RECENT CASES

BANKRUPTCY—POWER OF STATE AND NATION—NATIONAL LAW SUPREME.—HURLEY V. DEVLIN, 151 FED. 919.—*Held,* that Congress may pass laws making such distribution of bankrupt's property, dividing it among his creditors, his wife and the bankrupt, as seems proper to it, without interference from state laws.

A state legislature has power to pass bankrupt and insolvency laws, so long as they do not interfere with any national law on the subject, and do not impair the obligation of a contract. *Sturgis v. Crowninshield,* 4 Wheat. 122; *Ogden v. Saunders,* 12 Wall. 213; *Baldwin v. Hale,* 1 Wall. 223; *Hoyle v. Zacharie,* 6 Peters 635. When Congress passes a bankrupt law any state law concerning the same matter becomes suspended. *Ex parte Eames,* Fed. Cases, No. 4237; *In re Reynolds,* 8 R. I. 485. One case held that a state could not pass bankrupt laws, even in the absence of action by Congress. *Golden v. Prince,* Fed. Cas. No. 5509. It is now recognized that a state may pass an insolvent law, but it is superseded by national bankrupt law in so far as they conflict. *Appeal of Geery,* 43 Conn. 289; *Fisk v. Montgomery,* 21 La. Ann. 446. Congress has power to destroy a lien on the property of a bankrupt. *In re Jordan,* Fed. Cas. No. 7514; *Bank of Columbia v. Overstreet,* 73 Ky. 148. American bankrupt laws apply to any debtor; English apply only to fraudulent traders. *In re Klein,* Fed. Cas. No. 7865. The bankrupt's assignee is not entitled to bankrupt's wife's choses in action not reduced to possession. *In re Snow,* Fed. Cas. No. 13,142. Nor is he entitled to property of a bankrupt's minor children, acquired by their endeavors, and standing in their name. *Ex parte Tebbets,* Fed. Cas. No. 13,816.

CARRIERS—FREE PASSES—INJURY TO PASSENGERS—LIABILITY.—BRADBURN V. WHATCOM COUNTY RY. & LIGHT CO., 88 PAC. 1020 (WASH.).—*Held,* that a street railroad carrying a police officer free of charge as required by a municipal ordinance is liable for injuries sustained by him through the negligence of its motorman in charge of the car, though the ordinance is in conflict with Constitution, article 2, section 39, and article 12, section 20, prohibiting the granting of passes to officers.

CARRIERS—INJURY TO PASSENGERS—EXEMPLARY DAMAGES.—CLEVELAND, C., C. & ST. L. R. CO. V. OFFUTT, 104 S. W. 359 (KY.).—Where a passenger was injured in a collision between the car on which he was riding and the engine of another train, when both trains were moving slowly and the engine merely grazed the side of the car, and the cause of the accident appeared to be an error of judgment as to the space within which the incoming train would stop or to its arriving a few seconds before expected, *held,* that the circumstances were insufficient to justify the award of exemplary damages, even though the plaintiff claimed the jar threw him against the arm of the seat, and injured his hip and back, Carroll and Nunn, JJ., *dissenting.*

Exemplary damages may be given when a personal injury has been caused by the gross carelessness of a railroad company, in the management of its trains. *Hopkins v. The Atl. & St. Law. R. R.,* 36 N. H. 9. While such damages will not be given to a passenger who has been injured in a collision, caused by the negligence of the employees of a railroad, unless it is the result of their reckless indifference. *Milwaukee & St. Paul Ry. Co. v. Arms, et al.,*

91 U. S. 489. And for an error in judgment the employers are not liable for punitive damages. *Louisville & N. R. Co. v. Ferrel,* 7 Ky. Law. Rep. 607. But where, with full knowledge of the approach of a passenger train, or the time of its approach, the employees of the company left a switch open, and as a result, there was a collision, causing the injury of a passenger, there was such a degree of neglect as to authorize an instruction as to punitive damages. *Louisville & N. R. Co. v. Kingman,* 35 S. W. 264 (Ky.).

CARRIERS—PASSENGERS—COMMUNICATION OF CONTAGIOUS DISEASE—PROXIMATE CAUSE.—MISSOURI, K. & T. RY. CO. V. RANEY, 99 S. W. 589 (TEX.).—*Held,* that the act of a railway ticket agent infected with smallpox in exposing himself to plaintiff, who purchased tickets from him, was the proximate cause of plaintiff's wife contracting the disease, where plaintiff contracted it and communicated it to her.

CARRIERS—REFUSAL TO HONOR TICKETS—DAMAGES—MENTAL SUFFERING. —ST. LOUIS SOUTHWESTERN RY. CO. OF TEXAS V. CRANE, 102 S. W. 739 (TEX.)—*Held,* that the defendant was not liable for the mental suffering and humiliation arising from the fact that plaintiff was compelled to borrow money from her brother with which to pay her fare, her ticket represented by defendant as good on connecting line to destination, being refused.

