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should also have the contractual statute of limitations applied because no fault need be proved there either. This application of the contractual statute of limitations was repeated for the same reasons by a Pennsylvania district court.[54]

The *Le Gate* case did not decide that the unseaworthiness action was of a contractual nature thus departing from the *Sieracki* decision, but rather that the contractual statute of limitations was better suited to the action of unseaworthiness than the delictual statute. This could well prove to be something of a compromise answer to the question of whether the unseaworthiness has a delictual or contractual nature or perhaps neither as maintained by *Sieracki.*

In conclusion, the doctrine of laches determines how long a libellant may wait to bring his action in admiralty. In the absence of a statutory provision setting out this time as in the Jones Act, or special circumstances contracting or expanding the period during which an action may be brought without prejudicing the respondent, the applicable state statute of limitations is used as a guide to the proper period. The contractual statute is consistently used in maintenance and cure actions. The majority of courts apply a delictual statute in actions for unseaworthiness but a possible trend, originated by the second circuit, towards applying a contractual statute is discernible.

[54] Cummings v. Redeeriakteeb Transatlantic, 144 F. Supp. 422 (E.D. Pa., 1956), aff'd. 242 F.2d 275 (C.A.3rd, 1957).

DEVELOPMENT OF RIGHTS AGAINST NEGLIGENT THIRD PARTIES UNDER THE ILLINOIS WORKMEN'S COMPENSATION ACT

The Workmen's Compensation Act when introduced was a revolutionary development in the solution to the problem of industrial accidents. From the date of its mental conception to the time of its legal inception this legislation has given rise to repeated queries from the members of the Illinois Bar. In April of 1911, John H. Wigmore assailed the adoption of this legislation in Illinois at that time. In discussing its complexities and lack of national uniformity he said: "The danger is—yes, the *certainty* is —that confusion will be 'worse confounded' if these bills pass now."[1]

Although fifty years have passed, many provisions of this legislation still appear to be in a state of legal confusion. This article will be limited to just one of these areas of confusion—third party liabilities. The discussion is made in the hope that a disentanglement of past judicial decisions will lead to a clearer understanding and appreciation of the 1959 Illinois Workmen's Compensation Act.

[1] 5 Ill. L. Rev. 571 (1911).

ORIGIN OF THE ACT

It may be wise to begin with a general discussion of the rights of employees who are injured in an accident arising out of and in the course of their employment. To facilitate the reader comprehension of this, an examination of the rights and liabilities of all parties who may be involved in industrial accidents must be made.

Prior to the Workmen's Compensation Act, the employee's common law action for negligence against his employer was almost always defeated by the defenses of assumption of risk, contributory negligence or the Fellow-Servant Rule.[2] In contrast to this, the Illinois Workmen's Compensation Act provided a pattern of compensation for employees who had sustained injury arising out of and in the course of their employment. This plan entitled the employee to a pre-established sum irrespective of common law liability factors such as his employer's negligence or his own contributory negligence, assumption of risk or the Fellow-Servant Rule.[3]

This remedy was not an augmentation of the employee's common law rights but rather one given in substitution for them.[4] In *Nordland v. St. Francis Hospital*,[5] the plaintiff was an intern in the defendant's hospital. During the course of his employment while assisting an operation the anesthetic machine exploded and injured the plaintiff. He brought a common law action for negligence against the hospital. The court held that they had no jurisdiction over the case and based their decision on the case of *Thorton v. Herman*.[6] In the *Thorton* case the court held that the Workmen's Compensation Act had abolished the employee's common law action against his employer.

To be sure, the destruction of the employee's ineffectual common law remedy against his employer was, in fact, no loss to the employee. In its stead he received the absolute right of recovery for certain specified injuries that arose out of and during the course of his employment.[7] The employee was thereby assured of immediate and certain relief without the necessity of costly, tedious and dubious litigation.[8]

[2] Angerstein, Illinois Workmen's Compensation § 14 (1952).

[3] Ill. Rev. Stat. (1951), c. 48, §§ 138.7, 138.8.

