

that it was exactly in point and could not be distinguished from the case at Bar, "but," he continued, "this case was appealed to the Supreme Court of the United States and was unanimously reversed"; whereupon the appeal was dismissed with costs.

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"A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in colour and contents according to the circumstances and the time in which it is used."—Per Mr. Justice Holmes in *Towne v. Eisner*, 245 U.S. 425.

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#### BANK—LIABILITY FOR DISHONOURING CHECK.

Proof of actual damages is held not necessary in the Arkansas case of *McFall v. First Nat. Bank*, 211 S.W. 919, annotated in 4 A.L.R. 946, to enable a merchant or trader to recover substantial damages from a banker who dishonours his checks when he has funds on deposit.

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#### NEGLIGENCE—FOREIGN SUBSTANCE IN FOOD.

The mere presence of a small, flat-headed black tack in blueberry pie, served by the keeper of a restaurant to a patron, is held in *Ash v. Child's Dining Hall Co.*, 231 Mass. 86, 120 N.E. 396, not to establish negligence under the rule of *res ipsa loquitur* on the part of the keeper of the restaurant, although the pie was made on his premises, if there is no evidence as to how the tack got into the pie, and its size and shape are such that it might have been embedded in a berry, when it would escape the most careful scrutiny.

The presumption of negligence from finding a foreign substance in food is considered in the note appended to this case in 4 A.L.R. 1556.