RECENT CASES.

BANKRUPTCY—STATUTE OF LIMITATIONS—STATE LAW GOVERNS—HARGADINE-MCKITTRICK DRY GOODS CO. v. HUDSON, 10 AM. B. R. 225 (Mo.).—A claim was voluntarily filed against a bankrupt's estate and was disallowed on the ground that it was barred by the Statute of Limitations of the State where bankruptcy proceedings were pending, although not so barred in the State where the claim arose. *Held,* that such disallowance was no error.

There is a conflict in the earlier cases on this point. One line of decisions holding that where the Statute goes to the remedy merely and does not destroy the obligation, the claim should be allowed. *In re Ray,* Fed. Cas. 11,589; *In re Shepard,* Fed. Cas. 12,753. But the present case follows the clear weight of authority. *In re Kingsley,* 1 Low. 216; *In re Cornwall,* 9 Blatch. 114. These decisions are based upon the fact that the federal courts are governed by the Statutes of Limitation in the several States. *Bauserman vs. Blunt,* 147 U. S. 654. The recent cases all seem to follow the latter view. *In re Lipman,* 94 Fed. 353; *In re Resler,* 95 Fed. 804. Although strictly an outlawed debt is within the terms of Sec. 63 of the Bankruptcy Act and ought therefore to be allowed to be proved, still the law prevents its proof on the ground that its allowance against other creditors would be inequitable. *Collier, Bankruptcy,* 4th ed., 454.

CANCELLATION OF MORTGAGE—MISTAKE OF LAW—RELIEF IN EQUITY.—SWEDESBORO LOAN AND BUILDING ASS'N v. GANS ET AL., 55 ATL. 82.—*Held,* that the cancellation of a mortgage through misapprehension or mistake of law, upon grounds for which it would not have been cancelled but for such mistake, is good ground for equity to grant relief and re-establish the mortgage.

The principle is well founded in England that a mistake, whether of law or fact, is good ground for equitable relief, *Moses v. McFarlan,* 2 Burrows 1,005; *Farmer v. Arundel,* 2 Black. 824. In the United States at the present time the weight of authority is to hold a mistake of law good ground for equitable relief, *Northrop v. Graves,* 19 Conn. 548; *Culbreth v. Culbreth,* 7 Ga. 64; *Covington v. Powell,* 2 Met. (Ky.) 226, though in many States the contrary is held. *Nelson v. Davis,* 40 Ind. 366; *Smith v. McDougall,* 2 Cal. 586.

CARRIER OF FREIGHT—LIMITATION OF CONTRACT LIABILITY.—BERNSTEIN v. WEIR, 83 N. Y. SUPP. 48.—A shipper had a book containing freight receipts of a carrier. He delivered a package to carrier without stating value and tendered one of the receipts, which he had filled out with consignee's name and a description of the goods, to their employee, who signed it in his presence and returned it. There was upon the face of receipt a contract providing that the carrier was not liable for loss by certain specified causes unless through fraud or great negligence, and in no case for more than $50. *Held,* that the shipper was bound by the provision upon the face of the receipt and that he could not recover more than the amount stated therein unless under the exceptions stated.

This decision is contrary to those in the following cases: *Lake Shore & M. S. Ry. Co. v. Davis,* 16 Brawd. (Ill.) 425; *So. Exp. Co. v. Moon,* 39 Miss. 822; *L. & N. R. Co. v. Owen,* 12 Ky. 716, which held that the acceptor of a bill of lading was not bound by a contract on its face unless he assented to it. But the weight of authority seems to be in harmony with this decision in holding that he is bound whether he reads the contract or not. *Leitch v. U. R. R. Trans. Co.,* Fed. Cas. 8,224; *Davis v. Central Vt. R. R. Co.,* 66 Vt. 290; *Belger v. Dinsmore,* 51 N. Y. 166. He is held even though he cannot read. *Jones v. Cincinnati, S. & M. Ry. Co.,* 99 Ala. 376.

