RECENT CASES

LANDLORD AND TENANT—NOTICE TO QUIT—WAIVER BY LANDLORD.—ARCADE INV. CO. v. GURIET, 109 N. W. 250 (MINN.).—*Held:* A notice to quit, given by the landlord to a tenant, may be waived by the landlord. Henceforth the notice is inoperative. It is an established rule that a notice to quit may be waived by the reception of rent after notice has been given. *Stedman v. McIntosh,* 27 N. C. 571. But mere demand of rent does not constitute a waiver, *Condon v. Barr,* 47 N. J. Law 113, nor receiving back rent due prior to notice. *Norris v. Morril,* 43 N. H. 213. So a landlord giving a second notice after the expiration of first one, waives right of proceeding on first notice. *Morgan v. Powers,* 31 N. Y. Supp. 954. Likewise a notice to a tenant by a landlord, touching the termination of the tenancy, the same recognizing the existence of a lease, amounts to a waiver of former notice. *Dockwill v. Schenk,* 37 Ill. (App.) 44. Conversely, a tenant giving landlord notice that he intends to quit and then holds over, the tenancy is regarded as continuing, *Graham v. Dempsey,* 169 Pa. 460; notwithstanding some accidental cause keeps the tenant over. *Mason v. Wiereng,* 113 Mich. 151. In New York, however, a contrary doctrine is held. *Herter v. Muller,* 159 N. Y. 28, in which case three judges dissented.

MASTER AND SERVANT—INJURIES TO SERVANT—DEFECTIVE APPLIANCES.—KENTUCKY AND INDIANA BRIDGE AND R. CO. v. MORAN, 80 N. E. (IND.) 536.—*Held,* It is the duty of the master to exercise ordinary care to furnish or provide machinery and appliances reasonably safe and suitable for his employees, and to exercise a reasonable supervision in keeping them in a reasonably safe condition for use. It is the duty of the master to use such care in providing safe and proper machinery and appliances, and in keeping the same in repair, as prudent and careful men, similarly engaged, exercise. *Gorns v. Chicago R. I. & P. R. Co.,* 37 Mo. App. 221. A master is bound to use all reasonable care, diligence, and caution in providing for the safety of those in his employ, in furnishing them with safe, sound, and suitable appliances, and in keeping the same, *Haugh v. Rissner,* 4 N. Y. St. Rep. 664; *Frank & Otis,* 15 N. Y. St. Rep. 681. It is the duty of a master to use reasonable and ordinary care and foresight in procuring appliances to be used by his servants. *Dedrick v. Missouri Pac. Ry. Co.,* 21 Mo. App. 433.

MASTER AND SERVANT—INJURIES TO SERVANT.—DEFECTIVE APPLIANCES.—KNOWLEDGE OF DEFECT.—ALVES v. NEW YORK, N. H. & H. R. CO., 65 ATL. 261. (R. I.).—*Held,* an employee cannot recover from a railroad company for injuries caused by the breaking of a handle of a hand car by reason of defects in that porton of the handle which is fastened in the iron socket, and which cannot be discovered without removing it from the socket, in the absence of proof of the actual knowledge of the defect. *Wood on the Law of Master and Servant,* Section 322, says in substance that a servant in order to recover damages for injuries must prove negligence on the part of his master and due care on his own part, besides having two presumptions to rebut, (1) That the master has discharged his duty and (2) That he had no knowledge of the defect. The cases in point certainly seem to sustain this statement. Two

cases hold that an employer cannot be charged with negligence unless he knew of the defect. *Simpson v. Pittsburg Locomotive Works,* 139 Pa. 245; *Druig v. New York, O. & W. R. Co.,* 26 N. Y. Supp. 405. The court in the case of *Bogenschuiz v. Smith,* 84 Ky. 330, held that the plaintiff in order to recover damages must show, among other things, a knowledge of the master that a defect existed. When a defect is unknown to both it has also been held that the servant cannot recover. *The Mad River and Lake Erie R. R. Co. v. Barber,* 5 Ohio S. R. 541.

MASTER AND SERVANT—JOINT LIABILITY—TRADE UNIONS.—WYEMAN V. DEADY, ET AL., 65 ATL. 129 (CONN.).—*Held,* a labor union and its walking delegate, who procured plaintiff's discharge from employment, by means of threats made to plaintiff's employers, with the knowledge, approval, and authority of the union, were liable for plaintiff's discharge as joint tort-feasors.

