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The view of the majority represents a step beyond any reported decision and can be explained in part by a mistaken interpretation of the language in the New York case and a desire not to be confronted by the difficulty of determining when a reference is sufficient.¹³

L. M. B.

CRIMINAL LAW—PRIVILEGE AGAINST SELF-INCRIMINATION—RECORDS KEPT BY ACCUSED—[New York].—A New York statute¹ makes it a misdemeanor for the driver of a motor truck or bus, who has been on duty for an aggregate of ten in any fourteen consecutive hours, again to go on duty without at least eight consecutive hours off duty. The statute further provides that the driver shall keep records, showing his time on duty, for exhibition on demand by any state policeman or peace officer. At the time of his arrest, defendant's time card showed merely the hour at which he had begun driving and the amount of time he had had off duty. By comparing these items with the time of arrest, the police officer concluded that defendant had been driving for more than the statutory number of hours. The time card and the testimony of the arresting officer were the only evidence offered on behalf of the people. *Held*, that the introduction of the time card in evidence did not unconstitutionally compel defendant to incriminate himself.²

The basis of the decision was that the time card, upon which no final entry had been posted, showed nothing incriminatory on its face, because supplemental testimony by the officer was needed in order to prove the duration of the driving period. This case therefore places the time card in the same category as reports of pharmacists,³ pawnbrokers,⁴ and narcotics dealers,⁵ which may constitute evidence of an infraction of the law.⁶ The

13. "By thus requiring express notice on the bond, we preclude repeated litigation to determine whether the referential language in any kind of bond issue is adequate or not. We eliminate once for all the vexing problem of negotiable corporate bonds, which is not questioned in the instant case." *Guardian Depositors Corp. v. David Stott Flour Mills, Inc.* (Mich. 1939) 289 N. W. 122, 123.

1. N. Y. Thompson's Laws (1939) Labor Law, sec. 167.

2. *People v. Creeden* (N. Y. 1939) 24 N. E. (2d) 105.

3. *State v. Smith* (1888) 74 Iowa 580, 38 N. W. 492; *State v. Cummins* (1888) 76 Iowa 133, 40 N. W. 124; *State v. Huff* (1888) 76 Iowa 200, 40 N. W. 720; *State v. Elliott* (1891) 45 Kan. 525, 26 Pac. 55; *Commonwealth v. Stevens* (1892) 155 Mass. 291, 29 N. E. 508; *People v. Henwood* (1900) 123 Mich. 317, 82 N. W. 70; *State v. Davis* (1892) 108 Mo. 666, 18 S. W. 894; *State ex rel McClory v. Donovan* (1901) 10 N. D. 203, 86 N. W. 709.

4. *Lauder v. Chicago* (1884) 111 Ill. 291, 253 Am. Rep. 625; *St. Joseph v. Levin* (1895) 128 Mo. 588, 31 S. W. 101. But see *id.* at 102 that in a criminal proceeding, the pawnbroker could not be required to produce the book to be used as evidence against him, or to permit an examination of it for that purpose, because to do so would be an invasion of his constitutional right.

5. *United States v. Sherry* (D. C. N. D. Ill. 1923) 294 Fed. 684.

6. But see *Pople ex rel. Ferguson v. Reardon* (1910) 197 N. Y. 236, 90 N. E. 829, 27 L. R. A. (N. S.) 141, where a statute taxing transfers of

general rule is that "there is no compulsory self-crimination in a rule of law which merely requires beforehand a future report on a class of future acts among which a particular one may or may not in future be criminal at the choice of the party reporting." Such reports are generally admitted on the further ground that they have become public records.⁸

As the statute in question requires drivers to preserve their records for sixty days,⁹ it is possible that a driver may be arrested and a conviction sought on the basis of his time card alone, for a violation which occurred some days previously.¹⁰ Two lines of authorities bear upon this hypothetical situation, each presenting some analogies. In one, a distinction seems to be drawn between statutes requiring reports which may be a *link* in the chain of evidence, like those in the pharmacist and pawnbroker cases, and statutes, such as the one under consideration, compelling reports which will furnish the *entire* evidence upon which a conviction will be founded.¹¹

stock and requiring stockbrokers to furnish books and papers for inspection was held invalid as requiring self-incrimination.

7. 4 Wigmore, *Evidence* (2d ed. 1923) 855, sec. 2259c(2) and cases cited. See also *Wilson v. United States* (1911) 221 U. S. 361, 380, where the Court said: "* * * in the case of public records and official documents, made or kept in the administration of public office, the fact of actual possession or of lawful custody would not justify the officer in resisting inspection, even though the record was made by himself and would supply the evidence of his criminal dereliction. * * * The principle applies not only to public documents in public offices, but also to records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established. There the privilege, which exists as to private papers, cannot be maintained."