CONSTITUTIONAL LAW—POWER OF CONGRESS UNDER 15TH AMENDMENT—VALIDITY OF STATUTE AGAINST WRONGFUL INDIVIDUAL ACTS.—JAMES V. BROWN, 23 SUP. CT. 678.—*Held,* that a statute which purports to punish purely individual acts cannot be sustained as an appropriate exercise of the power conferred by the 15th amendment upon Congress to prevent denial of the right of suffrage by a State through some one or more of its official representatives, and that an indictment which charges no discrimination on account of race, color or previous condition of servitude, is likewise destitute of support by such amendment. Harlan and Brown JJ., *dissenting.*

The 15th amendment refers specifically to a denial by a State or any of its agents, of the right of suffrage to qualified citizens. It does not refer to individual acts and it has been repeatedly held that the words of the amendment cannot be narrowed to embrace purely individual acts of denial of suffrage, especially where the allegation does not charge that such acts were done on account of color, race or previous servitude. *United States v. Wiltberger,* 5 Wheat. 85; *Strouder v. West Virginia,* 100 U. S. 303; *Ex parte Bradley,* 7 Wall 364; *United States v. Reese,* 92 U. S. 214.

CRIMINAL LAW—APPOINTMENT OF COUNSEL—COMPENSATION—PAYMENT BY COUNTY—CONSTITUTIONAL LAW.—PEOPLE EX REL. ACRITELLI V. GROUT, 84 N. Y. SUPP. 97.—*Held,* that a statute providing for the compensation of counsel assigned to defendant in criminal proceeding is not a violation of the constitutional provision which forbids payment of public money for private purposes. Ingraham, Van Brunt, JJ., *dissenting.*

A statute granting compensation to a public official for expenses incurred in defending himself against a false charge is unconstitutional. *Chapman v. City of N. Y.,* 168 N. Y. 80. The power of the court, however, to assign counsel to a defendant without means is generally based on public justice and policy. *County of Dane v. Smith,* 13 Wis. 585. It is similar to the duty to support a pauper. *Webb v. Baird,* 6 Ind. 17; *Chapman v. City of N. Y., supra.* Some States, even, hold it unconstitutional to refuse to pay for such services of counsel on the ground that it would be taking private property for public purposes without compensation. *Hall v. Washington County,* 2 Greene (Iowa) 473. It would seem, then, that since the services of counsel are for public purpose, payment therefor does not violate the constitution.

EMINENT DOMAIN—MEASURE OF DAMAGES.—SOUTH BUFFALO RY. CO. V. KERKOVER ET AL., 68 N. E. 366 (N. Y.).—*Held,* that in condemnation proceedings by a railroad company, where land is acquired without the owner's consent, he is entitled to the market value of the part taken and to compensa-

tion for any damages to the residue, including those sustained by reason of the use to which the part taken is put.

Although this principle is well established, *Wood on Railroads,* p. 1,036; 10 *Am. & Eng. Enc. Law* (2nd ed.) 1165, there is much conflict as to what elements are to be considered in the assessment of damages. Apparently a desire of the courts to justly compensate an owner, thus deprived, against his will, of his land, has led some of them to carry the doctrine too far. Some courts are disposed to allow assessment for "speculative and consequential damages"; *McReynolds v. R. R.,* 100 Ill. 152; *Bridge Co v. Geisse,* 35 N. J. Law 474; *Young v. Harrison,* 17 Ga. 30. The weight of authority, however, favors a stricter view, although one rather more liberal than in ordinary damage suits. *Watson v. R. R.,* 37 Pa. St. 469; *Tucker v. R. R.,* 118 Mass. 546; *Curtis v. R. R.,* 20 Minn. 28; *Clark v. Saybrook,* 21 Conn. 313. This case adopts the principle and lends its authority to the stricter view.

EMINENT DOMAIN—PUBLIC AND PRIVATE USE—PUBLIC GRISTMILLS.—GAYLORD V. SANITARY DIST. OF CHICAGO, 68 N. E. 522 (ILL.).—*Held,* that long usage recognizes public gristmills as "public utilities" justifying the exercise of the power of eminent domain; but other mills have not received such absolute sanction, and as private enterprises cannot exercise such power.

