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Constitutionality of Barbers' Price Fixing Act

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In the *Laflin* case, supra, involving the breeding of registered stock, heifers were treated oppositely. In that case 34 cows ranging in ages from 9 years 1 month to 3 years, were allowed to be subject to capital gains but 68 females ranging from 1 year, 10 months to 1 year, were not so allowed. This was partially because of the test that the animals "must not have been held by the taxpayer in the ordinary course of his trade or business." The Court considered these heifers to be part of Laflin's "money crop." The other partial test favored by the Court was, "Admittedly none of the entire sixty-eight had ever had a calf, and, with virtual certainty, a large number of them were not pregnant and many of them, as their ages demonstrated, had never been exposed to pregnancy."

Note, in the earlier case the heifers were young but their ages did not govern the holding but in the later case the Court held the age of many of the heifers demonstrated they could not have been breeding animals. The stress in both cases was upon the probability or possibility of the heifers being bred. This is set forth in the judge's own words, "The record in the *Miller* case satisfactorily established the definitive inclusion of the heifers in the breeding herd. That in this[*Laflin*] case does not, but rather points clearly to its negation. Their breeding to bulls (insofar as it is indecisively shown) in this [*Laflin*] case is one . . . fact which has led to opposite conclusions in the two cases."

A new round of litigation will be but the second round of the same dance. The tune of the first was "not primarily held for sale" and that of the second will be "held for breeding." There should be this difference, whatever may be gained, formerly the taxpayer had the burden of proving a negative issue; now he should have the burden of proving an affirmative one.

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CONSTITUTIONALITY OF BARBERS' PRICE FIXING ACT

Since 1939, the Legislature of the State of Wyoming has almost continuously been confronted with a barbers' price fixing bill;[1] however, the bill has always failed to pass.

This article concerns itself primarily with the constitutionality of such a proposed law.

Although legislation on this subject is not uniform,[2] for the most part

1. H.B. No. 64, 1939; H.B. No. 96, 1941; H.B. No. 81, 1943; H.B. No. 15, 1945; H.B. No. 55, 1947; H.B. No. 64, 1949.
2. As representative of these statutes, see the following: Fla. Stat. 1949, sec. 476.27; Code of Ia. 1950, secs. 369.1 to 369.5; 1947 Supp. to Gen. Stat. of Kan. 1935, sec. 65-1830; La. Act No. 48, 1936; Mich. Comp. Laws 1948, sec. 338.653; Minn. Stat. 1949, secs. 186.01 to 186.08; 1939 Supp. to Mont. Rev. Codes 1935, sec. 3228.27; Neb. Rev. Stat. 1943 secs 71-225 to 71-237; Nev. Comp. Laws Supp. 1931-1941, sec. 763; N.M. Stat. 1941 secs. 51-1625 to 51-1638; N. Dak. Rev. Code 1943, secs. 43-0416 and 43-0417; Okla. Stat. 1941, sec. 59-102; S. Dak. Sess. Laws 1945, p. 117 (H.B. No. 157).

these acts confer power on an administrative board, usually the board of barber examiners, to approve minimum barber prices in the various localities of the state, based upon the cost of maintaining satisfactory sanitary conditions. Action to this end can be initiated by a certain percentage of the barbers in the locality, or the administrative board can itself initiate the action. The board is given the power also to re-fix or vary the minimum prices in the different localities as changing conditions may warrent. Notice and hearing are provided for the barbers affected by such administrative action. The act is generally preceded by a declaration of policy by the legislature to the effect that unfair competition is prevailing which is detrimental to the health, safety, and welfare of the general public, and that a fair minimum price will enure to the benefit of the public by insuring adequate sanitary conditions, thereby protecting the public health. Violation of the law is generally made a misdemeanor.