[4] Ill. Rev. Stat. (1913), c. 48 § 143 provides: "No common law or statutory right to recover damages for injury or death sustained by any employe while engaged in the line of his duty as such employe, other than the compensation herein, provided, shall be available to any employe who is covered by the provisions of this act. . . ."

[5] 4 Ill. App.2d 48, 123 N.E.2d 121 (1954); Hayes v. Marshall Field & Co., 351 Ill. App. 329, 115 N.E.2d 99 (1953).

[6] 380 Ill. 341, 43 N.E.2d 934 (1942).

[7] Ill. Rev. Stat. (1951) c. 48, §§ 138.7, 138.8; Moushon v. National Garages, 9 Ill.2d 407, 137 N.E.2d 842 (1956).

[8] Consult Ill. Bar. J., Vol. 45.7, p. 440 (1957).

The scope of this new system of compensation was not limited to the master-servant relationship. It extended to and included third persons and their rights and liabilities to the injured employee and his employer. This understanding was provided for by the provisions of Section 29 of the 1913 Act and this language was substantially reproduced in paragraphs one and two of Section Five of the 1951 enactment.[9]

EARLY PROCEDURE

The statute, as originally enacted, was elective in that both the employer and the employee had the right to elect to be bound by the Act. In fact, the Act's constitutionality was first upheld on the grounds that it was elective and not compulsory.[10]

Section 29 of the Act divided the employers and employees who had voluntarily become bound by the provisions of the Act from employers and employees who had not become bound by the Act. It established the

[9] Ill. Rev. Stat. (1951), c. 48 § 138.5 which provides:

[1] "Where an injury or death for which compensation is payable by the employer under this Act was not proximately caused by the negligence of the employer or his employees, and was caused under circumstances creating a legal liability for damages in some person other than the employer to pay damages, . . . such other person having also elected to be bound by this Act, or being bound thereby under Section (3) of this Act, then the right of the employee or personal representative to recover against such other person shall be transferred to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained, in an amount not exceeding the aggregate amount of compensation payable under this Act, by reason of the injury or death of such employee.

[2] "Where the injury or death for which compensation is payable under this Act was not proximately caused by the negligence of the employer or his employees and was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person having elected not to be bound by this Act, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act. In such case, however, if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or personal representative.

[5] "In the event the said employee or his personal representative shall fail to institute a proceeding against such third person at any time prior to 3 months before said action would be barred at law said employer may in his own name, or in the name of the employee, or his personal representative, commence a proceeding against such other person for the recovery of damages on account of such injury or death to the employee, and out of any amount recovered the employer shall pay over to the injured employee or his personal representative all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act, and costs, attorney's fees and reasonable expenses as may be incurred by such employer in making such collection or in enforcing such liability." Paragraph five of this section was added by amendment: Ill. Rev. Stat. (1935) c. 48, § 166.

[10] Victor Chemical Works v. Industrial Board, 274 Ill. 11, 113 N.E. 173 (1916).

respective rights and liabilities of all employers and employees covered under the Act against third parties who had not become bound by the Act.

As originally enacted, Section 29 of the Illinois Workmen's Compensation Act consisted of two unnumbered paragraphs.[11] The *first* paragraph dealt with situations where the injured employee and his employer were bound by the Act and established their respective rights against the third party tortfeasors who were *also voluntarily bound* by the Workmen's Compensation program. Paragraph *One* provided:

> Where an injury or death for which compensation is payable by the employer under this Act was not proximately caused by the negligence of the employer or his employees, and was caused under circumstances creating a legal liability for damages in some person other than the employer to pay damages, such other person having also elected to be bound by this Act . . . then the right of the employee or personal representative to recover against such other person shall be transferred to his employer and such . . . other person to recover the damages sustained, in an amount not exceeding the aggregate amount of compensation payable under this Act, by reason of the injury or death of such employee.[12]

In this situation the employer was subrogated to the rights of the injured employee provided that the injury, "was not proximately caused by the negligence of the employer or his employees." The employer and not the injured employee was given the right to sue the negligent third person. The employer could recover an amount not in excess of that for which he was liable to the employee under the Act. This subrogation right was qualified in that the employee's injury must have been incurred during the course of the employee's employment and arising out of his employment.