No mills other than gristmills have any claim to be of a public character. *Harding v. Goodlett,* 11 Tenn. 41. The exercise of the right of eminent domain is necessarily in derogation of private right, and hence the rule is that the authority is to be strictly construed. *Lance's Appeal,* 55 Pa. 16. *Contra.*—Whether a particular structure is for the public use is a question for the legislature, and their decision may be presumed correct. And the establishment of a great mill-power for manufacturing purposes is a recognized public use justifying the exercise of the right of eminent domain. *Hazen v. Essex Co.,* 66 Mass. 475. Raising of a milldam "for the encouragement of manufactures" is a taking of the lands thereby flowed for a public use. *Ash v. Cummings,* 50 N. H. 591. The Illinois court seems to have slighted the economic questions involved.

EQUITY—JURISDICTION—RIGHT TO ENJOIN—PENDING ACTION—LEGISLATIVE AUTHORITY—PRACTICE IN EQUITY.—WRIGHT ET AL. V. SUPERIOR COURT ET AL., 73 PAC. 145 (CAL.).—Under the civil code providing that an injunction cannot be granted to stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless to prevent a multiplicity of suits, *held,* that where an action is pending in one superior court, another superior court has no jurisdiction to entertain a bill of discovery and enjoin proceedings, except as above. Shaw, J., *dissenting.*

Spreckels v. Hawaiian Co., 117 Cal. 377, the only case relied on as authority, holds exactly the contrary, that jurisdiction existed, but under the law the statement of facts did not entitle to relief. The inconsistency in the main decision lies in the assumption that because the law deprives the plaintiff of a right of action, the court is ousted of its jurisdiction. It is based on the reasoning that the power of courts of equity to grant bills of discovery has been superseded or made inoperative by giving law courts the same power. *Contra.—People v. Davidson,* 30 Cal. 391; *Rosenberg v. Frank,*

58 Cal. 400. While this assumption is supported by *Bond v. Worley*, 26 Mo. 254; *Ex parte Boyd*, 105 U. S. 657; and *Rindskopf v. Platto* (C. C.) 29 Fed. 312, the great weight of authority is to the contrary, *Wood v. Hudson*, 96 Ala. 469; *Grimes v. Hilliary*, 38 Ill. App. 246; *Union Passenger R. R. Co. v. Mayor*, 71 Md. 238; *Elliston v. Hughes*, 1 Head. (Tenn.) 227.

EVIDENCE—EXPERT TESTIMONY—REMAINDERS.—RICARDS V. SAFE DEPOSIT AND TRUST CO., 55 ATL. 384 (MD.).—*Held*, incompetent to prove by medical testimony that a married woman 53 years of age was incapable of child-bearing for the purpose of defeating an estate in remainder.

There are some early English cases which upheld a presumption that a woman of advanced age was incapable of bearing a child. The more modern English cases have not adopted this presumption. *In re Dawson*, L. R. 39 Ch. Div. 155; *In re Sayers Trusts.*, L. R. Exch. 319. No case can be found in the American courts in which such a presumption has been given effect. *Lawson on Presumptive Evidence*, p. 302. If a physician may testify that because of a physical degeneracy a woman is incapable of bearing children so that a trust created for her benefit, during her life only, may be brought to an end and the vesting of a remainder may be defeated, no one can foretell to what lengths such a precedent would lead. The court holding this to be a case of first impression acted cautiously and with due consideration of the demoralizing consequences that might follow its decision.

INHERITANCE TAX—VALIDITY—CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES—UNCONSTITUTIONALITY OF STATUTE.—IN RE JOHNSON'S ESTATE, 139 CAL. 532.—A statute imposing a tax on property passing by will "other than to the use of father, mother, husband, wife, lawful issue, brother or sister," was amended to include "nieces and nephews, when a resident of this State." *Held*, not void as in conflict with the constitutional provision declaring that citizens of each State shall be entitled to privileges and immunities of the several States. Beatty, C.J., *dissenting*.