It is well established that professions or trades operating directly on the person are thereby "affected with the public interest" and may be regulated by the legislature under the police power, which enables the legislature to make all needful rules and regulations for the health, safety, and welfare of the people of the state.[3] The police power is broad and extensive and its regulations may reasonably limit the enjoyment of personal liberty including the right of making contracts.[4] But, happily, under our form of government, the state is not everything; individual rights are recognized as well as public welfare. Therefore, to obtain the proper constitutional balance, deprivation of individual rights must always be weighed against the public welfare.[5] The courts, through the years, have developed criteria to be applied in resolving this conflict. The means selected must have a substantial relation to the end to be obtained, and the staute must be reasonable.[6] In determining reasonableness, the courts generally consider four elements: (a) was the condition existing before the legislation such as to require a remedy; (b) will the new rule provide an adequate remedy; (c) will deprivation to individuals be sufficiently offset by the benefit to public welfare; (d) are alternative methods available whereby the same benefits can be obtained with less deprivation.[7] Among the auxiliary rules which the courts have adopted for determining whether the police power has been properly exercised are the following: (a) a declaration of the legislature that the industry is affected with a public interest must be given great weight by the court and all reasonable doubt should be resolved in its favor;[8] however, it is always subject to inquiry by the

3. 7 Am. Jur. 613.
4. Holden v. Hardy, 169 U.S. 366, 18 S.Ct. 383, 42 L.Ed 780 (1898); Chicago, Burlington and Quincy Railroad Company v. McGuire, 219 U.S. 549, 31 S.Ct. 259, 55 L.Ed. 328 (1911).
5. Miami Laundry Co. v. Florida Dry Cleaning Board, 134 Fla. 1, 183 So. 759, 119 A.L.R. 956 (1938).
6. Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L. Ed. 643, 3 Ann.Cas. 765 (1905).
7. See Note, "The Consideration of Facts in 'Due Process' Cases," 30 Col. L. Rev. 360, 362 (1930).
8. Board of Barber Examiners v. Parker, 190 La. 214, 182 So. 485 (1938).

courts whether the business is impressed with a public interest such as will justify the regulation;[9] (b) the fact that other states have passed similar legislation is entitled to some weight in determining whether the means provided in a statute will tend to accomplish the valid and expressed purpose of the legislature;[10] (c) prevention of destructive competition is a permissible exercise of the police power;[11] (d) the reasonableness of the exercise of police power by the state should be considered in the light of current economic conditions.[12]

It is clear that the services of a barber necessarily require personal contact. It therefore involves the public health and safety, is a business "affected with the public interest," and is subject to regulation under the police power of the state.[13] It is undisputed that a state, in the exercise of its police power, can require barbershops to be operated in a clean and sanitary manner by competent operators.[14] The question then is whether the state can go further in the exercise of its police power and regulate prices.

The *Adkins* case[15] decided in 1923, holding invalid an act of Congress establishing minimum wages for women within the District of Columbia, stood as the controlling guide in reference to price fixing legislation until 1934. The *Nebbia* case[16] decided in 1934, approved a legislative act of the state of New York establishing minimum prices for milk. It was there said that there is no constitutional principle which bars the state from correcting existing maladjustments by price legislation, if the industry is subject to regulation in the public interest. Hence, in this case, we find a recognition of the increasing economic complexities demanding more governmental supervision and a tendency to change direction. And finally in the *West Coast Hotel Company* case[17] decided in 1937, which upheld the validity of a statute of the state of Washington establishing minimum wages for women, the Supreme Court of the United States completely reversed the holding in the *Adkins* case. However, this latter holding does not suggest that the right of a state to impose limitations on the power to contract is unrestricted, or that the fundamental constitutional safeguards

9. Block v. Hirsh, 256 U.S. 135, 41 S.Ct. 458, 65 L. Ed. 865, 16 A.L.R. 165 (1921); Becker v. State, 7 W.W. Harr., Del., 454, 185 A. 92, 93 (1936).
10. Wholesale Tobacco Dealers Bureau v. National Candy & Tobacco Co., 11 Cal.(2d) 634, 82 P.(2d) 3, 118 A.L.R. 486 (1938).
11. H. J. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 69 S.Ct. 657, 93 L. Ed. 865 (1949).
12. West Coast Hotel Company v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L. Ed. 703, 108 A.L.R. 1330 (1937).
13. Patton v. Bellingham, 179 Wash. 566, 38 P.(2d) 364, 98 A.L.R. 1076 (1934); Nation v. Chism, 154 Okla. 50, 6 P.(2d) 766 (1931); Peters v. State, 56 Okla.Cr. 95, 34 P.(2d) 286 (1934); Grable v. Childers, 176 Okla. 360, 56 P.(2d) 357 (1936).
14. State ex rel. Garrison v. Reeve, 104 Fla. 196, 139 So. 817, 79 A.L.R. 1119 (1932); Cooper v. Rollins, 152 Ga. 588, 110 S.E. 726, 20 A.L.R. 1105 (1922); Moler v. Whisman, 243 Mo. 571, 147 S.W. 985, 40 L.R.A. (N.S.) 629 (1912).
15. Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L. Ed. 785, 24 A.L.R. 1238 (1923).
16. Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505, 78 L. Ed. 940, 89 A.L.R. 1469 (1934).
17. See note 12, supra.

