

character cannot be questioned by the defendants, because they have no exception, based on a timely objection, to the lack of findings for which they themselves are to blame (*Golej v. Varjabedian*, 86 N. H. 244), despite fair warning at the trial.

Hitherto the case has been considered on the theory that the verdict was no more than a finding of "the final amount in contemplation." The inadvertent remark of the plaintiff's counsel about "a present verdict" of "fair present value" may, as the court and counsel for the defendants thought, not have been understood by the jury. Generally, though not specifically, the remark had the blessing of the court, and the defendant made no objection that resulted in a ruling or an exception. If the defendants had obtained a ruling and excepted, they might have had the verdict set aside; or if they had requested clarifying instructions, they might have excluded the chance that the jury thought that they were returning a verdict of present value. We should be loath to place the judgment in this case solely on the doubtful theory that the jury understood the meaning of "present worth" (*Humphreys v. Ash, supra*, 230), but if the theory were tenable it would lead to the same result.

As applied to the situation presented by this case, the first and second questions are answered in the negative, and the third is answered in the affirmative.

*Judgment on the verdict.*

BRANCH and BURQUE, JJ., did not sit: the others concurred.

Hillsborough, }  
Nov. 4, 1942. } No. 3348.

STATE v. AMELIA CHOUINARD, *Ap't.*

*Stephen M. Wheeler*, Attorney-General, *Ernest R. D'Amours*, Assistant Attorney-General and *J. Vincent Broderick*, County Solicitor (*Mr. Wheeler* orally), for the State.

*Haydon C. Covington* (of New York), and *Frederick E. St. Cyr* for the defendant.

BURQUE J. The defendant is an adult, and is charged with selling or exposing for sale, pamphlets or magazines, April 27, 1940, upon a public place called Elm Street in Manchester, "without having had issued to her a badge for that purpose and not having complied with the terms under which said badge should have been issued, contrary to the rules and ordinances of said city of Manchester, contrary to the form of the statutes" etc.

The city of Manchester has an ordinance entitled "Newsboys and Bootblacks." It provides (section 1) that "no person shall, in any street or public place of the city of Manchester, work as a bootblack, or sell or expose for sale, any newspapers, books, pamphlets or magazines, unless there shall first have been issued to him a badge as hereinafter provided," etc.

Section 2 provides that "the superintendent of schools shall issue all badges in accordance with the provisions of this ordinance. He shall issue no badge except upon the application of the parent or guardian or of some responsible citizen of the city of Manchester if the applicant is under fourteen years of age."

In the A.L.R. Digest, under the title of "Carriers," vol. 1, p. 380, s. 333, is the following heading: "Children; newsboys." The section deals with cases relating to the status of newsboys in the act of selling and delivering papers, and whenever their ages appear in the cases considered, they are invariably found to be in their early teens.

But one case has been found where the court has said that it cannot be inferred from the use of the word "newsboy" that the person thus designated was under the age of twenty-one. *Alexander v. Railway*, 35 Q.B. (Upper Canada) 453. The case is not to be followed here.

In view of the title of the ordinance, and the further provision that the administration of the ordinance is placed in the hands of the Superintendent of Schools, who shall not issue a badge except "upon application of the parent or guardian or of some responsible citizen of the city of Manchester if the applicant is under fourteen

years of age," we conclude the ordinance is intended to apply only to children of school age, and to give the Superintendent supervision over them mostly for school attendance purposes. The only authority the Board of Aldermen has reserved to itself is to approve the design of the badge.

A law relating to child labor was first enacted in 1911, *c. 162*; and *s. 4* thereof referred (as appears in the margin), to "News-vendors and bootblacks." It provided that "no boy under ten and no girl under sixteen years of age shall sell or expose or offer for sale newspapers, magazines, periodicals or other merchandise in any street or public place . . ."

This law was reënacted, and incorporated in the revision and codification of the school laws (*Laws 1921, c. 85, Pt. III (b)*); and again in *P. L., c. 118, s. 21*. It is thought in view of the provision in the ordinance placing its administration in the hands of the Superintendent of Schools that it was the intent of the Board of Aldermen to conform as nearly as possible to the state law. Section 3 of the ordinance lends force to this view, in that it provides that the "applicant shall conform to the laws of the state of New Hampshire," etc. This necessarily includes all provisions of the school laws, enforcement of which are in the hands of the state and local boards of education. The conclusion, therefore, is that the ordinance applies only to children of school age.

The State contends that the ordinance is broad enough to apply to all persons, because of the use of the words "no person" in *s. 1*. We cannot subscribe to this. The reasons given above refute such a theory.

The result reached makes it unnecessary for us to consider the constitutional questions raised by the defendant on other phases of the case.

*Complaint quashed.*

All concurred.