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## Torts—Recovery of Illegal Receipts

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*Corp.*,<sup>35</sup> the Court determined that the statute placed its duty upon a corporation which "hired" an independent contractor to wash the windows of a school it was constructing. One wonders whether the corporation directed the method of washing windows or left the manner to the washer's judgment and experience.

Furthermore, if we accept the Court's definition of "directing"—that is, directing the method and manner of performance—then that word adds nothing to the statute. The common definition of an employer as applied by the courts is, one who controls the means of doing a particular job as well as the end.<sup>36</sup> We have a statute placing a duty upon one who employs or upon one who directs. An employer is one who directs the means. What then does the word "direct" mean? We can give it its own significance by defining it as the procuring of another to do the work, as was suggested by the dissenters.

The decision in holding that the plaintiff removed himself from the protection of the statute by sawing the ladder in two, is in this writer's opinion, error. However, the greater danger is that the Court's dictum as to the meaning of the word direct will be applied to all future cases where the plaintiff is an independent contractor. In all fairness it should be said that there are grounds to question whether this statute is intended to be applied to private homeowners when "employing" independent contractors or whether it is restricted to those "employing" independent contractors or employees as a part of *their* business.<sup>37</sup> Are we to place this absolute duty of providing safe equipment upon a homeowner who has no ability to distribute the costs of proper protection *in favor* of an independent contractor, one ostensibly in a business, who can distribute the costs of safety through control of the price of his services? The Court was not inclined to consider whether it would apply such an evaluation but instead expressly left open for the future the question of the statute's applicability to private homeowners "hiring" independent contractors.

### Recovery Of Illegal Receipts

In *Carr v. Hoy*<sup>38</sup> the plaintiff, having been convicted of a charge of violating public decency<sup>39</sup> for offering nude females as photography models, brought an action in conversion for his receipts taken by the defendant-sheriff. The complaint was dismissed on the grounds that the money taken and withheld from the

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35. See note 31 *supra*.

36. See, *e.g.*, *Hexamer v. Webb*, 101 N.Y. 377, 385, 4 N.E. 755, 757 (1886).

37. *Cf. Sweeney v. Spring Products Corp.*, 257 App. Div. 104, 12 N.Y.S.2d 72 (1st Dept's 1939), *aff'd*, 282 N.Y. 685, 26 N.E.2d 814 (1940) where the court held that the "employer" of an independent contractor was not liable under the statute to an employee of the independent contractor.

38. 2 N.Y.2d 185, 158 N.Y.S.2d 572 (1957).

39. N.Y. PENAL LAW §43.

plaintiff by the defendant was the proceeds of an illegal act committed by the plaintiff.

In affirmance of the lower tribunals<sup>40</sup> this Court held, (6-1) that public policy forbids recovery in the instant case.<sup>41</sup> The settled law of this jurisdiction is that one may not evoke the assistance of a court of law to permit him to profit or take advantage of his own wrongdoing.<sup>42</sup>

*Hofferan v. Simmons*<sup>43</sup> cited by the majority and dissent, held that by statute<sup>44</sup> one who has wagered with a gambler never parts with title to the money and thus having no title to the money, gamblers may not replevin their wagers.<sup>45</sup> In the instant case the Court pointed out that while there was no such statute covering the fact situation presently before them, it long has been settled by public policy that courts should withhold their sanction to titles and possessory rights founded only on law breaking. Answering the position taken by the dissent that such withholding was equivalent to a confiscation, the majority stressed they were by no means attempting to exact property without due process of law in that the defense of illegality was allowed not for the protection of the defendant but as a disability to the plaintiff.<sup>46</sup>

#### Admissibility Of Evidence Of Adverse Reaction In Aid of General Damages In Libel Actions

*Macy v. New York World-Telegram Corporation*,<sup>47</sup> a libel action, was based upon an article allegedly charging that plaintiff attempted to obtain nomination as United States Senate candidate by threatening disclosure of a letter describing certain questionable political transactions. Judgment for plaintiff at Trial Term was affirmed by the Appellate Division<sup>48</sup> and defendant appealed by permission of the Court of Appeals which reversed and granted a new trial. The decisive issue, over which the Court split (4-3), concerned the admissibility of evidence

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40. 126 N.Y.S.2d 7 (County Ct. 1956); 285 A.D.2d 968, 138 N.Y.S.2d 682 (2d Dep't 1956).

41. *Flegenheimer v. Brogan*, 284 N.Y. 268, 30 N.E.2d 591 (1940); *Riggs v. Palmer*, 115 N.Y. 506, 22 N.E. 188 (1889).

42. *Stone v. Freeman*, 298 N.Y. 268, 82 N.E.2d 571 (1948).

43. 290 N.Y. 449, 49 N.E.2d 523 (1943).

44. N.Y. PENAL LAW §994.

45. *People v. Stedeker*, 175 N.Y. 57, 67 N.E. 132 (1903).

46. *Reiner v. North American Newspaper Alliance*, 259 N.Y. 250, 181 N.E. 561 (1932).

47. 2 N.Y.2d 416, 161 N.Y.S.2d 55 (1957).

48. *Macy v. New York World-Telegram Corp.*, 1 A.D.2d 652, 147 N.Y.S.2d 677 (1955).