protecting the individual have otherwise been abandoned. It merely stands for the proposition that the legislative department of a sovereign state under its police power may regulate and fix prices for a trade or business "affected with the public interest," if the legislation has a real and substantial relation to the public health, safety and welfare. In other words, this decision in no way disturbed the "real and substantial relationship" test.

Construing the constitutionality of barbers' price fixing statutes is nothing novel. The courts have many times been put to the task. Price fixing legislation, along the lines outlined supra, has been rejected in Alabama, Iowa, Oregon, Utah, Indiana, Tennessee, Arizona, Arkansas, California and New Jersey (by implication), and sustained in Oklahoma, New Mexico, Minnesota, Wisconsin, Louisiana and Florida. All of these authorities will hereafter be discussed.

The Alabama[18] and Iowa[19] cases cannot be credited with too much weight because both holdings rested primarily upon the opinion of the *Adkins* case.[20]

The Oregon[21] and Utah[22] decisions also cannot be considered as controlling upon our primary problem since they held the act unconstitutional as an improper delegation of legislative authority. In these states, price fixing by the administrative board could be called into action only by petition of a certain percentage of the barbers involved in a district, whereas in Oklahoma and New Mexico, for example, such action can be initiated either through petition by the barbers or upon the board's own initiative. The Utah court approved the following quotation: "The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business."[23]

The Indiana court in the *Hollingsworth* case,[24] decided in 1940, made the same distinction as did the Oregon and Utah decisions, holding the barbers' price fixing act invalid as an improper delegation of legisative authority. The Legislature of Indiana seemingly cured that defect, in 1941, by putting the initiative for price setting in the board rather than with the barbers, and providing a reasonable standard for rates. But in

18. City of Mobile v. Rouse, 27 Ala. App. 344, 173 So. 254 (1937).
19. Duncan v. City of Des Moines, 222 Iowa 218, 268 N.W. 547 (1936). (Iowa again enacted a barbers' price fixing act in 1939).
20. See note 15, supra.
21. La Forge v. Ellis, 175 Ore. 545, 154 P.(2d) 844 (1945).
22. Revne v. Trade Commission, 113 Utah 155, 192 P.(2d) 563, 3 A.L.R.(2d) 169 (1948).
23. Carter v. Carter Coal Co., 298 U.S. 238, 310, 56 S.Ct. 855, 873, 80 L.Ed. 1188 (1936).
24. Hollingsworth v. State Board of Examiners, 217 Ind. 373, 28 N.E.(2d) 64 (1940).

construing the constitutionality of the new act in the *Cloud* case,[25] the court said that any assumption from the *Hollingsworth* case that price legislation for barbers could be validly enacted was only for the purpose of demonstrating that the method used in the Act of 1939 was invalid. The court held in the *Cloud* case that the Act of 1941 was unnecessary to conserve the health of the general public and that the classification made was unnatural. Accordingly, the new act was pronounced unconstitutional

The Tennessee decision[26] was based upon about the same reasoning as that employed in the *Cloud* case. The court recognized that the barbering trade could be controlled by police power, but ruled that licensing and making reasonable rules and regulations were sufficient to protect the public health without the added feature of price fixing. Both the Indiana and Tennessee decisions deemed that alternative methods were available for attaining the desired end, and that price fixing entails a greater deprivation than other regulations which will accomplish the desired result; therefore, the price fixing act was held to be invalid.

