RECENT CASES.

MUNICIPAL CORPORATIONS—CONTRACTS—PATENTED MATERIALS.—MONAGHAN V. CITY OF INDIANAPOLIS, 75 N. E. 33 (IND.).—A statute required that the board of public works of a city let contracts for street improvements to the lowest and best bidder. *Held*, that the board had no power to specify that street should be paved with a patented pavement, though the owner of the patent agreed to furnish the materials at a fixed price to any contractor equipped to lay the same. Wiley, C. J., and Myers, P. J., *dissenting*.

Upon this question the authorities seem to be in irreconcilable conflict. It has been held in several states that where there was such a statute the city did not have the power to let contracts requiring patented materials controlled by one man; *Burgess v. City of Jefferson*, 21 La. Ann. 143; for it would destroy competition and create a monopoly. *Dean v. Charlsto*, 23 Wisc. 590. But in others, and, it seems, with the better reason, the city may contract for a certain kind of asphalt pavement, although the patent of the material is owned by one person. *Verdin v. City of St. Louis*, 131 Mo. 26. It may contract for such things as are deemed for the best interest of the city, although the material contracted for is the product of an exclusive manufacturer. *City of Newark v. Bonnell*, 57 N. J. L. 424. Otherwise, however necessarv to the public welfare, the contract could not be made if the article desired or the manner of performance of the contract required a patented article; *Barber Asphalt Pav. Co. v. Hunt*, 100 Mo. 24; and thus the best interest of the city could not be subserved. *Baird v. Mayor*, 96 N. Y. 567.

CONTRACTS—IMPLIED CONTRACT FOR ATTORNEY'S SERVICES.—DAVIS V. TRIMBLE, 88 S. W. 920 (ARK.).—*Held*, that a contract for professional services cannot be implied between a party indirectly interested in the proceedings and an attorney, where the services were for the benefit of the party, and he, knowing, accepts them. Hill, C. J., Wood, J., *dissenting*.

A contract to pay for legal services may be implied or negatived according to the circumstances. *Mathews v. Lincoln County Commissioners*, 90 Minn. 348. A client, knowing the attorney is rendering services and who does not dissent, is liable on an implied contract for fees. *Davis v. Walker*, 131 Ala. 204; *Cooper v. Hamilton*, 52 Ill. 119. Mere incidental benefits derived from professional services are not sufficient basis for an implied contract to pay for such services. *Lamar v. Hall and Wimberly*, 129 Fed. 79; *Roselius v. Delachaise*, 5 La. Ann. 481. If the party avails himself of the professional services in the ordinary mode in which clients avail themselves of such services and nothing more appears, a promise to pay for such services is implied. *Ames v. Potter*, 7 R. I. 265.

MASTER AND SERVANT—LIABILITY OF INNKEEPER.—CLANCY V. BARKER, 103 N. W. 446 (NEB.).—*Held*, that it is the duty of an innkeeper to protect his guests, while in his hotel, from the assaults of employés. Barnes J., *dissenting*.

Since the *dictum* uttered in *Calye's Case*, 8 Coke, 32, denying the liability of the innkeeper for assaults on guests by servants little attention seems to have been given the subject. According to the tenor of modern

authority the liability of the innkeeper is similar to that of an ordinary master. *Wade v. Thayer*, 40 Cal. 578. Recently there have been some intimations that the rule of liability of common carriers should be applied to innkeepers. *Rommel v. Schambacher*, 120 Pa. 579.

PLEDGES—WAREHOUSE RECEIPTS—DELIVERY.—UNION TRUST CO. v. WILSON, 25 SUP. CT. 766.—*Held*, that goods which are stored, "to be delivered only on surrender of this receipt," are delivered sufficiently by a transfer of the receipt, as against creditors. Harlan, Brewer, and Day, JJ., *dissenting*.

