RECENT CASES.

APPEAL—WAIVER—STIPULATIONS—AVOIDANCE—ARTHUR D. JONES CO. v. SPOKANE VALLEY LAND & W. CO., 87 PAC. 65 (WASH.).—*Held*, that where parties to a suit made a stipulation that any appeal taken from the judgment of the trial court should be taken in time to be heard at a certain date otherwise to be dismissed, a mistake by counsel as to the date of the commencement of the term was not a sufficient cause to avoid the dismissal. Fulton, J., *dissenting*.

The right of appeal is favored in the law and will not be held to have been waived except on clear and decisive grounds. *Hixon v. Oneida County*, 82 Wis. 520. Nevertheless, the right of appeal may be waived by an agreement supported by sufficient consideration. *Mackey v. Daniel*, 59 Md. 484. But not if agreement was the result of fraud, mistake, or surprise. *Town of Alton v. Town of Gilmanton*, 2 N. H. 520. Nor in criminal cases, *Smith v. Commonwealth*, 14 S. & R. (Pa.) 69. Such an agreement does not take away the right of the court to review on writ of error. *Putnam v. Churchill*, 4 Mass. 516. The attorney-general may waive his right of appeal by parol agreement and the same is binding on his successor. *Peo. v. Stephens*, 52 N. Y. 306. While there seem to be no cases involving mistake as applied to an agreement of this kind, it has been held, in the absence of any agreement, that an omission to file appeal papers owing to a mistake of fact, is not a sufficient cause to avoid dismissal of the appeal. *Gill v. Hudson*, 14 La. 203; *Rain v. Thomas*, 12 Fla. 493.

ASSAULT AND BATTERY—DAMAGES—FRIGHT OF WIFE.—HUTCHINSON v. STERN, 101 N. Y. SUP. 145.—*Held*, that the plaintiff in an action for an assault committed on him in the presence of his wife, cannot recover for injuries to the wife, occasioned by fright, and subsequent loss of service of the wife. Kruse and Spring, J.J., *dissenting*.

The general rule is that pain of mind is only the subject of damages when connected with bodily injury. *Morse v. Duncan*, 14 Fed. 396. However, this is subject to the qualification that a recovery for mental injuries and suffering alone is not precluded in cases of wilful tort. *Williams v. Underhill*, 71 N. Y. Sup. 291. So where plaintiff's wife was sick so that they could not move at the termination of his lease, and defendant started to tear down the house, exciting the sick woman and filling her room with dust, so that she had to be removed and shortly died, the defendant was held liable, though deceased suffered no immediate personal injury, and her death was due solely to fright and excitement. *Preiser v. Wielandt*, 62 N. Y. Sup. 890. But where the fright and mental suffering was not caused by a wilful tort but by an accident, no action can be maintained to recover the damages thereby sustained. *Lehman v. Brooklyn City Ry. Co.*, 47 Hun. 355. No well considered case has held that fright alone, not resulting from some physical injury to the person, will sustain an action for negligence. *Ewing v. Pittsburg C. and St. L. Ry. Co.*, 147 Pa. 40.

BILLS AND NOTES—IRREGULAR INDORSERS—LIABILITY—GOLDING SONS CO. v. CAMERON POTTERY CO., 55 S. E. 396 (W. VA.).—*Held*, that when a payee

does not indorse a promissory note, he may, in the absence of any agreement, treat irregular indorses as joint promisors, or as guarantors, or as indorsers at his election.

This case emphasizes a divergent view on a point about which the decisions are inharmonious. The most widely prevailing view is that, under the conditions set forth, an irregular indorser is presumptively either a joint maker, *Union Bank v. Willis*, 8 Metc. (Mass.) 504; *Hamilton v. Johnston*, 82 Ill. 39, or a guarantor, *Riggs v. Waldo*, 2 Cal. 485; *Harding v. Waters*, 74 Tenn. 324. Some jurisdictions, however, hold that where the indorsement was made to give the maker credit with the payee the irregular indorser is liable as first indorser. *Moore v. Cross*, 19 N. Y. 227; *Blakeslee v. Hewett*, 76 Wis. 341. While other courts make the distinction that an irregular indorser before delivery is a joint maker, an irregular indorser after delivery a guarantor. *Thomas v. Jennings*, 13 Miss. 627; *Powell v. Thomas*, 7 Mo. 440.

CARRIERS—ACTION FOR INJURY TO PASSENGERS—NEGLIGENCE A MATTER OF LAW—PITTSBURGH RY. CO. V. BLOOMER, 146 FED. 720 (PA.)—*Held*, where a motorman started a street car forward without any signal from the conductor, and a passenger alighting therefrom was injured, there being no conflict of evidence on this point, the trial judge is justified in charging the jury as a matter of law that the defendants were negligent.