Arizona,[27] Arkansas,[28] and California[29] have all held the barbers' price fixing act to be unconstitutional on the principle that there is no substantial relationship, either in logic or common sense, between public health and prices charged for barber work. As the Arkansas case put it, ". . . Such connection is visionary and not real. . . ." The decisions of these three states are directly contrary to the cases holding the barbers' price fixing act to be constitutional.

By implication, it can be said that New Jersey[30] falls into the same category as Arizona, Arkansas, and California. New Jersey had a statute making it unlawful to display any price list for barber services in or upon any part of the premises of a barber shop. The court held that it was undoubtedly the purpose of the legislature to further clean, efficient and sanitary shops in the interest of health and safety of the people by stifling competition and controlling prices; that prohibiting the display of price lists was unreasonable and arbitrary, had no relation to the public health, morals, or to the general welfare, and therefore that the statute was unconstitutional.

All of the cases upholding the constitutionality of the barbers' price fixing act seemingly accept the legislative determination that there is a substantial relation between minimum price regulations and sanitary standards required of the barbers, since the board is in a position to determine what prices are necessary to enable barbers to maintain sanitary standards.

25. State Board of Barber Examiners v. Cloud, 220 Ind. 552, 44 N.E.(2d) 972 (1942).
26. State v. Greeson, 174 Tenn. 178, 124 S.W.(2d) 253 (1939).
27. Edwards v. State Board of Barber Examiners, 72 Ariz. 108, 231 P.(2d) 450 (1951).
28. Noble v. Davis, 204 Ark. 156, 161 S.W.(2d) 189 (1942).
29. Ex parte Kazas, 22 Cal.App.(2d) 161, 70 P.(2d) 962 (1937).
30. State v. Garrubo, 124 N.J.L. 19, 10 A.(2d) 635 (1940).

The Oklahoma courts have five times held the barbers' price fixing act constitutional and have answered almost every possible constitutional objection in these five cases. They have held that a law may be general and uniform in its nature and be within the recognized power of the legislature, although it may not be universally applicable.[31] An order of the administrative board establishing minimum prices for barber work does not contravene a provision of the state constitution prohibiting the passage of a special or local law since the order is not a law, but merely a "subordinate rule" promulgated under a policy laid down and standard prescribed by the legislature.[32] The legislature has the right to delegate to designated instrumentalities certain powers of fact finding and regulation that it possesses, when it fixes the limits within which the powers are to be exercised, and in doing so it does not amount to an unconstitutional delegation.[33] The sections of the act providing for fixing the minimum prices which barbers may charge for their services are not so arbitrary, discriminatory, or unreasonable in their general features, as to violate the provisions of the state or federal constitutions regarding liberty, due process, or freedom of contract.[34] Also, the classification used in the act is valid since it applies to all barbers similarly situated and, therefore, does not violate the equal protection clause of the state of federal constitutions.[35]

Other states sustaining the barbers' price fixing act have disposed of the above mentioned objections in about the same manner as did Oklahoma, but have also answered additional objections. The New Mexico court[36] holding the act constitutional said that in determining the constitutionality, the courts will not examine the act to determine whether some abuses may occur under the authority of the administrative board to regulate prices in the interest of the public health and welfare, but inquiry is directed to the question whether the statute, either on its face or under the particular circumstances under consideration, is constitutional. It was further said that the constitutional requirement that the legislature enact laws to prevent trusts, monopolies, and combinations in restraint of trade yields to a more important consideration of reasonably exercising the police power over a business or profession having a vital relation to the public health and welfare. It must here be observed that the New Mexico court could just as well have answered this objection by merely saying that the act in no way operates to promote trusts, monopolies or combinations in restraint of trade. This particular act is a far cry from an act regarding fair trade prices where there is a set price for exactly the same article of merchandise and which concededly is a definite restraint to competition.[37] It might be said that the barbers' price fixing act still amounts to a set price for

31. Herrin v. Arnold. 183 Okla. 392, 82 P.(2d) 977, 119 A.L.R. 1471 (1938).
32. Tennyson v. State, 70 Okla.Cr. 415, 106 P(2d) 1114 (1940).
33. Jarvis v. State Board of Barber Examiners, 183 Okl. 527, 83 P.(2d) 560 (1938).
34. Vandervort v. Keen, 184 Okla. 121, 85 P.(2d) 405 (1938).
35. Ex parte Herrin, 67 Okla.Cr. 104, 93 P.(2d) 21 (1939).
36. Arnold v. Board of Barber Examiners, 45 N.M. 57, 109 P.(2d) 779 (1941).
37. Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 71 S.Ct. 745, 95 L.Ed. 1035 (1951).

the same article, but here it can not be said that the quality and quantity received are the same. It could very easily be concluded that establishment of minimum prices for personal service does more to promote than it does to stifle competition.