The legislative purpose in enacting this provision was to provide added inducement to employers to voluntarily be bound by the Act. In so doing they would acquire immunity from common law negligence actions brought by third parties who were bound by this statute. The non-negligent employer was herein subrogated to the rights that the injured employee would have had against the third party tortfeasors. Thus, the paramount objective of this provision was the protection of the *employer's* rights. In a comprehensive treatise on Illinois Workmen's Compensation, Mr. T. C. Angerstein concluded that the essential purpose of paragraph *one* was the providing for indemnification of the employer for compensation paid out under the Act.[13]

The *second* paragraph of Section 29 dealt with the employer's and em-

[11] Ill. Rev. Stat. (1913) c. 48, § 166.

[12] Ibid.

[13] Angerstein, Illinois Workmen's Compensation § 997 (1952).

ployee's rights against a negligent third person who was *not* bound by the Act.[14] It provided the injured employee with an action against the negligent third person for damages notwithstanding the fact that the employer paid this injured employee under Workmen's Compensation. In such a situation it further provided that the injured employee must reimburse his employer out of his recovery. This reimbursement was limited to the amount that the employer had paid to the injured employee under the Workmen's Compensation Act. This right of the employer to indemnification was likewise restricted as it had been in paragraph *one* of this section. The identical words of paragraph *one*, "was not proximately caused by the negligence of the employer or his employees," also appeared as a limitation herein on the employer's right to indemnification.[15]

The analysis of paragraph *two* of Section 29 as explained is based upon a reading of the section as a whole. Paragraph *two* if taken out of context of the section would result in an entirely different interpretation.

On its face, the phrase "was not proximately caused by the negligence of the employer or his employees" could logically be construed only to mean that the *employee's* right to recover for his injuries is subject to the condition precedent established by this phrase. The net result would be that in an action against a third party tortfeasor the employee's recovery would be defeated if either his employer or his fellow employee was negligent.

The phraseology of paragraph *two* when interpreted *by itself* leads to this inescapable result. However, as pointed out previously, the opposite construction is to be preferred when the section is read in its entirety. This latter interpretation has also received the sanction of the Illinois Supreme Court as shall be pointed out later in this discussion.

In 1917 a compulsory amendment was enacted.[16] This amendment provided that the Act would automatically apply to all employers and their employees who were engaged in extrahazardous activities.[17] This amendment enlarged the application of paragraph *one* of Section 29. As originally enacted this paragraph dealt only with people who had voluntarily become bound or who had refused to be bound by the Act. The net result was that the injured employee covered by the Act lost his cause of action against the negligent third party who now became covered automatically by the Act. However, the employer of the injured employee

[14] Ill. Rev. Stat. (1913) c. 48, § 166.

[15] Ibid.

[16] Ill. Rev. Stat. (1917) c. 48, § 139.

[17] Ibid. Illinois Publishing & Printing Co. v. Industrial Comm., 299 Ill. 189, 132 N.E. 511 (1921). The constitutionality of this compulsory amendment was upheld as a valid exercise of the police power of the state.

had an action against this third party who had automatically become bound by the Act. The employer's recovery was limited to the amount of money paid out to the injured employee under the Act.

In the landmark case, *O'Brien v. Chicago City Ry.*,[18] the Illinois Supreme Court rendered the first decision which provided a comprehensive analysis of Section 29 of the Workmen's Compensation Act. In the *O'Brien* case an action was brought to recover damages for injuries suffered by the plaintiff-employee. The plaintiff had been employed by the City of Chicago and while engaged in his work on the street was struck and injured by a streetcar operated by the Chicago City Ry. Company, a third party *not* bound by the Act. The plaintiff in his complaint failed to allege his employer's freedom from contributory negligence. The defendant contended that plaintiff's right to recover was thereby defeated. Thus the construction of paragraph *two* of Section 29 was squarely placed before the Illinois Supreme Court. In granting judgment for the plaintiff, the court ruled that the plaintiff-employee was *not* required to allege his employer's freedom from negligence in an action against a third party.