It sometimes happens, when the facts are not ambiguous and there is no room for two honest and reasonable men to arrive at different conclusions, that negligence becomes a question of law for the judges to decide. *Ry. Co. v. Van Steinburg*, 17 Mich. 99; *Ry. Co. v. Stout*, 17 Wall. 657. But there is no general rule, the application of which will determine in every case, with certainty, whether the inference as to negligence, to be drawn from ascertained facts, is one of fact or of law. *Farrell v. Waterbury Horse Ry. Co.*, 60 Ct. 239. The mere finding of all the facts by the court does not make negligence a question of law, for such a course would speedily put an end to all jury trials. *Williams v. Clinton*, 28 Ct. 264; *Fiske v. Bleaching Co.*, 57 Ct. 119. Nor is it true that when the court finds facts undisputed, the question of negligence is necessarily one of law. *Ry. Co. v. Van Steinburg*, 17 Mich. 99; *Warton on Neg.* Sec. 420. But where there has been a clear breach of legal duty and special findings of fact are made by the court, it may hold negligence to be a conclusion of law. *Nolan v. Ry. Co.* 53 Ct. 461; *Beardsley v. Hartfort*, 50 Ct. 529. This is a much more simple question when the measure of duty is precisely defined by law. Then a failure to attain that standard is negligence in law. *Beach on Contrib. Neg.*, Sec. 163.

CARRIERS—DISCRIMINATION—CONSTITUTIONAL LAW—DEPRIVATION OF PROPERTY—LOUISVILLE & N. R. CO. V. CENTRAL STOCKYARDS CO., 97 S. W. 778. (KEN.), Const. Sec. 213 requires all railroads to transfer, deliver and switch empty or loaded cars coming to or going from any railroad with equal promptness and dispatch, and without discrimination, and to deliver, transfer, and transport all freight from and to any point where there is a physical connection between the tracks of such carrier and those of a connecting carrier. *Held*, that the performance of the duties imposed by such section did not deprive the carrier of his property without due process of law, though the performance thereof put the carrier to an increased expense and necessitated its parting

with the possession and control of its cars for a reasonable time, while they were in the possession of a connecting rival carrier. Barker, J., *dissenting*.

The above case is one of decided interest especially at this time on account of the great discussion in regard to the various phases of interstate commerce and its increasing importance. A consignor of goods, after they have passed from the hands of the R. R. Co. with which the contract of affreightment was made, into the hands of another Co., has the same right to change their destination while *in transitu*, as if the first Co., had a continuous line to the place of destination, *Penn. R. R. Co. v. Rennock*, 51 Penn. 244; 4 Kan, 378. *Contra*, *Childs v. Digby*, 24 Penn. St., 23. But the contention of the dissenting judge is that there is a taking of private property without the owner's consent and for the private use of another which is not due process of the law and therefore a violation of the 14th Art. of the Constitution of the U. S. and he quotes the famous case of *Loan Association v. Topeka*, 20 Wall, (U. S.) 655 to substantiate this proposition. However the greater weight of authority follows the majority opinion of the judges in this case.

CARRIERS—WHO ARE PASSENGERS—FITZMAURICE v. N. Y. N. H. & H. R. R. Co., 78 NORTHEASTERN 418 (MASS). In this case the person injured as the result of a collision had obtained a ticket by presenting to the agent a forged certificate that she was under eighteen, and a pupil in a certain school, the railroad having contracted to convey pupils at reduced rates. *Held*, that the carriage of the person was brought about by fraud and that she was not a passenger. See Comment *ante*.

CHARITABLE INSTITUTIONS—INJURIES TO SERVANTS—HEWETT v. WOMAN'S HOSPITAL AID ASS., 64 ATL. 190 (N. H.)—*Held*, that a hospital conducted as a charity is liable for the negligence of its manager in failing to notify a nurse of the contagious nature of a case assigned to her. The court points out that the hospital is incorporated under a general charter, and that although it has no capital stock and made no division of profits, and all its property was devoted to charitable uses, it is liable, and cites a number of English and American cases. The court also rejected the contention that as the plaintiff was an apprentice learning a trade, she was not a servant, and that the corporation was therefore relieved of its ordinary duty to her in that capacity.

CONSPIRACY—RIGHT TO EXCLUDE PERSON FROM THEATRES—PEOPLE EX REL. BURNHAM v. FLYNN—100 NEW YORK SUPP. 31. The defendants conspired to prevent the plaintiff from exercising a lawful trade or calling. Because of various criticisms made of the plays given at the various theatres, the defendants had given instructions that the critic should not be admitted, and he had been forcibly prevented from entering after purchasing a ticket. *Held*, that the conducting of a theatre is a private enterprise, and that, in the absence of Statutary regulation, the proprietor has the right to say who shall enter. Under this doctrine the court states that the agreement to exclude the critic was not an unlawful one, and that if his presence was distasteful as injurious to their business the proprietors had the lawful right to agree to exclude him.

CORPORATIONS—CORPORATE EXISTENCE—COMMONWEALTH EX. REL. ATTORNEY GENERAL v. MONONGAHELA BRIDGE CO., 64 ATLANTIC 909 (PA.) The city of Pittsburg bought all the shares of the capital stock of the stockholders of a bridge company. *Held*, that all the shares of a corporation are held by one person does not effect the existence of the corporation.