"Interference by fraud or force with the free exercise of another's trade or occupation or means of livelihood is a tort. . . . Where a violent or malicious act is done to a man's occupation, profession, or means of obtaining a livelihood, then an action lies in all cases." *Addison on Torts,* 9-14. In accord with this doctrine it has been decided that an actor had a right of action against people who by jeering at him forced his employer to discharge him. *Gregory v. Brunswick,* 6 Man. & Ge. 205. It seems to prevail that anyone causing a contract to be broken between two parties to the injury of one of them is liable thereto. *Chipley v. Atkinson,* 23 Fla. 206. In the case of *Bowen v. Hall,* L. R. 6 Q. B. D. 338, it was held that, while it might not be unlawful to persuade one to break a contract, it would certainly be an actionable case if persuasion is used maliciously to the injury of the plaintiff or benefiting the defendant at the plaintiff's expense.

MECHANICS' LIENS—CREATION OF LIEN—STATUTES.—VOLKER-SCOWCROFT LUMBER CO. V. VANCE, 88 PAC. REP. (UTAH) 896.—*Held:* That in the absence of an express contract creating a lien, the lien which a material man becomes entitled to depends solely on the statute for its existence, for his lien is a preference which he may secure by proceeding in a particular way and complying with the statutory requirements on the subject, and not otherwise.

Mechanics' Lien Acts are an innovation upon common law, which gave no such lien, *Belanger v. Hersey,* 90 Ill. 70; *Associates of the Jersey Co. v. Davison,* 29 N. J. L. 415; equity also raises no lien in relation to real estate except that of a vendor for purchase money, *Ellison v. Jackson Water Co.,* 12 Cal. 542; therefore, being remedial, *White Lake Lumber Co. v. Russell,* 22 Neb. 126; they must be strictly construed, 1 *Bl. Comm.* 87; *Logan & Cook v. Attix,* 7 Iowa 77; and claimant must comply with all the requirements of the statute, not only in creating the lien, but also in its continuance and enforcement. *Wagner v. Briscoe,* 38 Mich. 587; *Mushlitt v. Silverman,* 50 N. Y. 360. There are cases in regard to the last point resulting in two different views, first, that the privileges under these statutes are *stricti juris,* and party claiming under them must point to express law which gives him such right of preference, *Laudry v. Blanchard,* 16 La. Ann. 173; *Willard v. Magoon,* 30 Mich. 273; second, that the acts are not to be construed *strictissimi juris* but so as to secure substantial justice, *Putnam v. Ross,* 46 Mo. 337; the substantial requirement must, however, have been in good faith. *White v. Claffin,* 32 Ark. 59.

MONOPOLIES—CONTRACT—RESTRAINT OF TRADE.—CONTINENTAL WALL PAPER CO. v. LEWIS VOIGHT SONS CO., 148 Fed. 939.—*Held,* that where a combination of manufacturers and wholesalers of wall paper was claimed to be in restraint of trade and in violation of the congressional anti-trust act of 1890 (Act July 2, 1890, c. 647, 26 Stat. 209), it was immaterial to the validity of the combination that the agreement was valid at common law as imposing only a reasonable restraint on competition, provided the direct result of its operation was to directly restrain freedom of commerce between the states or with foreign nations.

Under this act any combination that imposes restraint is unlawful, whether legal or illegal at common law, *United States v. Freight Ass'n,* 166 U. S. 290, and it is immaterial whether the restraint is fair and reasonable or whether it actually results in raising the price of the commodity dealt in. *United States v. Coal Dealers Ass'n,* 85 Fed. 252; *United States v. Ass'n,* 171 U. S. 505.

NEGLIGENCE—CARE AS TO LICENSEE.—ROSENTHAL v. UNITED DRESSED BEEF CO., 101 N. Y. SUPP. 532.—*Held,* that where there was a means of access to a slaughter house through the defendant's premises, a customer of the owner of the slaughter house passing through defendant's premises to reach the same was a mere licensee to whom defendant owed no duty of active care.