Overruling *Estate of Mahoney*, 133 Cal. 180, which finds authority in *Spraigue v. Thompson*, 118 U. S. 90, and which strikes out the amending clause as unconstitutional. Although the unconstitutionality of laws imposing a special tax discriminating against non-residents is clear; *Cullman v. Arndt*, 125 Ala. 581; and a court, if possible, construes, where an exemption is claimed, in favor of the tax and against the exemption; *R. R. Co. v. Grand Rapids*, 102 Mich. 374; nevertheless, by the great weight of authority, beginning with *Campbell v. Morris*, 3 Har. & M. (Md.) 554, the courts have held privileges granted by a State to its citizens to be extended to citizens of the several States. *Sprague v. Fletcher*, 64 Vt. 69; *The Slaughter House Case*, 16 Wall. 36.

INFANCY—WAGES OF SON—RIGHTS OF CREDITORS OF FATHER.—WISNER V. OSBORN, 55 ATL. 51 (N. J.).—*Held*, that the wages earned by an infant emancipated by his father, though living at home, are not subject to the claims of the father's creditors.

Absence of fraud must be shown. *Elfelt v. Hinch*, 5 Ore. 255. Living at home does not affect the infant's emancipation. *Wilson v. McMillan*, 62 Ga. 161; *Wood on Master and Servant*, p. 30. The authorities show much diversity of opinion on this point. Some courts hold that the wages may be

reached by the father's creditors. *Stumbaugh v. Anderson,* 46 Kan. 541; *Bell v. Hallenback,* 1 Wright (Ohio) 751. The principal case follows the weight of authority, *Atwood v. Holcomb,* 39 Conn. 270; *Stanley v. National Bank,* 115 N. Y. 122; *Wambold v. Vick,* 50 Wis. 456. The courts of New Jersey are unanimous in upholding this decision. *Costello v. Prospect Brewing Co.,* 152 N. J. Eq. 557; *Peterson v. Mulford,* 36 N. J. Eq. 481.

INSURANCE—APPLICATION—AUTHORITY OF AGENT TO WAIVE PAYMENT OF PREMIUM.—RUSSELL V. PRUDENTIAL INS. CO., 68 N. E. 252 (N. Y.).—A general agent delivered policy to the insured, extending payment of premium contrary to the provisions of the contract. *Held,* that, in the absence of proof of agent's express authority to waive payment, beneficiary could not recover. Haight, J., *dissenting.*

The decision is based on the signature by the insured of an application, subsequently embodied in the policy, making payment of first premium a condition precedent to its validity. Where there is no previous subscription to the substantial terms of the contract, the weight of authority is that agents can waive provisions of policy relative to first payment. *Boehen v. Ins. Co.,* 35 N. Y. 131; *Dunn v. Ins. Co.,* 69 N. H. 224; *Richards on Insurance,* p. 93. Acceptance by agent of a note and a further extension after its maturity has been held to constitute a waiver of cash payment stipulations in application and policy. *Stewart v. Ins. Co.,* 155 N. Y. 257, an opinion which is based, however, upon the assumption that the company is estopped from denying a ratification after the lapse of a reasonable period of time. The dissenting opinion in the present case contends that the ruling of the majority will result in defrauding the insuring public. It is the prevailing custom of insurance agents to extend payment of premiums regardless of contract stipulations. It is also true that the insured generally attaches his signature to the application under such conditions as to make it impracticable for him to familiarize himself with all of its terms. In view of these considerations, the dissenting position seems well taken, and is in line with the decision in *Mathews v. Acc. Ass'n,* 78 Wis. 588; *Jones v. Ins. Co.,* 168 Mass. 245.

LIFE INSURANCE—POLICY—APPLICATION—WARRANTIES—AUTHORITY OF INSURANCE AGENT.—DIMICK V. METROPOLITAN LIFE INS. CO., 55 ATL. 291 (N. J.).—Where an insurance company makes the answers in its application blanks warranties and certain agents of the insurer write answers different from those given by the applicant, which they know to be false, *held,* that such answers constitute a breach of warranty, nullifying the policy.