A corporation, other than a joint-stock corporation, may be dissolved by the death of all its members or the withdrawal of all its members, or of such a number of its members that too few remain, under the constitution of the corporation, to continue the succession and file vacancies, *Blackwell v. State*, 36 Ark. 178; *Philips v. Wickham*, 1 Paige 590 (N. Y.) But it is not dissolved by the fact that all the shares of its capital stock have come into the hands of a single stockholder, or of a less number of stockholders than were required by the statute in the formation of the corporation. *In re Belton*, 47 La. Ann. 1614; *Louisville Banking Co. v. Eisenman*, 94 Ky. 83. Although under such circumstances, corporate action may be suspended, *Swift v. Smith*, 65 Md. 428, and a surrender of a charter by a corporation may be presumed from a neglect, for a long time, to choose corporators, *State v. Trustees of Vincennes University*, 5 Ind. 77. A corporation composed of many stock-holders may be dissolved by an individual obtaining possession of all the stock, *In re. Bellona Co.*, 3 Bland 442 (Md.) This last decision was rendered in 1831, and then represented a minority rule, bnt the general tendency since has been to reject it and now it is doubtful if there is any minority rule on this subject. *Bridge Co. v. Traction Co.*, 196 Pa. 25; *Morawetz on Private Corporations*, 1009, 10 *Cyc.* 1277. It makes no difference in principlewhether the sole owner of the stock of a corporation is a man or another corporation, *Exchange Bank v. Construction Co.* 97 Ga. 1-6.

CRIMINAL LAW—DEATH SENTENCE FOR LIFE CONVICT—BROWN V. STATE, 95 SOUTH WESTERN 1039, (TEX.)—*Held*, that although one is serving a life sentence for murder, such previous conviction does not constitute a bar to a second prosecution for murder, which may result in conviction and a death sentence may be put into effect immediately.

CRIMINAL LAW—LARCENY—STEALING GAS.—WOODS V. PEOPLE, 78 NORTHEASTERN, 607 (ILL.)—*Held*, that the occupant of a building who removes the meters and substitutes rubber hose connections, is guilty of grand larceny as feloniously taking the personal goods of another. The defendant's plan was to remove the meter as soon as the gas inspector had read it, and connect the pipes by means of rubber hose, this connection being left in place until near the time for the reappearance of the gas man, when it was removed and the meters replaced. It was also held in this case that in ascertaining whether the value of the gas taken was sufficient to make the offense grand larceny, the value of the gas consumed upon a number of consecutive days should be added together, and that the gas taken on each separate day did not constitute a separate offense. It was further held that in ascertaining the value, the jury should be guided by the selling price and not by the cost price of the gas.

DEAD BODIES—MUTILATION—DAMAGES—MENTAL ANGUISH.—LONG ET AL. V. CHICAGO, R. I. & P. R. R CO., 86 PAC. 289 (OKL.)—*Held*, that the parents of a deceased child are not entitled to damages for mental pain caused by the mutilation of the dead body of the child.

Cooley, in his work on torts, p. 280, says: ". . . the owner of the lot in which the body was deposited might maintain trespass *quare clausum* for its disinterment and recover substantial damages, in awarding which the injury to the feelings would be taken into consideration." It logically follows that a court that would allow damages for mental anguish caused by mutilation after burial would also allow the same damages for mutilation before

burial. And in accordance to this principle it was held in *Renheim v. Wright*, 25 N. E. 822 (Ind.), decided in 1890, in a case parallel to the present one, that mental anguish should be considered in awarding damages. Also *Wadsworth v. Telegraph Co.*, 86 Tenn. 695, where there was no pecuniary loss but only mental pain. Damages for mental anguish have been granted by the current weight of authorities. *Bessemer Land and Imp. Co. v. Jenkins*, 111 Ala. 135; *Am. & Eng. Ency. of Law*, Vol. 8, p. 54 (2nd edition); *Koerber v. Patek*. 102 N. W. 40 (Wis.); *Thurfield v. Mountain View Cemetery*, 12 Vt. 76. That a corpse is personal property is held in *Bogart v. City of Indianapolis*, 13 Ind. 135. Also a very strong case in favor of damages for mental pain is *Larson v. Chase*, 50 N. W. 238.

EMINENT DOMAIN—RIGHT OF WAY THROUGH CEMETERY. R. R Co. v. FOREST HILL CEMETERY Co., 94 SOUTHWESTERN 69 (TENN.)—*Held*, that "the wheels of commerce must stop at the grave." It was sought to have a right of way for the railroad condemned through a portion of the cemetery which had not as yet been used for burial purposes, for the reason that other available rights of way would be more difficult and more expensive to prepare.

HUSBAND AND WIFE—POWER TO CONTRACT.—MATTHEWSON v. MATTHEWSON, 79 CONN. 23. An action by a wife against her husband to recover the amount of a promissory note given to her.—*Held*, the right to make a contract carries with it a right to sue for its violation.