It is only where a party comes on the premises of another by invitation either express or implied, that the owner assumes the obligation of providing a safe and suitable means of ingress and egress and of moving about the premises. *The South Bend Iron Works v. Larger,* 11 Ind. App. 367; *Reardon v. Thompson,* 149 Mass. 267. A person, whose only right to use certain premises consists of the fact that the owner does not object to such use, is a mere licensee, *McCarn v. Thilemann,* 36 N. Y. Misc. Rep. 145, and one who enjoys such permission is only relieved of being a trespasser, *Vanderbeck, Vanderbeck and Pierson v. Hendry,* 34 N. J. Law 467, and must assume all ordinary risk attached to the nature of the place or the business carried on. *Faris v. Hoberg, et al.,* 134 Ind 269.

OFFICERS—COMPENSATION.—STEPHENS v. CITY OF OLDTOWN, 65 ATL. 115 (ME.).—*Held,* that a public officer for the performance of his official duties is entitled to such compensation only as is fixed by law for that office. If no compensation has been thus fixed, he is not entitled to any.

Williams v. Chariton County, 85 Mo. 645, held that no fees are allowed an officer, except where expressly given and allowed by law. This doctrine was upheld even more strongly in the case, *Hatch v. Maine,* 15 Wend. (N. Y.) 45, which held, not only that a public officer cannot recover for extra compensation for the redition of his duties, but that such an agreement if made would be against public policy. In an Alabama case it was held that a person who accepted an office took an office *cum onere* and if no compensation was fixed for the redition of duties of that office they were presumed to be gratuitous. *State ex rel. Pollard, Jr., v. Brewer,* 59 Ala. 130. The same principle is found in *Carroll County Commissioners v. Gresham,* 101 Ind. 53. In the old Connecticut case of *Preston v. Bacon,* 4 Conn. 471, it was held that an officer could not recover on a note given to him for compensation for services rendered by him which he was legally bound to carry out. Such an agreement being contrary to public policy.

PRINCIPAL AND AGENT—MUTUAL RIGHTS—ACTING FOR ADVERSE PARTIES.—COMPENSATION.—ATTERBURY V. HOPKINS ET AL., 99 S. W. (Mo.) 11.—*Held,* If an agent employed by one party acts secretly for the other also, he cannot recover compensation from his employer, who was not aware of the dual agency. An agent cannot obtain a commission from his principal for buying, where, unknown to such principal, he has received a commission from the seller. *Finsley v. Penniman,* 12 Tex. Civ. App. 591. An agent who, in procuring subscriptions to the stock of a corporation fraudulently and without the knowledge of the company, received rewards from subscribers for procuring their lands to be taken by company, cannot recover compensation from the company. *Cleveland & St. L. R. Co. v. Patterson,* 15 Ind. 70. An agent cannot recover compensation for his services where he acted for both parties without the knowledge of the party who employed him. *Huffcut on Agency,* p. 102.

PRINCIPAL AND AGENT—NOTICE TO PRINCIPAL—KNOWLEDGE OF AGENT.—BADGER V. COOK, 101 N. Y. SUPP. 1067.—*Held:* That the burden is on a party seeking to charge a principal with knowledge of his agent acquired in a different transaction and before the agency existed to show by clear and satisfactory evidence that the knowledge was present in the agent's mind at the time of the transaction under the agency.

The general rule is that notice of facts to an agent is constructive notice thereof to the principal when it is connected with the subject-matter of the agency. *Suit v. Woodhall,* 113 Mass. 391. Likewise if acquired pending the proceedings. *Johnston v. Laflin,* 103 U. S. 800. The old English rule was that notice of facts to the agent to bind the principal by constructive notice should be in the same transaction. *Warrick v. Warrick,* 3 Atk. 291. This was later modified to the extent that when one transaction is closely followed by and connected with another, it is constructive notice to the principal, *Hargreaves v. Rothwell,* 1 Keen 154. But it is also held that agent must actually have it in mind at time of the second transaction. *Nixon v. Hamilton,* 2 Dru. & W. 364. *The Distilled Spirits,* 78 U. S. (11 Wall.) 356. This rule holds good when knowledge is obtained when acting outside of his employment. *Wilson v. Minn. Farmers' Mut. F. Ins. Asso.,* 36 Minn., 112; also extends to corporations and their officers. *New Milford First Nat. Bank v. New Milford,* 36 Conn. 93. Except when agent is engaged in committing an independent fraudulent act on his own account. *Allen v. South Boston R. Co.,* 150 Mass. 206. Burden of proof is upon the party who seeks to charge the principal with notice by reason of such knowledge of agent. *Constant v. University of Rochester,* 111 N. Y. 604.