The court held that the phrase in paragraph *two*, "was not proximately caused by the negligence of the employer or his employees" was a limitation on the employer's right of subrogation and not a qualification on the employee's rights against negligent third parties. It was concluded that the employee's rights against third parties were based on a common law action for negligence. The court went on to say that the contributory negligence of the employer was not a defense to a common law action brought by an employee against a third party. This interpretation has been buttressed and reaffirmed by successive decisions.[19]

In 1935 paragraph *two* of Section 29 was augmented and clarified by amendment.[20] The amendment provided the non-negligent employer with a lien upon any recovery of his employee from the negligent third party. The lien thereby enabled the non-negligent employer to recover the amount of compensation payments he had made to the injured employee. It further provided that under certain circumstances the *non-negligent* employer could bring an action in his own name or in the name of his injured employee against the negligent third party. In such a situation the employer was required to pay the employee all sums collected in excess

[18] 305 Ill. 244, 137 N.E. 214 (1922).

[19] Ketler Co. v. Industrial Comm., 392 Ill. 564, 65 N.E. 359 (1946); Huntoon v. Pritchard, 371 Ill. 36, 20 N.E.2d 53 (1939); O'Brien v. Chicago City Ry., 305 Ill. 244, 137 N.E. 314 (1922); Hulke v. International Mfg. Co., 14 Ill. App.2d 5, 142 N.E.2d 717 (1957); Dillon v. Nathan, 10 Ill. App.2d 289, 135 N.E.2d 136 (1956).

[20] Ill. Rev. Stat. (1935) c. 48, § 166.

of litigation expenses thereby incurred and compensation payments paid to the employee.

The legislature in enacting this amendment reinforced and clarified the original purpose of paragraph *two* of Section 29. They established a means of reimbursing a non-negligent employer for compensation payments made to an employee, necessitated by the intervening negligence of a third party.

THE IMPACT OF THE GRASSE CASE

Section 29, as enacted in 1913, with the exception of two minor amendments in 1917 and 1935 remained in its original form until 1952. In 1952 the Illinois Supreme Court held paragraph *one* of Section 29 unconstitutional in *Grasse v. Dealer's Transport Co.*[21] It was decided that this paragraph wrongfully deprived employees of their common law tort action against third parties who were bound by the Act, either by compulsion[22] or election[23] by transferring the employee's cause of action to their employer. The court reasoned that since the employee under paragraph *two* of this section retained his rights against third parties not bound by the Act, the denial of the same right under paragraph *one* was unreasonable and arbitrary.

In holding paragraph *one* of Section 29 unconstitutional, the Illinois Supreme Court created a problem. This problem was, what were the rights of an employee against a third person who *was* bound by the Act? The court answered this question by saying that the effect of their determination in holding paragraph *one* unconstitutional was to restore to the employee the same rights he had against a negligent third party prior to the enactment of paragraph *one*.

The legislature, following the decision in the *Grasse* case deleted paragraph *one* from Section 29 and adopted verbatim paragraph *two* of the 1951 Act.[24] In 1951 Section 29 was numerically redesignated to be Section 5 and shall be referred to as such in the subsequent discussion. The net result of the 1953 Act was that in an action by an employee against a third party it became immaterial whether the third party was under the Act or not. In either situation, the employee had an unimpaired common law right of action against the negligent third party.

RECENT DEVELOPMENTS

Forty-six years have elapsed since the introduction of these Workmen's Compensation laws to this state. During this time Section Five has proved to be a fertile source of litigation. Interpretational conflicts reached an

[21] 412 Ill. 179, 106 N.E.2d 124 (1952).

[22] Ill. Rev. Stat. (1951) c. 48, § 138.3.

[23] Ibid., § 138.2.

[24] Ill. Rev. Stat. (1951) c. 48, § 138.5.

apex in *Rylander v. Chicago Short Line Ry.*[25] Justice Shaefer, stating the opinion of the court, said:

> We allowed the defendant's petition for leave to appeal, primarily to *re-examine* the effect of the Workmen's Compensation Act upon a common-law action for negligence brought by an employee injured in the course of his employment by someone other than his employer.[26]

The court's *re-examination* revealed a continuity of judicial expression on this issue. Notwithstanding this uniformity there also appeared an equally persistent effort on the part of many members of the Bar to construe Section Five of the Act to the contrary. It is believed that the court's interest was not in reviewing the effect of Section Five but in the reassertion in unequivocal language the correct construction to be given to the section.