A contract between husband and wife is valid and an action for breach will lie, *George v. High*, 85 N. C. 99. Husband may lawfully borrow money from his wife and thereby become her debtor, *Rowland v. Plummer*, 50 Ala. 182. Where a husband borrowed money from his wife and gave his note, declaring it belonged to her separate estate, his estate is liable. *Bryant's Adm'rs v. Bryant*, 66 Ky. (3 Bush.) 155. Also the husband's note is valid. *Logan v. Hall*, 19 Ia. 491. The husband's estate is liable for loans from the wife, *Whitford v. Daggett*, 84 Ill. 144; *Johnston's Adm'rs v. Johnston*, 1 Grant's Cases, 468 (Penn.). It has been held that when a wife loaned money to her husband and he used it to pay off mortgages on property owned by both, that the wife could recover from his estate. *Greiner v. Greiner*, 35 N. J. Eq. (8 Stew.) 134. The husband's parol promise to repay a loan to the wife will be enforced in equity, *Schaffner v. Renter*, 39 Barb. (N. Y.) 44; and though there be no formal agreement or promise to repay, it was held to be a loan. *McNally v. Weld*, 30 Minn. 209. No express promise to pay is needed, it will be implied. *Steadman v. Wilbur*, 7 R. I. 481. It has been held where money is loaned by the wife to the husband an action cannot be maintained in law or in equity against his person or estate. *Woodward v. Spurr*, 141 Mass. 283. A woman cannot contract with or sue her husband. *Fowle v. Torrey*, 135 Mass. 87.

MASTER AND SERVANT—INJURIES TO SERVANT—ASSUMPTION OF RISK—SWARTS v. R. M. WILSON MFG. Co., 100 N. Y. Supp. 1051.—*Held*, that where an experienced servant complained on Monday of the manner in which the machine he tended was operated, and the master promised to remedy the matter on the following Saturday, and he was injured in the meantime owing to the condition complained of, he did not assume the risk. Nash and Williams, JJ., *dissenting*.

Cases on this point are in conflict. As a general rule if a servant continues in the service of his employer after he has knowledge of any unsuitable

appliances in connection with which he is required to labor, and it appears that he fully comprehends and appreciates the nature and extent of the danger, he will be deemed to have assumed all risks incident to the service under such circumstances. *Conley v. American Express Co.*, 87 Me. 352; *Marsh v. Chickering*, 101 N. Y. 396. *Meador v. Lake Shore and Mich. South. Ry. Co.* 138 Indiana 290, holds that where an employe, whose duties require him to use a ladder, discovers that the ladder is defective and dangerous, and notifies the master, who promises to furnish another, but before doing so the employee, in using the defective ladder is injured, the master is not liable, although the service in which the ladder was used was of a kind which could not be postponed. A workman is under no obligation to continue working in a dangerous place of employment. If he does so, with every opportunity to know the danger he cannot excuse his own want of care in failing to notice and guard against it, by alleging that his employer promised to do this and had failed to observe his promise. *Reese v. Clark*, 146 Pa. 465. *Snowberg v. Nelson—Spencer Paper Company*, 43 Minn. 532, holds, however, like the case in point, that the alleged promise of the defendant to remedy the defects and his request to plaintiff to continue using the machinery until he should remedy it, brings the case within the recognized exception to he general rule that a servant who uses defective machinery, knowing of the defects, and the consequent danger, does so at his own risk. *St. Clair Nail Co. v. Smith*, 43 Ill. App. 105, and *T. & N. O. Ry. Co. v. Bingle*, 9 Texas Civil App. 322 are also in point.

MUNICIPAL CORPORATIONS—EMPLOYEES—COMPENSATION—MAY V. CITY OF CHICAGO—78 N. E. REP. 912 (ILL.) A regular employe in the Collector's office did extra work for which he was promised extra compensation by the Collector. *Held*, that he was not entitled to it.

Employes in a city department are not entitled to extra compensation even though detailed and requested by the head officer of such department. *Bruns v. City of New York*, 6 Daly (N. Y.) 156; *Merzback v. City of New York*, 30 N. Y. Supp. 908. By the doing of extra work in making a digest of the laws, an attorney for the city cannot recover extra compensation. *Hays v. City of Oil City*, 11 Atl. 63; or other extra work. *People v. Supervisors*, 1 Hill (N. Y.) 362. When a Solicitor does extra professional work he does acquire the right to additional compensation, *City of Baltimore v. Ritchie*, 51 Md. 233, the same being held when a health officer performed extra duties, *Wendell v. City of Brooklyn*, 29 Barb (N. Y.) 204; and also in the case of a city treasurer for extra work, *City of Covington v. Maybury*, 9 Bush (Ky.) 304. A person accepting a public office at a fixed salary cannot claim additional compensation for extra work even though promised by a committee. *Evans v. City of Trenton*, 4 Zab (24 N. J. L.) 764. It has been held, however, that when a clerk does extra work, the additional sum so earned, is treated as an increase in salary which is allowed, providing the head officer of the department keeps his expenses within the limits of the appropriation. *People v. Corwin* 29 N. Y. Supp. 1077. Where duties are foreign to those for which he was employed he can recover for such extra work. *City of Detroit v. Redfield*, 19 Mich. 376.

NEGLIGENCE—DANGEROUS MACHINERY—CARE REQUIRED—PLACES ATTRACTIVE TO CHILDREN. MCALLISTER V. SEATTLE BREWING AND MALTING CO., 87 PAC. 68 (WASH.) *Held*, that where dangerous machinery of a character

likely to excite the curiosity of children, is left unguarded in an exposed place, where children are liable to be, though on the premises of the owner, and a child attracted to it is injured, the owner is liable.

