which would measure up to the requirements of absolute privilege, but also on the ground that there is "no apparent purpose to injure." Here the court is clearly talking of qualified privilege, where it is necessary to disprove malice. *Friedell v. Blakely Printing Co.* (1925) 163 Minn. 226, 203 N. W. 974.

Authorities referred to by the instant cases support only qualified privilege. There are few cases referring to wills in particular as privileged documents. Appellate court in *Hendricks v. Vitizens and Southern National Bank,* above, held that statements of the testator unnecessarily intimating that plaintiff was illegitimate were not privileged. There is no reason why libellous statements in a will, when falling within the limits of qualified privilege, should not be defensible on this ground. Statements are qualifiedly privileged when made in good faith upon any subject matter in which the party communicating has an interest or duty and the party communicated to has a like interest or duty or when made for the protection of private interests. *Wise v. Brotherhood of Locomotive Fireman and Engineers* (C. C. A. Iowa 1918) 252 F. 961; *Alexander v. Vann* (1920) 180 N. C. 187, 104 S. E. 360; *Berry v. City of New York Insurance Co.* (1923) 210 Ala. 369, 98 So. 290; Newell on Slander and Libel, (4th Ed. 1924) p. 415. The facts in the present case clearly fall under this interpretation. But extending the defense of absolute privilege to them would open wide the doors for future extensions to all documents which will eventually figure in a court proceeding. The court, in introducing this subject is only confusing further the law of qualified privilege which was sufficiently confused before. The decision in *Nagle v. Nagle* is undoubtedly good law, but the dicta are superfluous and perplexing.

J. H. W. '37.

TRIAL—INSTRUCTIONS—DUTY TO REQUEST—The judge permitted a personal injury case to go to the jury after the plaintiff had failed to submit any instruction other than one on the measure of damages. The defendant objected and on appeal urged this to be error. *Held,* that it is within the "inherent power and duty of the court to see to it that the jury be informed as to the law of the case. Where prejudice results to the losing party by reason of the court's failure so to do, and the appellant properly saves the point, the judgment should be reversed and remanded. The defendant, however, was not prejudiced in this case. *Dorman v. East St. Louis R. R. Co.* (Mo. 1934) 75 S. W. (2) 854.

The instant case changes a rule of appellate practice which for years had been firmly established in Missouri, one which has had an interesting history. The early pronouncements of the Supreme Court were to the effect that it is the duty of the court to instruct the jury on all principles of law applicable to the facts in evidence. To refuse to do so was error. *McKnight and Bradley v. Wells* (1821) 1 Mo. 13; *Coleman v. Roberts* (1821) 1 Mo. 97. This rule persisted until in *Drury and Wiseman v. White* (1847) 10 Mo. 224 the court in considering a case submitted to the jury without instructions, held that it was too late to contend on appeal that the jury

was improperly instructed, since the appellant had not requested the necessary instructions. Eight years later, the legislature enacted a statute which settled the law with regard to the necessity to request instructions. R.S. Mo. 1855, sec. 47, c. 128, p. 1268; now R.S. Mo. 1929, sec. 967 which in brief states that ". . . either party *may* request . . . or the court *may* give . . . instructions. . ." This, together with the subsequent court decisions, established beyond doubt the rule that "mere non-direction is not error," that the court has no duty to give instructions unless the parties request them. *Tetherow v. St. Joseph and D. M. Ry. Co.* (1888) 98 Mo. 74, 11 S. W. 310; *Nolan v. Johns* (1894) 126 Mo. 159, 28 S. W. 492; *Minter v. Bradstreet Co.* (1903) 174 Mo. 444, 73 S. W. 668; *Morgan v. Mulhall* (1908) 214 Mo. 451, 114 S. W. 4; *Linkart v. Miller* (Mo. 1932) 48 S. W. (2) 867. Instructions which do not cover the whole case amount, in civil cases, to non-direction. *Wilson v. K. C. So. Ry.* (1906) 122 Mo. A. 667, 99 S. W. 465.

The decision in the principal case is a decided reversal of the law in Missouri defining the duty to instruct the jury, yet it cannot be said to be unexpected. For the past twenty years the Supreme Court has been condemning the practice of submitting cases to the jury without instruction, and has threatened the present action. See, *Buchanan v. Rechner* (1933) 333 Mo. 634, 62 S. W. (2) 1071; *Lindart v. Miller*, supra, *Barr v. Nafziger Bakery Co.* (1931) 328 Mo. 423, 41 S. W. (2) 559; *Brown v. Shepard Elev. Co.* (Mo. A., 1930) 23 S. W. (2) 1100; *Denkman v. Prudential Fixture Co.* (Mo. 1926) 289 S. W. 591; *Eversole v. Wabash Ry. Co.* (1923) 249 Mo. 523, 159 S. W. 419. Perhaps the statute, supra, has hindered an earlier expression of the rule which the court in the instant case lays down, with little concern for the enactment of the legislature. On authority of *In re Richards* (1933) 333 Mo. 907, 63 S. W. (2) 672, the court holds that the rules of court emanate from the judiciary and not the legislature and that the acquiescence by the court in the act of the legislature does not preclude the court from changing rules of practice which are within its inherent power.

The principal case has a further significance. Its advent signifies the departure of Missouri from the prevailing view that non-direction is not misdirection. *Pennock v. Diologue* (1829) 27 U. S. 1; *Tobish v. Cohen* (1932) 110 N. J. L. 296, 164 Atl. 415; *Cunningham v. Cox* (Cal. 1932) 15 Pac. (2) 169; *National Life and Accident Ins. Co. v. Bradley* (1932) 245 Ky. 311, 53 S. W. (2) 701; *Masonite Corp. v. Lochridge* (Miss. 1932) 140 So. 223; *Advance Mach. Co. v. Jacobs* (Idaho 1931) 4 Pac. (2) 657; *Buttitta v. Lawrence* (1931) 346 Ill. 164, 178 N. E. 390; *Ohusted v. Saber* (1930) 251 Mich. 688, 232 N. W. 353. This view obtains in England. *Ford v. Lacey* (1861) 30 L. J. (Exch.) 351. The reason for the prevailing view seems to be that the duty, if any, to present instructions should be upon the attorneys, who have studied the facts and law in their case far more than has the judge. See 2 Thompson on Trials (1912) sec. 2341. Despite the evident soundness and apparent clearness of the majority rule, there are a few states which foresee the evil of too few instructions to a lay jury and, therefore, to avoid a lack of direction place the duty on the

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*