In the *Rylander* case an action was brought by an employee to recover damages for injuries suffered due to the negligence of the defendant, a third party non-employer. In sustaining the plaintiff's action, the Illinois Supreme Court denied the construction of Section Five (b) of the Workmen's Compensation Act as advanced by the defendant.[27] The defendant asserted that this Section should be construed so as to require the plaintiff-employee to plead and prove his employer's freedom from contributory negligence. He contended that it was a condition precedent to recovery in a common law negligence action against a third party non-employer. It may be noted at this point that this proposed construction had been urged in a previous case and met with similar rejection by the court.[28]

In the instant case, Rylander was an employee of the Interlake Iron Company. On February 19, 1951, Rylander, while on Interlake's property and in the course of his employment, was fastening the cover on a tank car which had been delivered to Interlake by the defendant. The fastening device on the tank car cover was defective. This situation was the result of the defendant's negligence in failing to discover and repair this condition. In attempting to fasten this cover plate the plaintiff was required to apply an unusual amount of force to tighten the cover and, as a result, lost his balance, fell and sustained severe injuries.

Once again the problem of the rights of the injured employee against a third person under Section Five were placed at issue before the Illinois Supreme Court. In construing Section Five the court took cognizance of the unconstitutionality of the first provision of Section Five even though the *Grasse* case was decided after the *Rylander* action arose. It is there-

[25] 17 Ill. 2d 618, 161 N.E.2d 812 (1959).

[26] Ibid., at 813 (emphasis supplied).

[27] Ill. Rev. Stat. (1951) c. 48, § 138.5.

[28] O'Brien v. Chicago City Ry., 305 Ill. 244, 137 N.E. 214 (1922).

fore evident that the only valid statutory provision dealing with employee rights in a third party proceeding was paragraph *two* of Section Five. Paragraph *two* dealt with the rights of the employee against a third party tortfeasor who was *not* bound by the Act. It provided that an employee could bring a common law action for negligence against a third party tortfeasor. There was no provision in paragraph *two* for the transfer of the employee's cause of action to his employer as had been previously found in paragraph *one* of the section. Paragraph *two* did provide for the employer to recover any amounts paid to the employee under the Workmen's Compensation Act. However, this reimbursement was limited to certain circumstances.

The employer was permitted this recovery only when the accident "was not proximately caused by the negligence of the employer or his employees."[29] The Illinois Supreme Court again took the position that the phrase was intended for the protection and reimbursement of the *non-negligent* employer. They once again denied the argument that under the Act the employee is without a remedy against a third party if his employer is contributorily negligent.[30] The court held that this phrase was not a qualification of the employee's rights against third parties but rather a limitation on the employer's right to subrogation.

Shortly before the *Rylander* decision, the United States Court of Appeals for the Seventh Circuit construed Section 5(b) of the Illinois Compensation Act.[31] This case similarly involved an action by employee against a third party. This court also held that Section 5(b) did not have the effect of requiring the employee to prove his employer's freedom from contributory negligence in a third party proceeding.

This discussion has been limited to an examination of respective rights of the employer and his employee against a negligent third person. However, it has become necessary to briefly discuss the problem of the rights and liabilities of fellow employees.

In a recent case, *O'Brien v. Rautenbush*,[32] the problem of the liabilities of a fellow employee was raised. In this case the plaintiff was injured in an automobile accident as a result of his fellow employee's negligence. The court refused to grant the relief prayed for by the plaintiff. Their refusal was based upon the phrase in Section 5(b) that the injury "was not proximately caused by the employer or his employees." Complete

[29] Ill. Rev. Stat. (1949) c. 48, § 166.

[30] Hulke v. International Mfg. Co., 14 Ill. App. 2d 5, 142 N.E.2d 717 (1957).

[31] Giguere v. U.S. Steel, 262 F.2d 189 (C.A.7th, 1959).

