

UNITED STATES CASES.

thirty years, and such right is not legally "impaired" by a subsequent contract with another company to light the streets with electricity. Mich. Circuit Ct.—*7b*.

COMMONWEALTH V. BRIANT.

Sale of intoxicating liquors to minor by agent.

Defendant, who was duly licensed to sell liquors to be drunk on the premises, was indicted for selling to a minor. It was claimed that the sale was made by the bartender without defendant's authority. On the trial the court instructed the jury that a sale by a bartender in his master's shop, and in the regular course of his master's lawful business, is *prima facie* a sale by the master, although the sale is an illegal sale; but that such a sale may be explained by showing that it was unauthorized. *Held*, error; that although it was evidence for the jury to consider, and which might warrant it in inferring that the sale was authorized by the defendant, yet that it was going too far to hold that it raised a presumption of fact that such was the case. The fact that a man employs a servant to conduct business expressly authorized by statute, and that the servant makes the unlawful sale in the course of it, do not necessarily overcome the presumption of innocence merely because the business is liquor selling, and may be carried beyond the statute limits. *Com. v. Putnam*, 4 Gray, 16; *Com. v. Dunbar*, 9 id. 298. It is true that a master would be liable civilly for such a sale as supposed in the instruction, but his civil liability exists even when he prohibits the sale, and therefore it does not stand upon a presumption that he authorized the sale, but upon the general ground of a master's liability for the unauthorized torts of his servants, whatever they may be. *George v. Goodey*, 128 Mass. 289; *Roberage v. Burnham*, 125 id. 277; Pub. Stat., ch. 100, § 24; *Byington v. Simpson*, 134 Mass. 169, 170. *Com. v. Holmes*, 119 id. 195, cited for the prosecution, went no further than to decide evidence that the defendant's son and clerk sold intoxicating liquors in a public house kept by the defendant was evidence of sale by the defendant sufficient to be submitted to the jury. See *Com. v. Edes*, 14 Mass. 406. N hin was said as to a presumption of fact.

The evidence too was stronger than the case at bar. For there the defendant set up no license, and any sale was unlawful, and the question was whether the defendant gave authority to his clerk to sell at all. It might well be thought that the clerk would hardly undertake to sell in the way of business in his employer's house without some authority. But it is obviously much more likely that a servant employed to make lawful sales should occasionally go beyond his authority, which he might do by his taking a minor for an adult, than that he should go into a wholly unauthorized business. *Com. v. Nichols*, 10 Metc. 259, probably suggested the ruling of the court, and is perhaps a little nearer the case at bar than *Com. v. Holmes*, as the defendant seems to have sold liquors wholesale, and to have employed his clerk in that business, although not licensed to sell at retail. The court, in sustaining the defendant's exceptions, said a sale at retail by the clerk was only *prima facie* evidence of a sale by the master. It hardly said, and could not have decided, that such a sale was *prima facie* a sale by the master, or that it raised a presumption of fact. Moreover, if it were held that there was such a presumption of fact, in cases like *Com. v. Holmes* and *Com. v. Nichols*, it would not follow that there was the same presumption in the present case, still less that it was so plain that the jury could be instructed to act on it. Such presumptions are questions of fact and of degree. Mass. Sup. Jud. Ct.—*7b*, Nov. 27.

PEOPLE V. MONDON.

Criminal law—Evidence—Prisoner's testimony at coroner's inquest.

Defendant was an Italian labourer, having an imperfect understanding of the English language. He was under arrest, without warrant, charged with murder. A coroner's inquest was being held. The prisoner was taken by the sheriff, in whose custody he was, and whose power he could not resist, before the coroner's inquest then engaged in an investigation against himself. He did not go there voluntarily. He was sworn by the coroner as a witness: was without counsel, and without means to employ counsel. He was