SALES—ARTICLES TO BE MANUFACTURED—CONTRACT—BREACH—WAIVER.—ROBERT GAIR CO. V. LYON, ET AL., 101 NEW YORK SUPP. 787. A manufacturer received an order from a dealer for the manufacture of cartons to contain a specified address and to be delivered in installments. The manufacturer delivered an installment which did not contain the address, but which the dealer accepted and paid for. The manufacturer delivered a second installment, which the dealer refused to accept on the ground that the cartons did not contain the address. *Held,* that the dealer's acceptance of the first installment did not amount to a waiver of his right to reject the second. A strict and literal performance in accordance with the terms of a contract is, as

a rule, required, *Dauchey v. Drake,* 85 N. Y. 407. If the contract is not performed in accordance with the terms, the retention of the goods after the defect has been discovered is a waiver of the defect. *Titley v. Enterprise Store Co.,* 18 Ill. 457. If the goods are to be delivered in installments, and the vendee on receiving part of the goods retains them, he waives any breach of the contract by the vendor, *Shields v. Pettee,* 2 Land. L. C. R. 262 N. Y., and accepting part of the goods and paying for them will justify the vendor in making subsequent deliveries of goods in accordance with the terms of the contract, *Miller v. Moore,* 83 Ga. 685, but if the vendor cannot deliver goods in accordance with the terms of the contract, any installment which goes to the essence of the contract may be refused by the vendee. *Norrington v. Wright,* 115 U. S. 188. Where there is a contract for the sale of goods deliverable in installments, which are to be paid for on delivery, and the seller makes defective delivery in respect to one installment, or the buyer fails to take delivery of or pay for an installment, the question arises whether the breach gives rise merely to a claim for compensation or to a right to treat the whole contract as repudiated. It is difficult to reconcile the English cases upon this point. Some say it is a breach going to the root of the matter, *Hoare v. Rennig,* 5 Hurl. & U. 19, while the opposite view is upheld in the leading case of *Simpson v. Griffin,* L. R. 8 Q. B. 14. In this country the same conflict arises, but the Supreme Court has held it is such a breach. *Norrington v. Wright, supra.*

SEDUCTION—CRIMINAL PROSECUTION—EVIDENCE—ADMISSIBILITY.—STATE V. BENNETT, 110 N. W. 150 (IA.).—*Held,* that in a prosecution for seduction, the prosecutrix was properly permitted to testify that she yielded her person to the defendant's embraces because of his promises. The disqualification of parties as witnesses in their own behalf being now practically obsolete throughout our land as witnesses they may testify to intent or motive. *Wigmore Ev.,* Section 581. In accordance, it was held no error to ask the prosecutrix if, at the time of her seduction, she believed that defendant would marry her. *Armstrong v. People,* 70 N. Y. 38. And in *State v. Brinkhaus,* 34 Minn. 285, and *Ferguson v. State,* 71 Miss. 805, it was held that prosecutrix might testify that she permitted the intercourse because of the promises of marriage. But the accused may testify in rebuttal that prosecutrix knew he was engaged to be married to a third person. *State v. Brown,* 86 Ia. 121. Probably, in Alabama alone is the prosecutrix not permitted to testify to the motive which induced her to sexual intercourse. *Wilson v. State,* 73 Ala. 527.

SLANDER—WORDS ACTIONABLE PER SE.—BATTLES V. TYSON, 110 N. W. 299 (NEB.).—*Held,* to charge a woman with being a lewd character, of using her body for commercial purposes, and with keeping a gambling room, is actionable, *per se.*

It is not necessary in order to render words actionable *per se,* that they bear criminal import. If the words in their ordinary acceptation, would naturally and presumably be understood as importing a charge of crime, they are *prima facie* actionable. *Stroebel v. Whitney,* 18 N. W. 98 (Minn.). So charging a party with keeping a gambling place is sufficient to charge a crime and so is actionable. *Buckley v. O'Neil,* 113 Mass. 193. In *Ross v. Fitch,* 58 Fed. 148, it was held that words, imputing a want of chastity of a female are not actionable *per se,* but that specific damages

must be alleged and shown. But the common law rule has been greatly modified in many of our states, and words spoken imputing a want of chastity are actionable, *per se,* on the ground that such words tend to hinder her advancement in life, by degrading her in the eyes of respectable people, *Cleveland v. Deitweiler,* 18 Ia. 299. And some of the states have modified the common law rule by statute, making words, implying a want of chastity, actionable *per se. Newman v. Stein,* 75 Mich. 402; *Mason v. Stratton,* 1 N. Y. Supp. 511; *Seller v. Jenkins,* 97 Ind. 430.