At Common Law mental suffering must be connected with physical injury or other element of damage to person or property. *Lynch v. Knight,* 9 H. L. C. 577; *W. U. Tel. Co. v. Rogers,* 68 Miss. 748. Federal Courts hold the same doctrine. *Chase v. W. U. Tel. Co,* 44 Fed. Rep. 554. In *So. Relle v. W U. Tel. Co.,* 55 Tex. 308, mental suffering was not natural consequence, yet damages were allowed, but this decision was overruled in conformity with the general rule of law that injury complained of must be proximate result of negligence or wanton act. *Stuart v. W. U. Tel. Co.,* 66 Tex. 580; *Texas & Pacific Ry. Co. v. Bigham,* 90 Tex. 223; *Hale, Damages,* 39 and 40. This rule, consistently adhered to by Texas courts, is supported in *Dawson v. Louisville N. R. Co.,* 6 Ky. Law Reports 668, and in *Hoffman v. Northern Pacific R. Co.,* 47 N. W. 312 (Minn.). It was held that although money had to be borrowed to pay fare the mental suffering occasioned thereby was too remote to afford a basis for damages.

COMMERCE—INTERSTATE COMMERCE—SUBJECTS OF STATE TAXATION— LOVERIN & BROWN CO. V. TANSIL ET AL., 102 S. W. 72 (TENN.).—*Held,* that where goods are shipped in accordance with a general order, by a foreign mercantile corporation to a salesman in another state, in barrels and boxes which are opened by the salesman, and the goods separated and arranged for delivery to purchasers, that such corporation was not engaged in interstate commerce, but as a retail merchant, where transactions were made, and so liable to privilege taxes imposed upon local merchants.

Interstate Commerce is regulated by Congress. Const. Art. I. Section 8, section 3. Goods brought into a state in original package and remaining in that condition are within the protection of the clause. *Bradford v. Stevens,* 10 Gray 379; *Lincoln v. Smith,* 27 Vt. 335; *Schollenberger v. Penn.,* 171 Pa. 1. An original package,within the meaning of the law of interstate commerce, is the package delivered by the importer to the carrier, at the initial point of shipment, in the exact conditon in which it was shipped. *Guckenheimer v. Sellers,* 81 Fed. Rep. 997. In the so-called liquor cases an attempt was made to evade state laws by shipping bottles in an open box and selling the separate bottles as original packages, but the courts held that if anything was an

original package it was the box. *State of South Dakota v. Chapman,* 10 L. R. A. 432; a like conclusion was reached in regard to cigarette packages. *McGregor v. Cone,* 104 Iowa 465. Accordingly, when goods are so acted upon that they have become incorporated or mixed with the general mass of property within the state, they become subject to state taxation. *Brown v. Maryland,* 12 Wheat. 419.

CONSTITUTIONAL LAW—ARMY—HABEAS CORPUS.—EX PARTE SCHLAFFER, 154 FED. 921.—*Held,* that the imposition of a sentence of imprisonment for sixty days on a soldier, by the authorities of a city for a violation of a city ordinance, where the act charged did not result in nor threaten any injury to person or property, is unwarranted, and the soldier will be discharged on a writ of *habeas corpus* on petition of his commanding officer.

In times of peace a soldier can only be tried and imprisoned by civil authorities for a violation of a law of the land. Drunkenness is no such offence, although made a misdemeanor by municipal ordinance. *Ex parte Bright,* 1 Utah, 145. When a man becomes a soldier he goes from the control of the civil authorities to that of military, even to giving up his right to trial by jury. *Ex parte Milligan,* 4 Wall. 2. Control of Federal government over the regular army is plenary and exclusive. *Tarble's Case,* 13 Wallace 397. A city can not arraign soldiers for violations of municipal ordinances; it can arrest them to prevent further damage, but must hand them over to their military officers. *Ex parte Bright, supra.* Where a person is brought before a Circuit Court, on writ of *habeas corpus,* it should not discharge the prisoner, except in case of great emergency, but should leave the case for the state court to decide, after which the prisoner may appeal to the Supreme Court on a writ of error. *Baker v. Grice,* 169 U. S. 284; *Whitten v. Tomlinson,* 160 U. S. 231. But it may discharge him in case of great emergency. *Ex parte Royall,* 117 U. S. 241. As an extreme example, see *In re Neagle,* 135 U. S. 1.

