to contract for a "closed shop" and thus make their collective bargaining effective. See *Exchange Bakery and Restaurant, Inc. v. Rifkin*, 245 N.Y. 260, 263, 157 N.E. 130, 132 (1927); Frankfurter and Green, The Labor Injunction (1930), 29, 39; Witte, Labor's Resort to Injunctions, 39 Yale L. J. 374 (1930); Rice, Collective Labor Agreements in American Law, 44 Harv. L. Rev. 572 (1931); 41 Yale L. J. 1221 (1932). As long as such denials are made labor will be compelled to resort to socially undesirable methods of bargaining such as strikes and boycotts. The New York attitude, which considers such agreements against public policy only where the primary purpose is to injure third parties, seems preferable. Non-union employees may join the union or find employment elsewhere; the fact that the field is thus somewhat limited is more than offset by the social and economic advantages accruing from allowing the employees to act as a group, the only way in which they can deal with their employers on even terms. *Jacobs v. Cohen*, 183 N.Y. 207, 76 N.E. 5 (1905); 11 N.Y. Univ. L. Q. 262 (1933); 3 Temple L. Q. 421 (1929).

Practice—Petition for Removal to Federal Court as Waiving Defects of Service—[Illinois].—Plaintiff brought suit in Nebraska against an Illinois Corporation which had never done business in Nebraska nor had any authorized agent there to accept service for it. The defendant obtained an order of removal to the federal court, but when the action was remanded, abandoned the cause and allowed judgment to go by default. Plaintiff then brought debt in Illinois on this default judgment claiming that the Nebraska judgment required recognition under the "full faith and credit" clause of the federal Constitution. *Held*, that the defendant's petition for removal of the cause to the federal court did not constitute a general appearance nor a waiver of any defects of process, and that the Nebraska judgment was therefore void. *Van Dyke v. Illinois Commercial Men's Assn.*, 193 N.E. 490 (Ill., 1934).

In order for a state court to render a judgment *in personam* which will be enforced in all other states under the Full Faith and Credit Clause of the federal Constitution, such court must have jurisdiction over the defendant. *Haddock v. Haddock*, 201 U.S. 562 (1906). See Farrier, Full Faith and Credit of Adjudication of Jurisdictional Facts, 2 Univ. Chi. L. Rev. 552 (1935). This jurisdiction is usually acquired by service of process on the defendant. At common law process could be served on the defendant only if he were found within the territorial limits of the state. See *Pennoyer v. Neff*, 95 U.S. 714 (1877). The need for an extension of this common law method due to modern business transactions resulted in statutes authorizing service in certain instances when the defendant is not personally within the state. Thus a statute authorizing constructive service on its non-resident citizens has been held not to violate procedural due process. See *Bickerdike v. Allen*, 157 Ill. 95, 41 N.E. 740 (1895); *Fernandez v. Casey and Swasey*, 77 Tex. 452, 14 S.W. 149 (1890). And a foreign corporation "doing business" within a state can be bound by service on its agent, therein, because a foreign corporation is subject to exclusion and can be allowed to do business only on condition that it submits to such service. *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 115 N.E. 915 (1917). Likewise a statute authorizing a local officer to receive process as agent for non-resident motorists has been constitutionally justified because of the power of the state to prescribe the terms on which its highways may be used. *Hess v. Pawloski*, 274 U.S. 352 (1927). But legislation providing that a non-resident principal may be bound by service on his agent within a state violates due process because the

privileges and immunities clause of the federal Constitution prevents one state thus restricting citizens of other states. *Flexner v. Farson*, 248 U.S. 289 (1919). But, where the business done is of a type subject to the police power control of the state, a principal by sending his agent into a state to do business thereby subjects himself to the jurisdiction of the courts of that state. *Doherty v. Goodman*, 55 Sup. Ct. 553 (1935).

A state court, however, failing to get jurisdiction because of void service or process may nevertheless get control of a defendant if he makes an appearance. See Blair, Constructive General Appearances and Due Process, 23 Ill. L. Rev. 119 (1928). A defendant is said to have made an unqualified general appearance when he enters a plea in bar or demurs. Such an appearance waives all right to object to void service or process either on appeal or collateral attack. *Tolland v. Sprague*, 12 Pet. (U.S.) 300 (1838); *Osgood v. Thurston*, 40 Mass. 110 (1839). If a defendant enters a plea in abatement objecting to jurisdiction he thereby submits himself to the jurisdiction of the court to determine that issue. Such may be called a qualified appearance because the matter goes to judgment on the issue of jurisdiction only and the defendant's remedy in case of an adverse holding is by appeal on that issue. *Griggs v. Gilmer*, 54 Ala. 425 (1875). A motion to quash should, on the other hand, be considered as a special rather than a general appearance because the ruling does not go to judgment. If adverse to the defendant he then may defend on the merits or fail to plead and appeal on the judgment *nil dicit*. See *Nye v. Liscombe*, 39 Mass. 263 (1838).