8. *Marron v. United States* (C. C. A. 9, 1925) 8 F. (2d) 251; *State v. Smith* (1888) 74 Iowa 580, 38 N. W. 492; *State v. Cummins* (1888) 76 Iowa 133, 40 N. W. 124; *State v. Davis* (1892) 108 Mo. 666, 18 S. W. 894; *State ex rel. McClory v. Donovan* (1901) 10 N. D. 203, 86 N. W. 709. But cf. *State v. Pence* (1909) 173 Ind. 99, 89 N. E. 488, 25 L. R. A. (N. S.) 818, where pharmacist's records of liquor sales were not admissible because the statute requiring them to be kept did not provide that they become public records open to inspection; and *Commonwealth v. Stevens* (1892) 155 Mass. 291, 29 N. E. 508, where druggist's records were not admissible because requiring him to produce them in court would have been inconsistent with a proper regard for his duty to keep them where entries of sales could be immediately made.

9. N. Y. Thompson's Laws (1939) Labor Law, sec. 167.

10. In *Louisville & N. R. R. v. Commonwealth* (1899) 21 Ky. 239, 51 S. W. 167, the railroad was indicted for charging more for short than for long hauls, and a tariff sheet required by law to be publicly posted was allowed in evidence.

11. *Ex parte Kneedler* (1912) 243 Mo. 632, 147 S. W. 983, said that the statute requiring report of automobile accident did not make the accident itself a crime; *People v. Rosenheimer* (1913) 209 N. Y. 115, 102 N. E. 530, held not sufficient to render the legislation invalid that the report of automobile accident might prove an important factor in leading to detection of persons accused of crime. But cf. dissenting opinion in that case. *Commonwealth v. Showers* (1937) 32 Pa. Dis. & Cty. Rep. 264, where it was held that by accepting the privilege of operating a motor vehicle on the highways, defendant waived his privilege of refusing to disclose any fact which might be an essential link in the chain of evidence against him.

Thus an ordinance requiring a "full report" of automobile accidents was held invalid as requiring self-incrimination.¹² These cases would indicate that a conviction could not constitutionally be secured where the time card is the only evidence. In the other line of cases, statutes requiring a motorist in an accident merely to report his name, address and license number have generally been held valid¹³ on the ground that the operation of a car on the public highway is not a right but a privilege which, under the police power, may be granted upon condition.¹⁴

There are, of course, important differences between problems presented by the private motorist and the truck driver which may justify differences in regulation. The individual motorist may occasionally be involved in an auto accident, a conviction for which could be procured by evidence other than that furnished by his own report. Further, the statutory requirement of a report is not designed to be preventive of violation of the law. In respect to a truck driver, on the other hand, it is manifestly impossible to enforce the prohibitions of the New York statute in question otherwise than by requiring reports and permitting convictions based thereon. In addition, it is the excessively long periods truck drivers operate which, unless prohibited, occasion accidents. The statute requiring the filing of a report was designed to prevent this. In this situation a court might feel that considerations of policy against self-incrimination were outweighed by the broad public policy behind the legislative enactment and it might sustain a conviction on the basis of the evidence obtained from the time card alone. This view seems to be supported even by the statement in the instant case that "the obvious purpose of this law was to safeguard travelers upon the highways."¹⁵

V. M.

EVIDENCE—ADMISSIBILITY OF MOTION PICTURES—[Missouri].—Plaintiff, while working in a clay mine, was injured by a premature explosion of dynamite manufactured by the defendant company. To controvert plaintiff's allegation of defendant's negligence in mixing the explosive and non-explosive elements of the dynamite, defendant offered in evidence motion pictures of the manufacturing process. Although the case was reversed and remanded, the court upheld the refusal of the lower court to admit the motion pictures on the grounds that the film contained irrelevant and prejudicial matter. However, the court stated that motion pictures are admissible in evidence

12. *Rembrandt v. Cleveland* (1927) 28 Ohio App. 4, 161 N. E. 364.

13. *Lashley v. State* (1938) 236 Ala. 1, 180 So. 717, (1938) 28 Ala. App. 86, 180 So. 720; *People v. Diller* (1914) 24 Cal. App. 799, 142 Pac. 797; *In re Jones* (Fla. 1938) 178 So. 424; *Ex parte Kneeder* (1912) 243 Mo. 632, 147 S. W. 983, Ann. Cas. 1913C 923, 40 L. R. A. (N. S.) 622; *State v. Sterrin* (1916) 78 N. H. 220, 98 Atl. 483; *People v. Rosenheimer* (1913) 209 N. Y. 115, 102 N. E. 530, 46 L. R. A. (N. S.) 977; *Commonwealth v. Showers* (1937) 32 Pa. Dis. & Cty. Rep. 264.

14. See note 13, supra, and 8 Blashfield, *Cyclopedia of Automobile Law and Practice* (Perm. ed. 1935) 134, 135, sec. 5399.

15. (N. Y. 1939) 24 N. E. (2d) 105, 107.