TRADE-MARKS—UNFAIR COMPETITION—INJUNCTION—BANZHAF ET AL. V. CHASE, 88 PAC. 704 (CAL.). Without regard to whether plaintiffs have, or can have, a trade-mark in the words "Old Homestead," stamped on bread manufactured by them, the stamping into bread manufactured by the defendants of the words "New Homestead," in letters and words of the same size, style, and arrangement, being for the purpose, and with the result of, appropriating plaintiff's trade, *held* that, the defendant will be enjoined, on the ground of fraud.

The general rule of law applicable to this case is that, where a manufacturer has applied a peculiar and distinctive label to designate his goods, and has so used it that his goods are designated by it, a court of equity will restrain another party from adopting and using one so similar that its use is likely to confusion by purchasers exercising the ordinary degree of caution which purchasers are in the habit of exercising with respect to such goods. *Anheuser-Busch Brewing Ass'n. v. Clark,* 26 Fed. 410. Although plaintiff cannot acquire the exclusive right to use the word "American" as descriptive of beer, yet it is entitled to an injunction where an imitation of its signs, bearing that word conspicuously, so closely resembles theirs in size and colored lettering as to deceive the public. *American Brewing Co. v. St. Louis Brewing Co.,* 47 Mo. App. 14. Where the plaintiff has for a number of years used the word "Portland" to distinguish his stoves from others on the market, a rival dealer will be restrained from advertising and selling a different stove as the "Famous Portland," *Van Horn v. Coogan,* 52 N. J. Eq. 380. In order to constitute an infringement it is not necessary that the imitation should be exact. It is sufficient that there is such a substantial similarity that the public would be deceived. *Cooley on Torts,* (3 Ed.) 732.

TRUSTS—DEPOSITS IN BANKS—DEATH OF BENEFICIARIES—EFFECT.—IN RE UNITED STATES TRUST CO. OF NEW YORK, 102 N. Y. SUPP. 271.—*Held,* that a trust created by a father by his depositing money in a bank in his name, in trust for a son, terminates *ipso facto* on the son's death in the life-time of the father, and thereafter the fund remains the property of the father unimpressed by any trust. Ingraham, J., *dissenting.*

The deposit of funds in a bank in the name of the depositor in trust for another does not thereby create an irrevocable trust. *Matter of Totten,* 179 N. Y. 112; *Clark v. Clark,* 108 Mass. 522. And unless there is some evidence of an intention of so doing, *Ray v. Simmons,* 11 R. I. 266; *Estate of Smith,* 144 Pa. St. 428, the title to the funds remains in the depositor. *Cleveland v. Hampdon Savings Bank,* 182 Mass. 110. Even in those jurisdictions that hold that where the depositor dies before the beneficiary, leaving the trust open and unexplained, the latter is entitled to the deposit, *Martin v. Funk,* 75 N. Y. 134; *Conn. River Savings Bank v. Albee,* 64 Vt. 571, it would seem

that the beneficiary, having no interest in the fund previous to the depositor's death, *Cunningham v. Davenport,* 147 N. Y. 43, would have no interest or title to pass to his personal representatives if he died during the life-time of the depositor. *Peoples Savings Bank v. Wells,* 21 R. I. 218.

TRUSTS—RESULTING TRUST.—ATLANTIC CITY R. CO. v. JOHANSON, 65 ATL. 719 (N. J. Ch.).—*Held,* that where defendant street railroad in ejectment purchased the land by parol from the predecessor in title of plaintiff, and paid the consideration and entered into possession, a subsequent purchase of the land from the record owner by plaintiff is with notice, and constitutes the subsequent purchaser a trustee for the benefit of the prior purchaser.