Both Minnesota[38] and Wisconsin[39] upheld the validity of the barbers' price fixing act and held that the power to fix prices could as well be lodged in the governor as in an administrative board specially set up for that purpose. The Wisconsin court said that the legislature could, within the limits of the constitution, deal with unfair trade practices and unfair methods of competition, and the establishment of minimum prices for barbers was within those limits.

Louisiana and Florida encountered much difficulty before finally holding the barbers' price fixing act constitutional and both situations are worthy of mention. The Supreme Court of Louisiana[40] first held the act unconstitutional but, upon rehearing, a divided court reversed itself and held the act constitutional upon the authority of the changed position which the United States Supreme Court had taken in the then recently decided *Nebbia* case.[41] The Florida court was first confronted with such an act in 1936.[42] Using much of the reasoning expressed in the *Adkins* case,[43] they held the act to be unconstitutional. But thereafter, the same court upheld the validity of a price fixing statute concerning the laundry business[44] and inferentially overruled its earlier and contrary holding in the *Ives* case by saying: "There is no magic in the phrase, 'clothed with or affected with a public interest'. Any business is affected by a public interest when it reaches such proportions that the interest of the public demands that it be reasonably regulated to conserve the rights of the public and when this point is reached, the liberty of contract must necessarily be restricted."[45] Subsequently the Florida court did uphold the validity of the barbers' price fixing act[46] but said the authority exercised is found not in the interest of public health or general welfare but in a clause of the Florida constitution,[47] not mentioned in the *Ives* case, granting the legislature power to enact laws designed for the correction of abuses and to prevent unjust discrimination and excessive charges by persons engaged in services of a public nature. However, the court did conclude that barber services were of a public nature.

38. State v. McMasters, 204 Minn. 438, 283 N.W. 767 (1939).
39. State v. Fasekas, 223 Wis. 356. 269 N.W. 700 (1936). (Barbers' price fixing statute since repealed in Wisconsin).
40. Board of Barber Examiners v. Parker, 190 La. 214, 182 So. 485 (1938).
41. See note 16, supra.
42. State ex rel. Fulton v. Ives, 123 Fla. 401, 167 So. 394 (1936).
43. See note 15, supra.
44. Miami Laundry Co. v. Florida Dry Cleaning Board, 134 Fla. 1, 183 So. 759, 119 A.L.R. 956 (1938); Florida Dry Cleaning Board v. Everglades Laundry, 137 Fla. 290, 188 So. 380 (1939).
45. Ibid at 183 So. 763.
46. McRae v. Robbins, 151 Fla. 109, 9 So.(2d) 284 (1942).
47. Art. 16, sec. 30.

How would the Supreme Court of Wyoming hold on the constitutionality of a barbers' price fixing act? This court has already held a city ordinance regulating the hours of barber shops invalid as being unreasonable.[48] But this does not determine how the court would hold on price fixing legislation. The majority of the cases which have considered the validity of ordinances regulating the closing hours of barber shops have held such regulations to be an unconstitutional invasion of the right to earn a living, and consequentlly a denial of due process, having no reasonable relation to the proper exercise of the police power.[49] The Florida court, after upholding the validity of the barbers' price fixing act, held an ordinance invalid which restricted the business hours of a barber shop.[50] The Supreme Court of Wyoming in the case of *State v. City of Sheridan,*[51] adopted the language of the Supreme Court of the United States[52] which is as follows: "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unsual and unnecessary restrictions upon occupations." The adoption of the above quotation would seem to indicate that Wyoming would follow the rule expressed by the United States Supreme Court in the *Weaver* case[53] and hold that if alternate methods are available for attaining a desired result, the fact that one entails a greater deprivation than the other would be a factor for consideration on the validity of the legislative choice. The Wyoming court, however, definitely threw this rule out in the case of *State v. W. S. Buck Merc. Company,*[54] by holding that in considering the reasonableness of a regulation, the courts do not profess to substitute their judgment for that of the legislature on questions about which reasonable men might differ, and, if the purpose of the law is to promote the public welfare, the means adopted need not be the best. It is obvious then that Wyoming would not declare the barbers' price fixing act unconstitutional on the same grounds as did the courts of Indiana and Tennessee.