This is the first case decided where a policy was vitiated through the writing of false answers by both the insurance and medical solicitors. The case most nearly in point, *Sternaman v. Metropolitan Life Ins. Co.,* 170 N. Y. 13, holds the contrary, where the medical examiner answered falsely; but it is not controlling here, since no question was raised concerning the truth of the solicitor's answers. In the latter cases it has been held that false answers vitiate the policy; *Van Shoick v. Niagara Fire Ins. Co.,* 68 N. Y. 434; *O'Brien v. Home Benefit Society,* 117 N. Y. 310; but the prevailing authority in New York is otherwise. The decision rests upon the doctrine that the principal is not bound by acts of the agent in excess of authority.

Contra, Wood v. American Fire Ins. Co., 149 N. Y. 382; *Insurance Co. v. Wilkinson*, 13 Wall. 222—the latter case being decided on the express ground that no notice of agent's limitation of authority came to the assured's knowledge, though the weight of authority is contrary. The other ground of the decision is that parol evidence may not be introduced to vary the effect of a written contract. *Martin v. Franklin Fire Ins. Co.*, 40 N. J. Law 568.

MANSLAUGHTER—VERDICT—SUFFICIENCY—FORMER JEOPARDY.—MAHANY V. PEOPLE, 73 PAC. 26, (COL.).—*Held*, that where a verdict of manslaughter was void because the jury failed to designate whether it was voluntary or involuntary, as required by statute, but the defendant made no objection to the discharge of the jury, merely excepting to the verdict in the usual form, he cannot plead former jeopardy on a subsequent trial.

As to what constitutes jeopardy there are two widely variant rules. The courts of some States hold that when a person has been placed on trial on a valid indictment and the jury has been sworn, he is in jeopardy. 17 *Am. & Eng. Enc. of Law* (2d ed.), 584; 1 *Bish., Crim. Law* (5th ed.), 1016. But the greater weight of authority supports the rule that jeopardy does not attach until a valid verdict, for conviction or acquittal, has been rendered. *U. S. v. Gilbert*, 2 Sumn. 60; *People v. Goodwin*, 18 John. 187; 17 *Am. & Eng. Enc. of Law* (2d ed.), 585. The courts of Colorado follow the latter rule. Two alternative processes of reasoning are used to justify the granting of a new trial. First: A defective verdict is a nullity and, therefore, the prisoner never has suffered actual jeopardy. *Kearney v. People*, 11 Col. 258; *U. S. v. Haskill*, 4 Wash. C. C. 409; *U. S. v. Coolidge*, 2 Gall. 364; *Wharton's Crim. Law*, 573-587. Second: A failure on the part of the prisoner to object to the discharge of the jury and to ask for a correction of the verdict, involves an implied waiver of the privilege of subsequently pleading previous jeopardy. This reasoning is equally well supported. *Carpenter v. State*, 62 Ark. 286; *Murphy v. State*, 7 Cold. (Tenn.) 516; *Com. v. Call*, 21 Pick. 506. Thus, notwithstanding the two very different rules defining jeopardy, it seems beyond dispute that when a defective verdict is rendered and the prisoner makes no objection to the discharge of the jury, he cannot plead former jeopardy at a new trial.

MARTIAL LAW—DUTY OF SOLDIER—HOMICIDE.—COMM. EX REL. WADSWORTH V. SHORTALL, 55 ATL. 952 (PA.).—*Held*, that where a militiaman, called out to suppress disorder, without malice, in performance of his duty, and under orders, commits a homicide, he is excusable, unless he manifestly exceeded his authority and knew the act to be illegal.

The issue by a governor of a general order, calling out the militia to maintain order in a certain district, is a declaration of qualified martial law. This is contrary to the ruling of the Supreme Court of the United States in *Ex parte Milligan*, 71 U. S. 2, that martial law cannot exist in time of peace. 1 *Bl., Com.*, 413; *Johnson v. Jones*, 44 Ill. 157. But many authorities hold that it exists wherever soldiers are called out to suppress disorder. However, the necessity must be urgent. *Bryan v. Walker*, 64 N. C. 141; *Koonce v. Davis*, 72 N. C. 218; *Merritt v. Nashville*, 5 Cold. (Tenn.) 95. For acts done in the suppression of public disorder, a commander is liable, civilly and criminally. *Mitchell v. Harmony*, 13 How. 115; *Milligan v. Hovey*,

3 Biss. 13. A soldier is bound to obey the orders of his superior where they are not clearly illegal and such orders will be a protection to him. *Riggs v. State,* 43 Tenn. 85; *Sampson v. Smith,* 15 Mass. 365.