A resulting trust arises by implication of law and not from contract. *Potter v. Clapp,* 203 Ill. 592, and the Statute of Frauds is not applicable. *Lynch v. Herrig,* 32 Mont. 267. So an equitable estate exists in the purchaser of lands where the contract has been fully performed by the parties except as to the delivery of the deed. *Young v. Young,* 45 N. J. Eq. 27. Whatever is sufficient to put a reasonably careful man upon inquiry is notice, *Abell v. Brown,* 55 Md. 222; *e. g.,* possession of the land by one who is not the record owner. *Ferrin v. Errol,* 59 N. H. 234. Therefore, if one purchases from a trustee, with knowledge, actual or constructive, he himself becomes the trustee of the property. *Sadler's Appeal,* 87 Pa. 154. The vendor of an estate who has received the purchase money, but retains the legal title, being a mere trustee for his vendee, *Waddington v. Banks,* 1 Brock. 97, when a vendee is in the occupation of land which the vendor afterwards sells to another to whom he transfers the evidence of legal title, the subsequent purchaser is charged with notice, and will be considered as holding the legal title as a trustee for the first vendee. *Scroggins v. McDougall,* 8 Ala. 382.

VENUE—DISQUALIFICATION OF JUDGE—PERSONAL INTEREST.—BRITTAIN V. MONROE COUNTY, 63 ATL. REP. 1076 (PA.).—*Held,* that in an action against a county, the plea that the presiding judge is a property owner and taxpayer of the county, does not make him "personally interested" so as to require a change of venue.

The rule generally prevails to the effect that the "interest" of a judge, constituting a reason for changing the venue, must be pecuniary, *Hungerford v. Cushing,* 2 Wis. 397; *State v. Winget,* 37 Ohio St. 153; and he is within that rule when he is related to either litigant, or interested in a litigated case, *De La Guerra v. Burton,* 23 Cal. 592; *In re White's Estate,* 37 Cal. 190. But this rule has been held almost universally among the states as not applying to a judge sitting in the trial of a cause against a county of which he is an inhabitant, *Justices of Burlington County v. Fennimore,* 1 N. J. Law. 190; and the same to a town, city or state, *Kilbourn v. State,* 9 Conn. 560; *Commonwealth v. Emery,* 65 Mass. 406. Such an objection is not valid because the "interest" is too shadowy, indirect, remote and contingent to be within the rule "that a man cannot be a judge in his own case." *Myer v. San Diego,* 41 L. R. A. 762; *State v. MacDonald,* 26 Minn. 445. But a judge owning taxable property in a city against which proceedings are brought to annul the corporation and remove its officers, is disqualified to try the cause, *State v. City of Cisco,* (*Civ. App.*) 33 S. W. 244 (Tex.). However, there appears to be but one case to mar the universality of the "interest rule" in its application to a judge's disqualification by reason

of the fact that he is a taxpayer in the county against which a suit is brought. *Jefferson County Supervisors v. Milwaukee County Supervisors,* 20 Wis. 139.

WITNESSES—IMPEACHMENT—CONTRADICTORY STATEMENTS.—CINCINNATI TRACTION CO. v. STEPHENS, 79 N. E. 235 (O.).—*Held,* that where, upon the trial of a case, a witness is shown to have made statements of fact contradictory to those made by him on the trial, it is error to permit an attempt to rehabilitate the impeached witness by proving that he had made prior statements similar to those made on the trial.

The general tendency, if there are exceptions to the general rule stated above, is that those exceptions occur in the courts of some of the Southern states and of a few in the West. *People v. Doyell,* 48 Cal. 85; *State v. Fontenat,* 48 La. Ann. 283; *Johnson v. Patterson,* 9 N. C. 183. But the courts of the East, North and Central states uphold the general majority rule, *Conrad v. Griffey,* 52 U. S. 480; *Commonwealth v. Jenkins,* 76 Mass. 485; *Smith v. Stickney,* 17 Barb. (N. Y.) 489; *State v. Vincent,* 24 Ia. 570. This majority rule is further supported—for the making of the inconsistent statement being admitted by the witness, proof of prior statements consistent with the statement of the witness on the trial, for the purpose of corroborating and sustaining the credit of the witness, is irrelevant because it would not prove the truthfulness of the witness, nor the reliability of his recollection, nor that there was no inconsistency between the two statements, 1 *Greenl. Ev.* (16th Ed.) 469.