Generally, there must be actual transfer of the property to be good against creditors. *Christian v. Atlantic, etc., R. Co.*, 133 U. S. 241; *Skiff v. Stoddard*, 63 Conn. 198. No matter how numerous the articles are no writing can be a substitute for a pledge. *George v. Pierce*, 123 Cal. 172. But in certain cases, as in that of warehouse receipts, where delivery of the goods is impracticable, it has been held sufficient to deliver the receipt. *Willits v. Hatch*, 132 N. Y. 41. There have been cases to the contrary. *Nat'l Exch. Bank v. Graniteville Mfg. Co.*, 79 Pa. 22. But the great weight of authority is as in the principal case. *Bank v. Hubbard*, 48 Mich. 118; *Union Trust Co. v. Trumbull*, 137 Ill. 146.

MASTER AND SERVANT—NON-COMPLIANCE WITH STATUTE—ASSUMPTION OF RISKS.—HALL v. WEST SLADE MILL CO., 81 PAC. 915 (WASH.).—*Held*, that a master who fails to comply with a statute requiring him to place safeguards over cogs, gearing, and the like, cannot invoke the doctrine of "assumed risk" against a servant who is injured by such unguarded machinery, although the latter knows of the failure to comply with the requirements, and the danger to which he is subjected. Root, Rudkin, and Crow, JJ., *dissenting*.

On this question the authorities are by no means uniform. It is well settled that at common law a servant cannot recover damages when he knows of the dangers incident to his employment; *St. Louis, I. M. & S. Ry. Co. v. Davis*, 54 Ark. 389; for he is presumed to have assumed the risks and cannot recover, though the master is negligent. *Mundle v. Hill Mfg. Co.*, 86 Me. 400. Some states hold that statutes similar to the above one change the common law in this respect and say that failure, by the master, to comply with the requirements renders him liable, even though the servant knows of the dangers; *Brazil Coal Co. v. Hoodlet*, 129 Ind. 327; nor does the right of the servant to recover depend upon his exercising ordinary care. *Catlett v. Young*, 143 Ill. 74. Other states, and, it seems, by the weight of authority, say that these statutes are penal and do not in any way affect the right of the servant to recover; *Knisby v. Pratt*, 148 N. Y. 372, and that the servant cannot recover for an injury resulting from an open and obvious defect caused by the master's failure to perform a statutory duty. *Spiva v. Osage Coal Min. Co.*, 88 Mo. 68.

RELIGIOUS SOCIETIES—JURISDICTION OF COURTS—BONACUM v. MURPHY, 140 N. W. 180 (NEB.).—*Held*, that the courts will not review the process or proceedings of church tribunals for the purpose of deciding whether they are regular or within their ecclesiastical jurisdiction; nor will they attempt to decide upon the membership or spiritual status of persons belonging or claiming to belong to religious societies.

The decisions of the highest tribunal of a church on a purely ecclesiastical matter are binding upon the civil courts. *Kims v. Robertson*, 154 Ill. 394;

Connit v. Church, 54 N. Y. 551. But although civil courts have no power to rejudge the rulings of ecclesiastical tribunals as to matters within their jurisdiction, it has been held that the jurisdiction may be inquired into. *Perry v. Wheeler*, 75 Ky. 541; *Samsell v. Escher*, 11 Ohio Dec. 351. Still, in order for a civil court to have jurisdiction, it must obtain it because some civil or property rights have been violated. *Grimes v. Harmon*, 35 Ind. 198; *Bird v. Church*, 62 Iowa 567. Thus a deposed minister, simply as such, has no civil redress. even though he lose reputation and means of livelihood because of the deposition. *Watson v. Garvin*, 54 Mo. 353. Cases as apparently in conflict as *Chase v. Cheney*, 58 Ill. 509, and *Kreiker v. Shirley*, 163 Pa. 534, the first of which holds that the civil courts will not interfere with religious associations to revise their decision upon ecclesiastical matters, or for the purpose of ascertaining their jurisdiction, and the second of which holds that the laws of an ecclesiastical body will be reorganized and enforced by the civil courts, if not in conflict with the constitution or laws of the state, are reconcilable, if it is considered that the civil courts take jurisdiction only when civil or property rights are violated, *ante*, and that the proceedings of religious associations should receive the same consideration as those of any other voluntary association. *Smith v. Nelson*, 18 Vt. 511. See *xiv Yale Law Journal*, 398.

