workmen's compensation commission's denial of the claim. *Industrial Commission of Ohio v. McWhorter* (Nov., 1934), —Ohio—, 193 N. E. 620.

Cases uniformly hold that a contractual relation of employer and employee is a condition of the applicability of Workmen's Compensation Acts. Most of the decisions have held that no such relation exists in the case of a relief worker. According to a recent case those on relief are wards of the municipality entitled to its support, and their services, voluntarily offered, help contribute to this support. *Vaivida v. City of Grand Rapids* (1933), 264 Mich. 204, 249 N. W. 826, 88 A. L. R. 707. Thus the voluntary indigent worker is merely a recipient of public charity unable to enforce a contractual right to payment and is, therefore, not an employee within the meaning of workmen's compensation acts. *McBurney v. Industrial Accident Commission of Cal.* (1934), 220 Cal. 124, 30 Pac. (2d) 414; *Martin v. Industrial Commission* (Cal. App. 1934), 30 Pac. (2d) 527; *Rico et al. v. Industrial Commission* (Cal. App. 1934), 30 Pac. (2d) 584; *Los Angeles*

County v. Industrial Commission (Cal. App. 1934) 30 Pac. (2d) 1035. The obligation of the political subdivision to support the indigent individual whether he works or not has been emphasized. *Oleksik v. City of Detroit* (1934) 268 Mich. 697, 256 N. W. 600; *In re Moore,* (Ind. App. 1933) 187 N. E. 219; *Village of West Milwaukee v. Industrial Commission* (Wis. 1934), 255 N. W. 728.

In other cases denying compensation, the facts seemed to show that the workmen applied for relief to the welfare department of one political subdivision but, though this department paid his remuneration, actually worked for another political subdivision. It was held that the money was paid, not as remuneration for his work, but for the relief of himself and his family, and that hence there was neither a contractual relation with the relief agency, nor with the body for which he was voluntarily working. *Village of West Milwaukee v. Industrial Commission,* supra; *Jackson v. N. C. Emergency Relief Administration et al.* (1934), 206 N. C. 274, 173 S. E. 580; *Bell v. City of Raleigh et al.* (1934) 206 N. C. 275; 173 S. E. 581; *In re Moore,* supra; *Schmueser v. Copelin et al.* (Ind App. 1934,) 192 N. E. 123; *Basham v. County Court of Kanawha County* (W. Va. 1933), 171 S. E. 893; *San Bernandino County v. Industrial Commission* (Cal. App. 1934), 37 Pac. (2d) 122.

The present case, with a few others, holds an employer-employee relationship to exist. In a Georgia case it was held that relief workers employed and paid by a municipality did not come under an exception in the Workmen's Compensation Act applying to charitable organizations and that they were "employees", even though the current rate of wages was not paid. *City of Waycross v. Hayes* (1934), 48 Ga. App. 317, 172 S. E. 756. Accord: *Porton v. Central (Unemployed) Body for London* (1909) 2 B. W. C. C. (Eng.) 296, which seems to be the first recorded case touching upon the subject. In *McLaughlin v. Antrim County Road Commission* (1934), 266 Mich. 73, 253 N. W. 221, it was held that the indigent worker, sent out by the welfare committee, was an employee of the employing Road Commission, even though the current rate of wages was not paid. The welfare committee of the county simply acted as an employment agency for the unemployed on its relief rolls. Yet in a similar case, in which the worker was selected by the union from a union unemployed list and sent to the job, it was held that he was not an employee of the contractor. Here the current rate of wages was paid, though it was paid by the municipality with the aid of Federal funds, and not by the contractor. *Schmueser v. Copelin,* supra.

In the principal case the court found it reasonable to distinguish between those who work for their support and those who do not, and held that on grounds of sound public policy, to preserve the self-reliance of those on relief, it is better to find in favor of a relation of employer and employee. There seems to be no more reason for excluding the worker on relief than for excluding any other public employee. These usually are expressly included in the Workmen's Compensation Acts. G. C. Ohio, sec. 1456-61; R. S. Mo. (1929), secs. 3304, cl. b., 3305, cl. a. Schneider Workmen's Compensation Law (1932) sec. 36. The courts have liberally construed the definition of a public employee, and thus the following persons have been held public employees: a taxpayer, who had the option, by law, to pay his road tax or perform labor, and who elected to work—*Town of Germantown v. Industrial Commission* (1922) 178 Wis. 642, 190 N. W. 448, 31 A. L. R. 1284; a bystander, summoned by a sheriff to assist in making an arrest—*County of Monterey v. Industrial Commission* (1926) 199 Cal. 221, 248 Pac. 912, 47 A. L. R. 359; a convict working on the highway and receiving compensation, where it was optional with prisoners whether they would accept the labor or not—*California Highway Commission v. Industrial Commission* (1926) 200 Cal. 44, 251 Pac. 808, 49 A. L. R. 1377; a juror while in service as such, *Industrial Commission v. Rogers* (1930) 122 Ohio St. 134, 171 N. E. 35, 44 A. L. R. 1244. Since many courts have so far extended the definition of a public employee, it scarcely seems fitting now to restrict it so as to exclude the indigent worker performing relief work.

P. A. M. '36.