Although a railroad company is not bound to the same degree of care in regard to mere strangers, who are on its premises, that it owes to others, yet it is not exempt from liability to such strangers for injuries arising from its negligence. *R. R. Co. v. Stout*, 17 Wall. 657. The cases following the above seem to be of two classes; the first, being based on the proposition that whenever a dangerous machine, attractive to children, and where they are wont to play, is left unguarded it is the duty of the railroad to keep it in a safe condition. *R. R. Co. v. Stout, supra. R. R. v. Bailey*, 11 Neb. 333. The second class is based on the theory of constructive invitation, i. e., if one is allured or attracted on to the premises, he is not a trespasser, and leaving an unguarded, attractive machine is such. *Keffe v. Milwaukee & St. Paul Ry. Co.*, 21 Minn, 207. The fact that a child is a trespasser will not necessarily preclude him from a recovery against a party guilty of negligence. *Birge v. Gardner*, 17 Conn. 507. Some States, however, contrary to the general rule, hold that he cannot recover. *Daniells v. R. R.*, 154 Mass. 349; *Frost v. R. R.*, 64 N. H. 220.

PARENT AND CHILD—CUSTODY OF CHILD.—WORKMAN V. WATTS, 54 SOUTHEASTERN REP. 775 (S. C.) Parents of a child placed her in the custody of her grandparents in her infancy and she was supported and educated by them till nearly fourteen years of age; at which time the parents sought possession of the child, who expressed under oath a desire to remain with her grandparents. There was no unfitness of either party shown. *Held*, that she would be allowed to remain with the grandparents.

We meet the old common law rule which gives the custody of the children to the father as against the mother and especially as against third persons, *Johnson v. Terry*, 34 Conn. 395. Unless it is of tender years, and its parents are separated. *Gray v. Field*, 19 W'k'l'y. Law Bul. 121. Yet the father may deprive himself of this right by ill-fitness or voluntary transfer of his right of custody, *Bently v. Terry*, 59 Ga. 555; but this transfer is invalid if the child is over fourteen years of age and it was done without the child's consent. *State v. Smith*, 6 Me. 462. There is a difference of opinion among the States as to the legal possibility of the transfer of the custody. As to this, the minority rule has been gradually disappearing. Some of those States have held that in such a transfer, there is a lack of mutuality and such an agreement is voidable as a delegation of powers. *Foulke v. People*, 4 Colo. App. 519, *Ward v. People*, 3 Hill 395. But those jurisdictions, which allow the transfer by the parents, hold it is not revocable unless some sufficient legal reason is shown. *Janes v. Cleghorn*, 54 Ga. 9; *State v. Barney*, 14 R. I. 62. This view has been developed farther and by the great weight of authority the Court will not restore the child unless it is for the benefit of the child, *People v. Lohman*, 17 Abb. Prac. 395. In such a case, the wish of the child is almost controlling, unless under tender age for then the welfare of the child must not be placed in jeopardy by the exercise of an immature judgment, *Curtis v. Curtis*, 71 Mass. 535.

PRINCIPAL AND AGENT—EXISTENCE OF AGENCY.—EAGLE IRON CO. V. BAUGH, 41 SOUTH. REP. 663. (ALA.)—*Held*, that the authority of an agent cannot be established by the declarations of the alleged agent.

The fact of the agency or the nature and extent of the authority cannot be established by the agent's own declarations. *Whiting v. Lake*, 91 Pa. 349; nor by his correspondence. *Hill v. Helton*, 80 Ala. 528; and this rule is just as inflexible in not allowing it proved by his affidavit, *Bowen v. Powell*, 1 Lans. 1. This is far from saying that an agent is an incompetent witness to prove the fact of the agency or authority. Where parol evidence, as to the existence of the agency or extent of the authority, is admissible at all, the agent is as competent a witness as any other person to testify under oath to facts within his knowledge touching the agency, *Rice v. Gore*, 22 Pick. 158; *Indianapolis Chair Mfg. Co. v. Swift*, 132 Ind. 197. Even the old rule of evidence, which excluded the testimony of a party in interest, made an exception in favor of the evidence of an agent produced to prove the fact of the agency, 1 *Greenleaf Evid.* 416; *Thayer v. Meeker*, 86 Ill. 470. And this applies equally when a husband is the agent of his wife or a wife of her husband, *Roberts v. N. W. Nat. Ins. Co.*, 90 Wis. 210. But if the authority be conferred in writing, parol evidence of any kind is generally inadmissible. *Neal v. Patten*, 40 Ga. 363; unless it be where the question of authority is only incidentally involved, *Columbia Bridge Co. v. Geisse*, 38 N. J. Law 39.

RAILROADS—REGULATIONS—STOPPING FAST MAIL—INTERSTATE COMMERCE RAILROAD COMMISSIONERS V, ATLANTIC LINE RY. CO., 54 S. E. 224 (S. C.).—Where accommodations furnished citizens of the state by an interstate railroad are inadequate, *held*, a writ of mandamus compelling the company to stop two fast mails or else furnish other equal facilities, is not an unreasonable burden on interstate commerce.

