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Witnesses—Credibility—Drug Addiction as Grounds of Attack

fer of possession and is adequate to constitute a pledge. *Atherton v. Beaman* (1920) 264 F. 878; *Frieburg v. Dreyfus* (1889) 135 U. S. 478; *Franklin Nat. Bank v. Whitehead* (1897) 149 Ind. 590, 49 N. E. 592. But such symbolic possession is of course dependent for its efficacy upon complete and actual, as distinguished from merely formal and colorable, relinquishment of control of the pledgor. In *Bush v. Export Storage Co.* (1904) 136 F. 918, property pledge was enclosed separate from other similar property and marked off by placards and other indicia to show possession by the warehouse company. In *Phila. Warehouse Co. v. Winchester* (1907) 156 F. 600, signs were put up in conspicuous places on the leased premises in such a way as to attract the attention of persons of ordinary intelligence. So also in *Union Trust Co. v. Wilson* (1904) 198 U. S. 530, leather was placed in a basement room and the door thereto padlocked. The warehouseman had the only key and had placed placards both on the storage room and on the outside of the building. In such situations the change of possession was considered adequate.

However there are other cases in which the exclusive power of the so-called bailee faded away to nothing. In *Security Warehouse Co. v. Hand* (1906) 206 U. S. 415, the court emphasized the fact that no signs were displayed that were visible to all who came to the mill and that the possession was not absolute. For similar reasons other courts have refused to countenance warehouse transactions. *American Can Co. v. Erie Pres. Co.* (1909) 171 F. 540; *In re Rodgers* (1903) 125 F. 169; *In re Spanish-American Cork Co.* (1923) 2 F. (2d) 203; *Bank v. Jagode* (1898) 186 Pa. St. 556; *Drury v. Moors* (1898) 171 Mass. 252.

Thus, the courts have sanctioned "field warehousing" with limitations based upon complete possession in the warehouseman and clear notice to all comers. Thus the creation of a "false front" for purposes of obtaining undeserved credit from third persons is prevented. Upon such considerations, the principal case is wholly consistent with the trend of the decisions. But the courts by this limited recognition of field warehousing have created an anomalous type of warehouse receipt. The holder thereof must determine at his peril whether there is adequate control by the warehouseman.

A. P., '33.

WITNESSES—CREDIBILITY—DRUG ADDICTION AS GROUNDS OF ATTACK.—*In Maryland Casualty Co. v. Kelly* (C. C. A. 4, 1930) 788, it was held that the testimony of a physician as to the effect of excessive use of morphine by a witness was inadmissible for the purpose of attacking his credibility.

It is generally held a witness cannot be discredited by evidence tending to show that he is a user of drugs or to show the effects of their use, unless it is proven that the witness was under their influence at the time of the trial or that his mind, memory, or observation were affected by the habit. *State v. Gleim* (1895) 17 Mont. 17, 4 Pac. 998; *Panes v. State* (1901) 43 Tex. Crim. 201, 63 S. W. 104; *Eldridge v. State* (1891) 127 Fla. 162, 9 So. 448; *State v. King* (1903) 88 Minn. 175, 92 N. W. 965; *State v. Smith* (1918) 103 Wash. 267, 117 Pac. 9; *Gordon v. Gilmore* (1913) 141 Ga. 347,

80 S. E. 1007. Consequently it would not be proper to bring forth the bald fact of addiction unless offering other evidence as required by the rule. *State v. Schuman* (1915) 89 Wash. 9, 153 Pac. 1084. But in *United States v. Wilson* (1913) 232 U. S. 563, the Supreme Court held that a witness can be cross-examined not only as to present dosage (partaking of the drug) at the time of the trial but also as to addiction alone as bearing on credibility. In order to reconcile these two views the court in the principal case audaciously construed the Supreme Court doctrine to permit cross-examination as to present dosage in order to attack credibility but to exclude questions concerning the "bald fact" of addiction. It was felt that knowledge of the bare fact of addiction would work an illegitimate injury to the testimony of the witness, since by popular presumption drug addicts are mendacious. *Kelly v. Maryland Insurance Co., supra,* 789. But in other jurisdictions bare addiction has been allowed as a ground of attacking the credibility of a witness. *State v. Tang Loon* (1916) 29 Idaho 248, 158 Pac. 233; *State v.* ——— (1901) 25 Wash. 327, 65 Pac. 534; *Beland v. State* (1919) 86 Tex. Crim. 285, 217 S. W. 147.

In the instant case the court intimates that in the absence of reliable and adequate scientific knowledge, the testimony attacking the witness should be ruled by the particular facts. This view is strengthened by the view that "Much of the moral deterioration attributed to narcotics in the past was not deterioration but an original nervous instability or moral obliquity. . . . No preparation of opium produces an appreciable intellectual deterioration." *Mental Hygiene* Vol. 9, Oct., 1925, 699-724. Intellectual deterioration, therefore, should be a subject of demonstration in each case.

J. G. G., '32.

WORKMEN'S COMPENSATION—SUBROGATION—NEGLIGENCE OF THIRD PERSONS.—Plaintiff while in the employ of a contracting company was injured through the negligence of the defendant. After receiving compensation from his employer under the Workmen's Compensation Act, he brought this action in his own name against the defendant. In Missouri deciding such a case for the first time the court held that although the statute provides that the employer be subrogated to the rights of the employee upon payment of compensation, the employee was not precluded from maintaining a separate action against the negligent third party. *McKenzie v. Missouri Stables* (Mo. 1930) 34 S. W. (2d) 136.

Common-law rights against negligent third parties were not destroyed by the Workmen's Compensation Act. *Fox v. Dallas Hotel Co.* (1922) 111 Tex. 461, 240 S. W. 517. To hold otherwise would in a sense be to relieve reckless persons negligently injuring an employee under the Compensation Act, from liability, though a similar injury to another party would create a liability. *Moeser v. Shunk* (1924) 116 Kan. 247, 226 Pac. 784. Consequently a statute providing for subrogation after payment by an employer will not bar a subsequent action by the employee against the third party. *O'Brien v. Chicago City Ry. Co.* (1922) 305 Ill. 244, 137 N. E. 214, 27 A. L. R. 479. Even where the statutes give the employee a right to recover