PRINCIPAL AND AGENT—AUTHORITY OF AGENT—ADMISSIBILITY OF EVIDENCE.—QUALE V. HAZEL, 104 N. W. 215 (S. D.).—*Held*, that where a plaintiff in an action for commission for the sale of land for the defendant, alleged that the contract sued on was made with the defendant's agent, whose authro ity to contract with the plaintiff the defendant denied, the contract between the defendant and his agent, which the defendant testified was the only contract that he had made regarding the sale of the land, was admissible.

Where the nature and extent of the agency is contested, a letter from the principal to the agent bearing upon the scope of his authority is admissible *Slonecker v. Garrett*, 48 Pa. 415; *Bell v. Rankin*, 1 Kan. App. 209. Any paper of this nature that is shown by the agent to the adverse party, even although not used in the transaction between them, is admissible to show the limitations upon the agent's authority. *Deane v. Everett*, 90 Iowa 242; *Herring v. Skaggs*, 62 Ala. 180. The fact that it is not written to the adverse party does not prevent its admission as evidence. *Morse v. Diebold*, 2 Mo. App. 163. So a power of attorney to sell real estate may be concerned in a letter or any other kind of a private writing. *Wheelage v. Lotz*, 44 La. Ann. 600. By any of the above means, it is competent for a principal appointing a special agent to show what his instructions to such agent were, in order to prove the extent of the agent's authority. *Nininger v. Knox*, 8 Minn. 140.

DIVORCE—EVIDENCE OF CO-RESPONDENT.—DELANEY V. DELANEY, 61 ATL. 226 (N. J.).—*Held*, that the uncorroborated evidence of a co-respondent is sufficient evidence on which to grant a divorce.

Generally it has not been so held, although it has been said to be rather a precaution of the courts than a rule of law. *Evans v. Evans*, 93 Ky. 512; *Moller v. Moller*, 15 N. Y. 466. The reason is that the paramour shows, by his very statement, his character to be such that a serious matter, like a decree of divorce, should not be allowed on his unsupported testimony. Some cases, however, follow the law of the principal case in declaring that it is sufficient where it is the only evidence or where the evidence is of equal weight. *Mayer v. Mayer*, 21 N. J. Eq. 286; *Herrick v. Herrick*, 31 Mich. 298.

PRINCIPAL AND AGENT—LIABILITIES—CONTRACT UNDER SEAL.—VAN DYKE v. VAN DYKE, 17 S. E. 582 (GA.).—*Held*, that the rule that an undisclosed principal shall stand liable for the contract of his agent does not apply when the contract is a promissory note under seal.

It is a settled rule of law that no one but a party to a sealed instrument can be sued thereon. *Briggs v. Partridge*, 64 N. Y. 347. But there is conflict as to whether the sealed instrument can be disregarded and suit be brought against the undisclosed principal on an implied contract, in cases where the seal is not necessary as above. It was held, in *Boerscherling v. Kotz*, 37 N, J. Eq, 150, that it could not; but the best considered cases hold otherwise; *Moore v. Granby Min. Co.*, 80 Mo. 86; *Hitchcox v. Moore*, 4 Wend. 285; and there seems to be no reason why the mere fact that an instrument is under seal, though it is not necessary as in the above case, should change the liability of the principal. *Kirshbor v. Bauzel*, 67 Wis. 178.

RAILROAD—CROSSING ACCIDENTS—CONTRIBUTORY NEGLIGENCE.—YEATON v. BOSTON & M. R, R. 61 ATL. 522 (N. H.).—*Held*, that, where plaintiff is killed by attempting to cross in front of a train, his contributory negligence is immaterial if the company's servants, by the exercise of care, could have avoided the accident.