Congress alone has the power to regulate interstate commerce, Const., Art. I, Section 8, and when state legislation is in its essence and of necessity a regulation of interstate commerce, it is an encroachment upon the power of Congress over the subject, and is therefore void. *Cooley's Principles of Const. Law*, page 71. However, this must be distinguished from mere local aids for its improvement. *County Mobile v. Kimball*, 102 U. S. 691, 702. For, while a statute interfering with the mails of the U. S. has been considered not within reasonable police regulation and void; *Ill. Cen. R. R. v. Ill.*, 163 U. S. 142; yet a statute directing that passenger cars should be heated by stoves has been held to be a proper police regulation. *N. Y., N. H. and H. R. R. v. N. Y.*, 165 U. S. 628. And, although state regulations, if local in their nature and adapted to the locality, will not be considered void, *Cooley on Const. Law*, page 71, yet a state may not, under the cover of exerting its police powers, substantially prohibit or burden interstate or foreign commerce. *Ry. Co. v. Husen*, 95 U. S. 465. So while the cases seem to hold that local regulations are reasonable as long as they do not directly interfere with interstate commerce; whether the stopping of mail trains is such a regulation seems to be a matter of doubt.

REAL PROPERTY—TITLES BY POSSESSION—RIGHTS OF SQUATTERS.—LINK V. BLAND, 95 SOUTHWESTERN 1110 (TEX.).—*Held*, that a squatter may secure title to land after ten years' possession in spite of the fact that he took possession of the land without any claim of right and with the intention of holding the land if possible against all other claims. In this case the land belonged to a railroad company, and the claimant is given title to a quarter section which he cultivated and used as his homestead. The decision conforms to

previous decisions of the Texas court, and is made in spite of the statutory definition that adverse possession must be an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another.

RESTRAINT OF TRADE—CONTRACT TO SECURE TRAFFIC—VALIDITY.—DELAWARE, L. & W. R. Co. v. KUTTER, 147 FED. 51. Defendant railroad company entered into a contract with plaintiff to build up, develop, and conduct the business of the transportation of milk on its lines of road. Plaintiff was to have full charge of such business and was to receive as a compensation a percentage of the freights earned thereon. *Held*, that such a contract was not void as being in restraint of trade nor contrary to the anti-trust act to protect trade and commerce against unlawful restraint and monopolies.

The contracts prohibited by the anti-trust act of July 2, 1890, are simply those void under common law. *U. S. v. Trans-Missouri Freight Asso.*, 58 Fed. 58. And at the present day the mere fact that a contract to some degree restricts trade is not sufficient to avoid it. *Central Shade Co. v. Cushman*, 143 Mass. 353; *Hubbard v. Miller*, 27 Mich. 15. In order to be illegal such contracts must involve an appreciable diminution of the number of the persons engaged in the trade or of the supply furnished. *Fowle v. Park*, 131 U. S. 88; *Diamond Match Co. v. Roeber*, 106 N.Y. 473. So that each particular case must rest upon its merits and all the surrounding circumstances must be considered in determining whether a contract will operate as a restraint injurious to the public. *Gibbs v. Consolidated Gas Co.*, 130 U. S. 396; *Oregon Steam Nav. Co. v. Winsor*, 20 Wall. 64.

REWARDS—OFFER AND ACCEPTANCE.—MCCLAUGHREY ET AL. V. KING, 147 FED. 463.—Where defendant as sheriff of a county, offered a reward "for the arrest of each of the parties convicted" of a certain bank robbery and murder, *Held*, that the reward was not accepted merely by the giving of information concerning the whereabouts of the suspect, who was already under arrest in another state, but could only be accepted by the party assuming the personal danger and responsibility of either actually arresting the suspect or causing some other person to arrest him. Hook, J., *dissenting*.

As a general rule it may be stated that one who offers a reward may annex such conditions as he chooses, and one claiming the reward must prove a compliance with them. *Amis v. Conner*, 43 Ark. 337. And it has been held that a reward offered for the apprehension and conviction of each of the perpetrators of a crime is not earned by one who merely informs the governor of the state that one such person is in the penitentiary of another state, and who, without risk, responsibility, or expense to himself appears as a witness at the trial. *Lovejoy v. A. T. and S. F. Ry Co.*, 53 Mo. App. 386. Nor is a reward offered for the capture of a thief earned by merely giving information to the sherriff which enables him to find and arrest him, *Everman v. Hyman*, 3 Ind. App., 459; and this, although the party giving the information went with sheriff as one of his posse, to make the capture. *Juniata Co. v. McDonald*, 122 Pa. St. 115.

SALES—CONVERSION OF GOODS BY CARRIER.—DUDLEY V. CHICAGO, MILWAUKEE & ST. P. RY. CO., 52 SOUTHEASTERN, 718—A quantity of apples was shipped with drafts on the buyer for their value according to a contract of sale attached to the bills of lading. On the arrival of the fruit at its destination the

railroad company permitted the buyer to inspect the apples without his producing bills of lading or showing any right or title to the apples. Finding them to be of inferior quality, the buyer refused to take them. *Held*, that the railroad company is not guilty of a conversion of the goods.