Some courts have held that a petition for removal to a federal court amounts to a general appearance and that if the case is remanded the defendant has waived his right to object to the jurisdiction of the state court. *Tollman v. Baltimore & Ohio Ry Co.*, 45 Fed. 156 (S.D. Ohio 1891); *Britton v. Beltzhoover*, 147 Miss. 737, 113 So. 346 (1927); *State v. Gale*, 232 Mo. 166, 132 S.W. 1119 (1910). See 21 Ill. L. Rev. 73 (1926). The other instances, however, of waiver by unqualified or qualified general appearance have rested on the theory that by submitting an issuable proposition to the court the defendant thereby subjects himself to the jurisdiction of the court to determine that issue, and that it would be unfair to allow the defendant to gamble on a verdict and in case of failure still be allowed to object to the control of the court over him. By a petition to remove to a federal court the defendant does not put in issue either the legal or factual allegations of the plaintiff nor does he question the validity of process or service, but rather seeks to exercise a right conferred on him by federal statute. See *Wabash Western Ry. Co. v. Brow*, 164 U.S. 271 (1896). The state court cannot render a final decision on this question because if removal is denied the defendant may defeat the ruling of the state court by presenting a record of the proceedings to the proper federal court and thereby attain the same result as if removal had been allowed. Although sometimes called a special appearance, the petition for removal differs from a motion to quash for lack of jurisdiction of the defendant in that the defendant does not request the state court to pass on the sufficiency of service or process. In *Goldey v. New Haven Morning News*, 156 U.S. 518 (1895), the Supreme Court expressed the majority view by holding that a petition to remove to a federal court does not operate as an appearance, such that process and service defects are thereby waived. See also *Clark v. Wells*, 203 U. S. 164 (1906); *Hassler v. Shaw*, 271 U.S. 195 (1926); *Schwab v. Mabley*, 47 Mich. 512, 11 N.W. 390 (1882). The court in the *Goldey v. New Haven Morning News* pointed out that if a state court were allowed to consider a petition for removal an appearance that would subsequently support a default judgment, the purpose of the

federal act would be thereby defeated. See *Wabash Western Ry. Co. v. Brow*, 164 U.S. 271 (1896).

If, however, there has been a demurrer, plea or motion in the state court which would amount to a general or special appearance and in addition a petition for removal, it follows that on remand, the state court should have the same jurisdiction of the defendant as if there had been no petition for removal. *Cf. State v. Love*, 110 Fla. 91, 148 So. 208 (1933).

Sales—Implied Warranty of Fitness for Consumption by Restaurant Keeper—[Federal].—Plaintiff, injured by a particle of glass in an ice cream soda served at defendant's soda fountain, sued defendant for breach of an implied warranty of fitness for consumption. *Held*, plaintiff may not recover for breach of warranty, the transaction constituting, not a sale of food, but merely a furnishing of service and a license to consume as much food as is desired. *F. W. Woolworth Co. v. Wilson*, 74 F. (2d) 439 (C.C.A. 5th 1934).

At common law, and to a large extent under the Uniform Sales Act, where there is a sale of food by a retail dealer for immediate consumption, there is an implied warranty that the food is wholesome. 1 Williston, Sales (2d ed. 1924), §§ 241, 242*b*. Courts which hold there is a warranty even though food is served for consumption on the premises consider the transaction to be a sale. *Barringer v. Ocean S.S. Co. of Savannah*, 240 Mass. 405, 134 N.E. 265 (1922); *Temple v. Keeler*, 238 N.Y. 344, 144 N.E. 635 (1924); *Clark Restaurant Co. v. Simmons*, 29 Oh. App. 220, 163 N.E. 210 (1927). Other courts hold the rule of sales to be inapplicable and regard the transaction as merely a furnishing of service and a license to the patron to consume as much as he desires and leave the residue. *Merrill v. Hodson*, 88 Conn. 314, 91 Atl. 533 (1914); *Nisky v. Childs Co.*, 103 N.J.L. 464, 135 Atl. 805 (1927). The license theory seems to be based on the statement found in two old English cases that an innkeeper does not sell his provisions but utters them. *Crisp v. Pratt*, Cro. Car. 549 (1639); *Parker v. Flint*, 12 Mod. 254 (1698). This theory has not only been held inapplicable to the modern restaurant or cafeteria, where the customer pays not for the meal but for a definite portion of food; *Barrington v. Hotel Astor*, 184 App. Div. 317, 171 N.Y.S. 840 (1918); 1 Williston, Sales (2d ed. 1924), § 242b; 12 Corn. L. Q. 535 (1927); but has also been criticized as unsound.

The meal served is part of the consideration for the price paid, and the customer is entitled to the full consideration. To say that although the customer may eat all the food, he may not carry away that which is uneaten seems to be rather arbitrary. It can hardly be said that the parties intended a transaction which would make the customer guilty of a tort or a crime if he removed the uneaten food. See 1 Univ. Cinn. L. Rev. 369 (1927). But in any event even though the transaction is not considered a sale, it is still possible that there be an implied warranty of fitness. The basis of an implied warranty is justifiable reliance on the skill and judgment of the warrantor rather than a technical sale. 7 Cal. L. Rev. 360 (1919); 81 Univ. Pa. L. Rev. 483 (1933); 1 Williston, Sales (2d ed. 1924), § 242b; see *Barringer v. Ocean S.S. Co. of Savannah*, 240 Mass. 405, 134 N.E. 265 (1922). The suggestion has been made that the imposition of absolute liability is as justified here as in cases of extra-hazardous conduct. 81 Univ. Pa. L. Rev. 483 (1933); 25 Yale L. J. 679 (1916).

It is contended that to imply a warranty, thus placing liability on the restaurant owner without negligence, is not only harsh, and productive of groundless claims, but