As a rule negligence which contributed to the injury will prevent a recovery. *Chicago etc. R. Co. v. Dewey*, 25 Ill 255; *Young v. Old Colony R. Co.*, 156 Mass. 178, If defendant's acts are gross or willful contributory negligence is immaterial. *Kans. Pac. R. Co. v. Pointer*, 14 Kan. 37. The present case is an illustration of the stricter rule that is applied to railroad crossings. In case of negligence in failure to use signals, etc., the plaintiff's contributory negligence will prevent a recovery. *Ga. Pac. R. Co., v. Lee*, 92 Ala. 262; *State v. Me. Cen. R. Co.*, 77 Me. 538. While a similar amount of negligence in not using due care on seeing a person approaching a crossing will render plantiff's contributory negligence immaterial. *Kean v. Balt. & O. R. Co.*, 61 Md. 154; *Maryland Cent. R. Co. v. Newheur*, 62 Md. 391.

TORTS—CHARITABLE ORGANIZATIONS.—ILL. CENT. R. R. Co. v. BUCHANAN, 88 S. W. 312 (KY.).—*Held*, that where a railroad hospital association was incorporated and supported by monthly assessments deducted by the railroad from the employés' salaries the railroad was not liable for the negligence of physicians of the hospital in treating a railroad employé. Hobson, C. J., Munn, J., *dissenting*.

The rule is that those who furnish hospital accommodations and medical attendance, not to make profit thereby, but out of charity are not liable for the malpractice of the physicians or the negligence of the attendants they employ, but are responsible only for their own want of ordinary care in selecting them. *Glavin v. R. I. Hospital*, 12 R. I. 411; *Secord v. St. Paul M. & M. R. R. Co.*, 18 Fed. 221. The company has performed its whole duty when it has selected a proper and competent man. *Van Tassell v. Manhattan Eye & Ear Hospital*, 15 N. Y. Supp. 620; *McDonald v. Mass. Gen. Hosp.*, 120 Mass. 432. But if the company conducts the hospital to derive profit thereby, it would be liable for the want of skill of its physicians. 1 *Shearm & Redf. Neg.* Sec. 331.

TRUSTS—SAVINGS BANK DEPOSITS.—NICHOLAS v. PARKER, 61 ATL. 267 (N. J.).—*Held*, that a savings bank deposit made by intestate in her own name

as trustee for another, she retaining complete control during her life, was insufficient to create a trust.

The intention to or not to create a trust is the controlling element. *Kelley v. Snow*, 185 Mass. 288. Many courts hold that the mere deposit in trust for another without more raises an inference of a trust. *Gafney's Estate*, 146 Pa. St. 49; *Robertson v. McCarty*, 54 N. Y. App. Div. 103. Others hold that some further act is necessary to evidence intent. *Cleveland v. Hampden Sav. Bank*, 182 Mass. 110; *Marcy v. Amazeen*, 61 N. H. 131. Some jurisdictions go farther and hold that it may be a trust, even though the donor intends to retain control over it till his death. *Martin v. Martin*, 166 N. Y. 611; *Miller v. Clark*, 40 Fed. 15. But the general rule is that the reservation of the power of revocation negatives the intention to create a trust. *Providence Sav. Inst. v. Carpenter*, 18 R. I. 287.

WILLS—UNDUE INFLUENCE—BRADFORD V. BLOSSOM, 88 S. W. 721 (MO.).—*Held*, that undue influence may be inferred from facts and circumstances—from the relation of the parties and testator's mental condition. Brace, C. J., Marshall, J., *dissenting*.

The widest range of evidence is permitted to show undue influence. *Reynolds v. Adams*, 90 Ill. 134; *Beaubien v. Cicotte*, 12 Mich. 459. That influence is not presumed to be undue which is acquired by affection, honest argument or persuasion, *Re Snelling*, 136 N. Y. 515, close relationship, charge and control of decedent's business affairs, presence of chief beneficiary when will was executed, *Mackall v. Mackall*, 135 U. S. 167, unless testator's free agency is destroyed. *Schmidt v. Schmidt*, 20 Ill. 191. To invalidate the will, undue influence must be intentionally exercised specifically to secure the testament in question. *Herster v. Herster*, 116 Pa. 612. Unless the testator's mental capacity at the time of the execution of the will is questioned neither his prior nor subsequent declarations are competent evidence. *In re Donovan's Estate*, 140 Cal. 390.