SALES—RIGHT TO REGULATE RESALES AND PRICE.—HARTMAN v. JNO. B. PARK & SONS CO. 145 FED. 358 (Ky.) *Held*, that contracts between the manufacturer and wholesalers to sell at a certain price and only to retail dealers, designated by the manufacturer should be sustained. The court disposes of the defense that the contracts were unlawful, as in restraint of trade, by a holding that the restraint in order to be unlawful must be unreasonable.

SHIPPING—VALIDITY OF CONDITIONS IN TICKET—LIMITATIONS OF LIABILITY—THE MINNETONKA, 146 FED. 509—*Held*, conditions printed inconspicuously upon a steamship ticket, providing that the shipowner shall not be liable for any loss of passenger's baggage through theft or any act, neglect or default of the shipowner's servants or others, which were not known to such passenger are invalid, and constitute no defense to an action by him to recover jewelry stolen by one of the ship's employes.

As a general rule in the United States, a shipowner or other common carrier cannot, by stipulation in a contract of carriage, limit its liability for injury to goods of a passenger caused by the negligence or theft of its servants, on the ground of public policy. *The Hugo*, 57 Fed. 403; *Armstrong v. Express Co.*, 159 Pa. 640. Yet a rule that carriers will not be responsible for baggage beyond a certain amount unless its value is reported to them and its carriage paid for, is reasonable and obligatory if known to or brought home to the knowledge of the passenger. *Brown v. Eastern R. R.*, 11 Cush. 97, *Brehme v. Dunsmore*; 25 Md. 328. The carrier is under the same obligation, ordinarily, for the safety of luggage as of freight. *Hannible Ry. Co. v. Swift*, 12 Wall. 262. *Merrill v. Grunell*, 30 N. Y. 594. However, for such baggage as a passenger keeps in his own possession, a carrier is not liable as insurer but only for negligence. *Steamship Co. v. Bryan*, 83 Penn. St. 446; *Whitney v. Pullman Co.*, 143 Mass. 243.

TIME—SOLAR OR STANDARD—COURTS—EXPIRATION OF TERM—TEXAS TRAM AND LUMBER CO. V. HIGHTOWN, 96 S. W. 1071 (TEX.)—*Held*, that in limiting the time of the expiration of a term of court limited by statute to a certain day, solar time and not standard or railroad time, should be used, though the community has generally adopted standard time.

A civil day is the mean solar day used in ordinary reckoning of time beginning at midnight. *Webster's Int. Dict.* The only standard of time recognized by the courts is the meridian of the sun, and an arbitiary standard set up by persons in a certain line of business will not be recognized. *28 Am. and Eng. Ency. 2nd Ed.*, 210. The time to be used in determining he expiration of a policy on a certain date will, in the absence of statute or custom be determined by the common or solar time unless it is shown that a different time was intended. *Jones v. Ins. Co.*, 110 Ia. 75. The cases on the above point are very few but it seems to be settled as a general rule that solar time is to be used and is so decided as a matter of law in Georgia. In Nebraska it is merely a presumption, while in Kentucky and Iowa, a matter of custom. *Ins. Co. v. Peaslee Gaulbert Co.*, 1 L. R A. (N. S.) 364.

TRADE MARKS AND TRADE NAMES—TITLE OF PUBLICATION. NEW YORK HERALD v. STAR CO. 146 Fed. 204.—*Held*, that complainant was entitled to protection in the trademark "Buster Brown," tital of a comic section of a newspaper, as having used it exclusively for such a length of time as to acquire a proprietary right therein.

A sign, symbol, word or device which indicates origin or ownership of articles manufactured or sold, or an arbitrary symbol to distinguish a vendible commodity is a legal trademark. *Burton v. Stratton*, 12 Fed. 696 *Gowans v. Aklbrn Bros.*, 4 Kulp. (Pa.) 31. This is true independent of any statute. *L. H. Harris Stove Co. v. Stucky*, 46 Fed. 624, *La Croix v. May* 15 Fed. 236. The title in the main case is not merely descriptive words, *Spreker v. Lash*, 102 Cal. 38; *C. F. Simmons Medicine Co. v. Mansfield Drug Co.*, 93 Tenn. 84; and the right to its exclusive use does not rest upon any property right therein, but upon priority of use and application as in the manner used by complainant, *Walton v. Crowley*, Fed. cases No. 17,133. Still such use may give rise to property rights which the law protects, *Clark v. Clark*, 25 Barb. (N. Y.) 76. A trademark is not essentially exclusive, *Clark Thread Co. v. Armitage*, 67 Fed. 904, only the particular application is protected, *Amoskeag Mfg. Co. v. Trainer*, 101 U. S. 57; and only at the residence of the user, *Sarton v. Schoder*, 101 N. W. (Iowa) 516. Registration may be rerequired for full protection. *Whittier v. Dietz*, 66 Cal. 78.