MASTER AND SERVANT—SAFE PLACE TO WORK—NEGLIGENCE OF MASTER.—PENN R. R. v. JONES, 123 FED. 753 (PA.).—An employe was killed by the backing of a train off a stub switch which had no bumper. *Held,* that failure to protect the end of the switch rendered the railroad liable for negligence. Archibald, J., *dissenting.*

This ruling is directly contradictory to *R. R. v. Driscoll,* 176 Ill. 330. But the general weight of decisions is as above. *Chesapeake & O. R. Co. v. Hennessey,* 38 C. C. A. 314 (Ky.). The question is whether such absence of bumper is a part of the general plan of the road or a defect in the road. A master need not use the newest and safest appliances. *R. R. v. Lonergan,* 118 Ill. 41. It is for him to decide how railroad shall be built. *Tuttle v. R. R.,* 122 U. S. 189. On the other hand he must construct the road so that it may be safe to work upon. *Trask v. Cal., etc., R. R.,* 63 Cal. 96. *R. R. v. Swett,* 45 Ill. 197. He is liable for death of employe between two cars where buffers failed to meet. *Ellis v. R. R.,* 95 N. Y. 546. These decisions imply that lack of bumper should be held a defect.

MONOPOLIES—COPYRIGHT—ILLEGAL RESTRICTION OF COMPETITION.—STRAUSS V. AM. PUB. ASS'N, 83 N. Y. SUPP. 271.—Defendants, composed of 95 per cent. of the book publishers in the United States and Canada, formed a combination, the purpose of which was to compel all retailers to sell copyrighted books at a certain price fixed by the association. *Held,* that, under the N. Y. Statute (Laws 1899, c. 690, sec. 1) prohibiting contracts creating a monopoly, the combination was illegal. Van Brunt, P.J., and McLaughlin, J., *dissenting.*

This decision is directly contrary to the ruling in *Park Co. v. Druggists' Ass'n,* 175 N. Y. 1, which held that manufacturers of copyrighted goods can combine for the purpose of dictating prices at which the articles shall be sold and of requiring dealers to maintain such prices. The Park case, however, arose prior to the enactment of the present statute; but the statute is a substantial codification of the principles of the common law and must be construed as a continuation thereof. *In re Davis,* 168 N. Y. 89. This agreement does not fix the price at which the publishers must sell their books. They can name the price to the consumer now as they could before, the validity of a contract between manufacturers and purchasers to sell at a stipulated price being well determined. *Garst v. Harris,* 177 Mass. 72; *Fowler v. Park,* 131 U. S. 88; *Walsh v. Dwight,* 40 App. Div. 513. The decision in the present case would not seem to be maintainable. As the dissenting justices indicate, it is difficult to comprehend why a seller of property in respect to which he has a monopoly cannot impose any conditions as to its resale that he may desire.

MUNICIPAL CORPORATIONS—DE FACTO CLERK—PAYMENT OF SALARY—RIGHT OF DE JURE CLERK.—MARTIN V. CITY OF NEW YORK, 68 N. E. 640 (N. Y.).—Plaintiff, a clerk in municipal employ, was irregularly dismissed, but was later reinstated by mandamus proceedings. *Held,* he can not recover salary

paid to a *de facto* clerk who performed the duties of the position during the interval.

The case of *Higgins v. The Mayor,* 131 N. Y. 128, is directly in point, and following *Terhune v. The Mayor,* 80 N. Y. 185, holds that payment to another who actually did the work is a good defense to such an action by a municipal corporation. The general rule is to the contrary. *Dillon, Mun. Corps.,* sec. 235. The salary of a public office is incident to the title and wrongful payment to a *de facto* officer is no defense to an action by a *de jure* officer. *Dorsey v. Smith,* 28 Cal. 21. A municipal corporation wrongfully removing an officer is liable for his salary. *Shaw v. Macon,* 19 Ga. 468. The amount of salary received by a *de facto* officer is the measure of damages receivable by a *de jure* officer for deprivation from office. *United States v. Addison,* 6 Wall. 291.