CONSTITUTIONAL LAW—STATE STATUTE—DESECRATION OF NATIONAL FLAG. —HALTER V. NEBRASKA, 205 U. S. 34; 27 SUP. CT. 419.—*Held,* that the statute of Nebraska preventing and punishing the desecration of the flag of the United States and prohibiting the sale of articles upon which there is a representation of the flag for advertising purposes is not unconstitutional either as depriving the owner of such articles of his property without due process of law, or as denying him the equal protection of the laws because of the exception from the operation of the statute of newspapers, periodicals or books upon which the flag may be represented if disconnected from any advertisement.

CORPORATIONS—OFFICERS—LIABILITY TO CORPORATIONS—INDIVIDUAL BENEFITS.—RICKERT V. WHITE, 105 N. Y. SUPP. 653. Where a corporation officer purchases goods for the corporation from a partnership in which, unknown to the corporation, he holds an interest, *held,* that the corporate officer must account to the corporation for the profits derived.

Officers of a corporation occupy a fiduciary relation towards the corporation, *Marshall on Private Corporations,* section 376, and they cannot therefore with respect to the same matter act for themselves and for it, *Wardell v. Railroad Co.,* 103 U. S. 651. Thus in *Grey v. Lewis,* L. R. 8 Ch. App. 1035, and *Hersey v. Vesey,* 24 Me. 9, it is declared that a director or promoter cannot make a secret profit out of his transactions with the corporation; and it is held that where a director makes such profit, he must account for said

profit to the corporation, *Cook on Stock and Stockholders,* Sections 649, 650; *The Liquidators, etc., Assn. v. Coleman,* L. R. 6 H. L. 189, reversing L. R. 6 Ch. 558, where it was declared, that a director might have an interest in business, brought by him, to the corporation; and that he could retain a commission. And as to a promoter who for a consideration secretly agrees with a patentee to form a company to buy his patents, and being elected a director, votes for the resolution to purchase, the company may recover of him his secret profits. *Yale Gas-Stove Co. v. Wilcox,* 64 Conn. 101. Although ordinarily the law frowns upon the contracts made by a director of a corporation in their representative character with themselves as private persons, such contracts are not necessarily void, *In re Lafferty,* 2 Pa. Dist. R. 215, and they are valid, if fair, free from fraud and for the benefit of the corporation. *Savage v. Madelina Farmer's Warehouse Co.,* 108 N. W. (Minn.) 296; *Twin Lick Oil Co. v. Marbury,* 91 U. S. 587.

CRIMINAL LAW—CONFESSIONS—INDUCEMENTS.—STATE V. SHERMAN, 90 PAC. 981 (MOW.).—*Held,* that confessions to be inadmissible need not have been procured by inducements held out by one in authority, but it is enough that inducements were held out by a private person in the presence of one in authority.

A confession obtained through inducements held out by a person, not in authority, is admissible: *Reynolds Ev.,* Section 25; *People v. Barker,* 6 Mich. 277; *Price v. State,* 10 Ohio St. 418; *contra,* that confession must be voluntary no matter to whom it is made: *Rex v. Dunn,* 4 C. & P. 543; *Rex v. Slaughter,* 4 C. & P. 544. Inducements held out in the presence of an officer have the same effect as if held out by the officer: where husband, in the presence of an officer, held out inducements to his wife, *Regina v. Taylor,* 8 C. & P. 733; where innkeeper, in the presence of officer, held out inducements to the prisoner, *Rex v. Pountney,* 7 C. & P. 302. Some courts have gone so far as to say that a confession obtained through the threats of a third party and accidentally overheard by one in authority is not admissible, *Hall v. State,* 65 Ga. 36; but the weight of authority is the other way. *Wharton on Ev. in Crim. Cases,* Section 644; *Commonwealth v. Goodwin,* 186 Pa. 218.

EJECTMENT—POSSESSION OF DEFENDANT—STRETCHING WIRE ABOVE SURFACE.—BUTLER V. FRONTIER TELEPHONE CO., 79 N. E. 716 (N. Y.).—*Held,* that ejectment will lie where a telephone wire is stretched across plaintiff's premises, about thirty feet above the surface of the ground, which is not supported by any structure standing on the premises, plaintiff being the owner of the space above his premises and entitled to its exclusive possession.

ELECTRICITY—DEFECTIVE WIRING BY CUSTOMER—SHUTTING OFF CURRENT.—BENSON V. AMERICAN ILLUMINATING CO., 102 N. Y. SUPP. 206.—*Held,* that where, after an elective company has wired an office for light, the customer makes defective connections of other wires with the wiring, causing danger of fires, and refuses to remedy the same, the company which, in case of fire therefrom, would be liable for damages to third persons, may shut off the current, without liability to the customer therefor.

EVIDENCE—BEST AND SECONDARY.—COLE V. ELLWOOD POWER CO., 65 ATL. 678 (PA.).—*Held,* that where an original paper and a carbon copy are made on a typewriter at the same time, signed by the same person, and executed in the same manner, both may be considered originals, and either one is admissible in evidence without notice to produce the other.