TRADE-MARKS AND TRADE-NAMES—UNFAIR TRADE—REPAIRS FOR UNPATENTED MACHINE.—ENTERPRISE MFG. CO. v. BENDER, ET AL., 148 FED. 313 (O.)—Complainant manufactured and sold an unpatented meat chopper called the "Enterprise," which name was registered as a trade-mark, and also parts for replacing those that had become worn, which were marked with complainant's name. Defendants also made such replacing parts, selling them in packages marked to show for what machine they were made and by whom, but the parts themselves were not identified by any mark. *Held*, that defendants, while having the right to make and sell the parts, were not entitled to do so without clearly marking the same to prevent their being mistaken by retail purchasers for those made by complainant for its own machines.

In the absence of a patent the freedom of manufacture cannot be cut down under the name of preventing unfair competition. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169. But in making such article the public must not be led to believe it the product of another, *Schener v. Muller*, 74 Fed. 225. It is enough that such similitude exists as would lead an ordinary purchaser to suppose that he was buying the genuine article and not the imitation; and it is not necessary that the resemblance should be such as would mislead an expert. *Shaw Stocking Co. v. Mack*, 12 Fed. 707. The primary object and purpose of such mark, name or symbol is to distinguish each of the articles to which it is affixed from like articles produced by others, seems to be the clear consensus of all the cases which are authoritative, *Canal Co. v. Clark*, 13 Wall. 311; *Mill Co. v. Alcorn*, 150 U. S. 460.

WATERS AND WATER COURSES—NAVIGABLE RIVERS—RIPERIAN RIGHTS.—KINKEAD v. FURGESON, 109 N. W. (NEB.) 744.—*Held*, that where the Missouri river suddenly changes its course and abandons its former bed, the respective riparian owners are entitled to the possession and ownership of the soil formerly under its waters as far as the thread of the stream.

The common law rule was that on navigable rivers the riparian proprietor's ownership extended merely to the high-water mark and the test of navigability was the ebb and flow of the tide. 3 *Kent.* 521; *Middleton v. Pritchard*, 3 Scam. (Ill.) 510. Some of the courts in this country have accepted this test of navigability and hold that in all rivers in which the tide does not ebb and flow the riparian proprietor's ownership extends to the thread of the stream. *Jackson v. Hathaway*, 17 Mass. 288; *Gavit v. Chambers*, 3 Ohio, 495. Other jurisdictions, however, have insisted upon a broader test as to navigability and maintain that where rivers are in fact navigable the riparian proprietor's ownership extends only to high-water mark. *Elder v. Burrus*, 6 Humph. (Tenn.) 358; *Pollard v. Hogan*, 3 How. (U. S.) 212.

WITNESSES—COMPETENCY—HUSBAND AND WIFE.—BIANCHI ET UX V. DEL VALLE, 42 SOUTHERN 148 (LA.).—*Held*, that a husband cannot be a witness for or against his wife in a matter affecting her paraphernal rights.

At early common law husband and wife were unable to testify for or against each other, this being based principally on public policy. *Wilson v. Sheppard*, 28 Ala. 623.

The common law disability has been removed and to-day a husband may be a witness for his wife in many cases. *Laudy v. Kansas City*, 58 Mo. App. 141; *Evans v. Evans*, 15 Pa. 572. However, it has universally been held that a husband cannot testify for wife when the suit concerns her separate estate. *Berlin v. Cantrell*, 33 Ark. 611; *Palmer v. Henderson*, 20 Ind. 297.

WRONGFUL DEATH—ACTION BY NON-RESIDENT ALIEN.—ATCHISON, T. & S. F. R. R. CO. V. FAJARDO, ET AL., 86 PAC. 301.—*Held*, that non-resident parents can recover for death of son under Kansas statute, *Code Civ. Proc.*, Section 422, granting right of action to personal representative for wrongful death of the deceased if the latter could have maintained an action had he lived.

Unless the statute in plain terms excludes non-resident beneficiaries they are entitled to sue as if they were residents. 8 *Am. & Eng. Ency. of Law*, 905. An administrator appointed in Colorado can sue for wrongful death in Kansas. *Kan. Pac. R. R. Co. v. Cutter*, 16 Kan. 569 (1876). Resident of Missouri can recover for wrongful death of husband, a resident of Missouri, in Kansas. *Chicago, R. I. & P. R. R. v. Mills*, 57 Kan. 687 (1897). Similar statute entitles resident of Itaty to bring an action. *Pittsburgh, C. C. & St. L. R. v. Naylor*, 73 Ohio St. 115. A non-resident alien can bring an action for wrongful death. *Szymanski v. Blumenthal, et al.*, 52 Atl. 347 (Del.); *Alfson v. Bush Co.*, 75 N. E. 230. A resident of another state can sue. *Denick v. Central R. Co.*, 103 U. S. 11; *Higgins v. Central New Eng. & W. R. Co.*, 24 N. E. 534; *Jeffersonville, Madison, etc., R. Co. v. Hendricks, Admr.*, 41 Ind. 48. Exemption to "every person who has a family" may be claimed by a non-resident. *Sproul v. McCoy*, 26 Ohio St. 577. A statute purporting to apply to everyone may be taken advantage of by non-resident aliens. *State v. Smith*, 12 Pac. 121.