TITLE TO ANIMAL SKINS—BURDEN OF PROOF—PRESUMPTION.—LINDEN V. MCCORMICK ET AL., 96 N. W. 785 (MINN.).—*Held,* that where the plaintiff purchased deer skins for commercial purposes, it is to be presumed the game was lawfully killed and the skins came lawfully into his possession.

No previous adjudication of the point involved has been found. It is probably the first time it has come before the court for determination. Sec. 33, chap. 22, Gen. Laws, Minn., declares that no person can acquire title to game except by proving the killing of it at the time, and in the manner authorized. This statute was declared constitutional in *State v. Rodman,* 58 Minn. 393. In the present case the court distinguished between the title to game and the title to the product thereof, *id est,* the skins. The burden of proving that the skins were not legally obtained is on the State. *James v. Wood,* 82 Me. 173. *Thomas v. Northern Pacific Express Co.,* 73 Minn. 185. The modern tendency as set forth in this case is, that "a person in good faith may acquire a valid title to skins of wild animals although the same may have been killed contrary to law."

USE OF STREETS—ADDITIONAL SERVITUDE—TELEPHONES.—KIRBY V. CITIZENS' TEL. CO., 97 N .W. 3 (S. D.).—*Held,* that the construction and maintenance of a telephone system on the streets of a city in such a manner as not to cause unnecessary injury is not an additional servitude for which an abutting property owner is entitled to compensation.

The decision in the principal case is based upon the principle that telephones are a means of communication. The reasonable use of the streets of a city for the necessary equipment of a telephone system is not a new and additional burden for which the abutting property owner is entitled to compensation. *Anerach v. Tel. Co.,* 70 Ohio N. P. 633. Other courts hold that telephones were not in contemplation when highways were constructed. *Pacific Cable Co. v. Irvine,* 49 Fed. 113. The construction of a telephone line is an additional burden for which the abutting owner is entitled to compensation. *Eels v. Am. Tel. Co.,* 143 N. Y. 133; *Board of Trade v. Barnett,* 107 Ill. 507; *Willis v. Erie Telegraph & Tel. Co.,* 37 Minn. 347; *Stowerson v. Tel. Co.,* 68 Miss. 559.

WATERCOURSES—SUBTERRANEAN CHANNELS—PERCOLATING WATERS—ADJOINING OWNERS—WASTE—INJUNCTION.—BARCLAY V. ABRAHAM ET AL, 96 N.

W. 1080 (IOWA.)—*Held*, that a landowner who dug a well, thereby diverting percolating waters and cutting off the supply from neighboring wells may be enjoined from wasting for pure malice the full flow of water thus obtained.

This follows the common law rule. *Greenleaf v. Francis*, 17 Pick. 117; *Chatfield v. Wilson*, 28 Vt. 49; *Wheatley v. Baugh*, 25 Pa. 528; *Frasier v. Brown*, 12 Ohio St. 294. *Contra, Huber v. Merkel*, 94 N. W. (Wis.) 354, holding that one is not liable for wasting water drawn from percolations, and that malice is not a factor even though his acts may stop the flow of neighboring wells. This is an extreme interpretation of the doctrine that percolating waters are property. All other recent decisions tend to qualify the doctrine of earliest decisions to the extent that even in the absence of malicious intent, percolating waters may not be used for pure profit, if such an act diminishes the flow of neighboring wells, to the detriment of their owners. *Stillwater Water Co. v. Farmer*, 93 N. W. (Minn.) 907; *Forbell v. City of New York*, 164 N. Y. 522; *Smith v. City of Brooklyn*, 160 N. Y. 357. Reason in the use of the property seems to be a criterion of the decisions on this point. 12 *Yale Law Journal*, 253, 459.