LANDLORD AND TENANT—LANDLORD'S LIEN—POSSESSION OF CROPS.—GROESBECK V. EVANS, 88 S. W. 889. A creditor of a tenant attempted by execution to remove the tenant's crop from the premises of the landlord and it was *held*, that the landlord, by virtue of his lien, has such possessory rights in the crop of his tenant as to prevent its removal from the premises, and if removed, to maintain an action as to the right of property, in order to have the crop returned.

A landlord's lien for rent is paramount to the lien of an execution creditor; *Travers v. Cook*, 42 Ill App. 580; or to a prior judgment. *Reddick v. Hutchinson*, 94 Ga. 675. There is a cause of action against the creditor of the lessee to the extent of the lessor's lien. *Ward v. Gibbs*, 10 Tex. Civ. App. 287 Where a tenant's mortgagee converts the crop the landlord can maintain special action on the case for his lien for rent. *Hudson v. Vaughan's Ex'rs*, 57 Ala. 609; *Shepherd v. Taylor*, 105 Ala. 507. Injunction is a proper remedy to enforce a landlord's lien upon property found upon the rented premises, as against execution creditors endeavoring to sell it to satisfy their debts. *Click v. Stewart*, 36 Tex. 280. A tenant may dispose of crops without consent of the landlord. *Doremus v. Howard*, 23 N. J. L. 390.

HOMICIDE—COOLING TIME.—FRANKS V. STATE, 88 S. W. 923 (TEX.).—*Held*, that cooling time was a question of time in which the mind of an ordinary

man might regain his reason and become sedate, and not one of the actual condition of the mind at the time of the homicide. Brooks, J., *dissenting*.

It has been held that cooling time was a question of fact as to the actual condition of the man's mind at the time of committing the homicide. *Jones v. State*, 33 Tex. Cr. R. 492. But by the great weight of authority there seems to be no hard and fast rule. *State v. Hill*, 4 Dev. & Bal. Law 396. It is a question of time to be determined upon the facts and circumstances of each particular case; *State v. Yarbrough*, 39 Kan. 581; generally the time in which an ordinary man would have cooled is regarded as a reasonable time; *Kilpatrick v. Com.*, 31 Pa. 198; and if this time has elapsed, which is a question of fact for the jury, the crime is not reduced to manslaughter, even though it is clear that the rage did actually continue and cause him to strike the fatal blow. *McNeill v. State*, 102 Ala. 121.

CORPORATIONS—STOCK DIVIDENDS—INCOME OR PRINCIPAL.—SAFE DEPOSIT AND TRUST CO. v. WHITE, 61 ATL. 29 (MD.).—*Held*, that a dividend in stocks of a corporation declared out of the net earnings, is income and not principal.

Such has been the rule in some jurisdictions. *McLouth v. Hunt*, 154 N. Y. 179; *Ashurst v. Field's Adm'rs*, 26 N. J. Eq. 1. The reason is that being income it makes no difference what form it assumes. *In re Smith*, 140 Pa. St. 344. On the other hand, by what would seem to be the better reasoning, it is held, contrary to the rule in the principal case, that shares of stock represent an interest in the capital and management of the corporation and hence, should be considered principal. *Davis v. Jackson*, 152 Mass. 58. *Gibbons v. Mahon*, 156 U. S. 549.

CONVERSION—MEASURE OF DAMAGES.—BARKER V. ST. LOUIS STORAGE AND TRANSFER CO. 61 ATL. 363 (CONN.).—*Held*, that the measure of damages for the conversion of household goods, is not the market value, but the value to the owner based on his actual loss.

The general rule in the law of damages is that the market price is to be taken as the value. *Parmenter v. Fitzpatrick*, 135 N. Y. 190. And such has been held to be the case even where the goods are of special value to the owner. *Iler v. Baker*, 82 Mich. 226; *Beebe v. Wilkinson*, 30 Minn. 548. But, as the law aims to put a man in as good position as he would have been in had the loss not occurred, the true measure of damages would seem to be, as in the principal case, the actual value to the owner. *Stickney v. Allen*, 76 Mass. 352; *Lovell v. Shea*, 18 N. Y. Supp. 193.