An analysis of the cases determining the constitutionality of the barbers' price fixing act makes it clear that the courts have promulgated many rules but have been unable to establish any set pattern for following those rules. Neither can it be said that there has been a recent tendency to hold on way or the other on this problem.

48. State ex rel. Newman v. City of Laramie et al, 40 Wyo. 74, 275 P. 106 (1929).
49. 98 A.L.R. 1094.
50. City of Miami et al v. Shell's Super Store, Inc. ——Fla.——, 50 So. (2d) 883 (1951).
51. 25 Wyo. 347, 170 P. 1 (1918).
52. Lawton v. Steele, 152 U.S. 133, 14 S.Ct. 501, 38 L.Ed 385 (1894).
53. Weaver v. Palmer Bros Co., 270 U.S. 402, 46 S.Ct. 320, 70 L.Ed. 654 (1926).
54. 38 Wyo. 47, 264 P. 1023, 57 A.L.R. 675 (1928).

In conclusion, it can only be said that the problem seems to revolve around the extent to which the courts will accept the legislative determination that prices of barbers bear a real and substantial relation to the public health and welfare.

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AN AFFIRMATIVE DEFENSE IN A CRIMINAL ACTION

"The law imposes upon the state in criminal prosecution the burden of proving the case set forth in the indictment or information, in all its material parts, beyond a reasonable doubt. . . ."[1] In the Anglo-American system of jurisprudence, unlike the Continental system ,the parties themselves apportion the task of abducing evidence.[2] They must apprise themselves of both the burden of proof and the burden of going forward with the evidence. Thus in criminal cases the state, as heretofore mentioned, must assume the former burden beyond a reasonable doubt if a conviction is to stand; in civil cases the plaintiff assumes the same burden by a preponderance of the evidence.

Preponderance and reasonable doubt are of course not synonymous terms.[3] The distinction had its origin about the end of the 1700's and was first applied in capital cases.[4] But where the accused in a criminal action interposes an affirmative defense this distinction seems to become less clear, according to some decisions.

The courts are not in agreement as to what in fact constitutes an affirmative defense. The term has been defined as "some distinct substantive ground of defense to a criminal charge, not necessary to a prosecution on which the indictment is founded,"[5] or "facts wholly disconnected from the body of the particular offense charged."[6] Such defense is matter not covered by pleas of guilty, not guilty and former conviction or acquittal.[7] Alibi has been said to be an affirmative defense,[8] as well as the contrary.[9] The discord may stem in part from the fact that particular matter may constitute an affirmative defense under some circumstances while not so under others. An exception within a statute may be part of the offense, in which instance the state will plead and prove it, or it may be an excuse or justification providing an affirmative defense[10] to be pleaded and proved by defendant. An exception is part of the offense when it qualifies the

1. 20 A.J. 1111.
2. 9 Wigmore, Evidence, 266.
3. Lovejoy v. State, 62 Ark. 478, 36 S.W. 575 (1896).
4. 9 Wigmore, Evidence, 317.
5. Commonwealth v. McKie, 1 Gray (Mass.) 61, 61 Am. Dec. 410 (1854).
6. Commonwealth v. Gentry, 261 Ky. 564, 88 S.W.(2d) 273 (1935).
7. Ibid.
8. People v. Meisenhelter, 381 Ill. 378, 45 N.E.(2d) 678 (1942) dictum.
9. State v. Hubbard, 351 Mo. 143, 171 S.W.(2d) 701 (1943).
10. State v. Stallman, —R.I.— 79 A.(2d) 611 (1951).