[32] 10 Ill.2d 167, 139 N.E.2d 222 (1956); Cunningham v. Metzger, 258 Ill. App. 150 (1930). While an employee's action against a fellow servant is not specifically barred in Section 5 the cases have held that the injury arises out of and in the course of their employment an action against a fellow employee is barred.

immunity was thereby granted to a fellow employee from a common law action brought by a fellow servant.

The court's reliance on this phrase in denying liability is incongruous with prior decisions. Previously, the phrase has been held to apply *only* to the rights of the *employer* to subrogation. Yet in *Rautenbush*, it was the basis for denying the recovery of the plaintiff employee. In the *Rylander* case the court recognized this irregularity and conceded that this construction of Section 5(b) was erroneous. They further commented, without reference to any specific section, that the Act does prohibit a common law action for negligence between employees. It must be noted that the *Rautenbush* case involved an action between employees and not a third party tortfeasor. In the light of this factual distinction the case cannot be said to have altered the construction of Section 5(b) as interpreted by the *Rylander* case.

CONCLUSION

Section Five from the date of its inception to the present time has not been clearly understood by the members of the Bar of this state. In spite of this lack of understanding it is submitted that the Illinois Supreme Court has maintained a uniform position in the interpretation of the phrase "was not proximately caused by the negligence of the employer or his employee." The court's view that the phrase is a limitation upon the employer's right to subrogation becomes an inescapable conclusion when viewed in light of past judicial decisions and a reading of Section Five in its entirety.

Assume a hypothetical situation where the employee is injured by the negligence of a third party and the employee's employer is also negligent. Using the Illinois Supreme Court's construction of the phrase, the employee could recover under the Act from his employer and also from the third party pursuant to Section 5(b). However, the employer because of his own negligence would not be able to recover the amount of compensation payments paid to his employee. The result would be that the employee would be the recipient of a "double recovery."

However, in the case of negligence on the part of the employer and the third party, the employee is placed in the position of a person who has been injured by two different people. The employee's compensation claim against his employer is in the nature of an *ex contractu* action. In regards to the employee's rights against the third party, it is based upon an *ex delicto* action. Most assuredly the employee in this situation has not received a "windfall." Instead, he is a person who is in possession of two separate and distinct causes of action which he should be allowed to enforce. Surely this result is morally and legally acceptable and as such poses no problem to the acceptance of the court's construction of this phrase.

The great import of the *Rylander* case is not found in the definitive words of the court but rather the impetus it provided the state legislature. After forty-six years of existence the phrase "was not proximately caused by the negligence of the employer or his employees" was omitted in the 1959 statute.[33] The section was not otherwise changed. This legislative action is in complete accord with the previous decisions of the Illinois Supreme Court. The question is now absolutely resolved.

[33] Ill. Rev. Stat. (1959) c. 48, § 138.5(b).

THE FEDERAL CIVIL RIGHTS ACT A JUDICIAL REPEAL

INTRODUCTION

Section 1983[1] and Section 1985[2] of the Civil Rights Act were originally enacted in 1871.[3] In the years following, they have been the subject of a great amount of discussion.[4] They have been called "a powerful piece of legislation,"[5] however, recent decisions involving law enforcement officials have tended to repeal any powerful effect they may have had.

Section 1983 gives a cause of action for denial of due process[6] while

[1] 42 U.S.C.A. § 1983 (Supp., 1959) provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[2] 42 U.S.C.A. § 1985 (Supp., 1959) provides: "(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

[3] 17 Stat. 13 (1871), "An Act to Enforce the Provisions of the Fourteenth Amendment."

[4] Consult: Gressman, The Unhappy History of Civil Rights Legislation, 50 Mich. L. Rev. 1323 (1952).

[5] Cooper v. Hutchinson, 184 F.2d 119 (C.A. 3rd, 1950).

[6] Ortega v. Ragen, 216 F.2d 561 (C.A.7th, 1954), cert. den. 349 U.S. 940 (1955); McShone v. Moldovan, 172 F.2d 1016 (C.A.6th, 1949); Bottone v. Lindsley, 170 F.2d 705 (C.A.10th, 1948), cert. den. 336 U.S. 944 (1948).