EVIDENCE—ENTRIES IN PRIVATE MEMORANDUM.—BURKE v. BAKER, 80 N. E. 11033 (N. Y.).—*Held,* that in an action by executrix for services rendered by her testator, entries in the diaries of testator relating to services alleged to have been rendered defendants were inadmissible.

While such an admission is justified on the ground of necessity, or as best evidence, *Kendall v. Field,* 14 Me. 30; or where made in regular course by deceased clerk, *Bacon v. Vaughn,* 34 Vt. 73; or even where clerk is alive, yet not produced, *Cummings v. Fullam,* 13 Vt. 434, it was distinctly decided in *Lapham v. Kelley,* 35 Vt. 195, on thorough examination of all authorities, that such an entry in a pass-book of like character was not admissible as independent evidence and the rule seems well established that private memoranda made for preserving a knowledge of a fact are never admissible as independent evidence in favor of persons who made them. *Godding v. Orcutt,* 44 Vt. 54; *Lawrence v. Baker,* 5 Wend. 301; *Glover v. Hunnewell,* 6 Pick. 222; *Haven v. Wendall,* 11 N. H. 112; *Story's Confl. of Laws,* sections 526-7.

EVIDENCE—EXPERTS—HYPOTHETICAL QUESTION.—CITY OF CHICAGO v. DIDIER, 81 N. E. 698 (ILL.). Where a medical expert was asked a hypothetical question based upon assumed facts and the assumed truth of testimony of witnesses for the plaintiff, offered at the trial, *held,* that the question was not objectionable in form.

Courts as a rule entertain an aversion to expert testimony, but consider it necessary in many cases. *Tulles v. Rankin,* 6 N. D. 44. The courts have adopted different rules as to what shall constitute a hypothetical question. In *Mayo v. Wright,* 63 Mich. 32, it was said that the question must not contain statements outside of any testimony given previously in the trial, but this was carried farther in *Elgin A. & S. Traction Co. v. Wilson,* 217 Ill. 47, where it was said that a physician could express an opinion upon information gained in the exercise of his professional duties with the patient. Nevertheless, where the question is based upon conflicting testimony, it will not be admitted, *Smith v. Hickenbottom,* 57 Iowa, 733; and it should embody substantially all the facts relating to the subject upon which the question is asked. *Serm v. Southern Ry. Co.,* 108 Mo. 142. Also it may be based upon the hypothesis of all the evidence, or on a hypothesis framed of certain facts assumed to have been proven. *Goutier v. Hartman,* 3 Colo. 53.

EXEMPTIONS—BILL OF—COMPELLING TRIAL JUDGE TO ACT—MANDAMUS.—STATE EX REL. COLUMBUS ST. RY. & LIGHT CO. v. DEUPREE, 81 N. E. 678 (IND.). Where a judge refused to sign a bill of exceptions on the ground that there was no shorthand reporter during the trial, *held,* that mandamus would lie to compel him to act on the bill, and if correct, to sign it.

It is a well settled rule of law, that a judge must sign a bill of exceptions, if it is correct. *State ex rel. Sneed v. Hall,* 3 Coldwell (Tenn.) 255. And if they do not correctly state the truth of the case, it is the duty of the judge, with the aid of counsel, to setttle the bill, *Page v. Colton,* 30 Grattan (Va.) 415; though a judge cannot be compelled to sign a bill of exceptions which he alleges is untrue, *State ex rel. Wittenbrock v. Wickham,* 65 Mo. 634; or one which he believes does not contain the truth, *People ex rel. Vosburgh v. Jamison,* 40 Ill. 93; and the power of determining whether the bill is correct or not, is vested in the judge, *State v. Todd,* 4 Hammond (Ohio) 351, and when the judge refuses to sign because he says it does not state the truth of the case, which the relator traverses, an issue of fact is presented, to be determined upon the evidence, *Collins et al. v. Christian,* 92 Va. 731; but the

instrument must show a fair and *bona fide* statement of the case. *Pacific Land Asso. et al v. Hunt,* 105 Cal. 202.

HIGHWAYS—WATER MAINS—ADDITIONAL SERVITUDE.—BALTIMORE CO. WATER AND ELECTRIC CO. v. DURREUIL, 66 ATL. (MD.). 439.—*Held,* that the only right the public acquires in an ordinary country highway, the fee of which is in the abutting owner, is the easement of passage and its incidents, and the laying of water pipes therein is an additional servitude.

In the use of streets for public purposes the rule is said to be that the rights of the abutter, as between him and the public, are substantially the same whether the fee is in him subject to the public use or is in the city in trust for street purposes. *Barney v. Koebuck,* 94 U. S. 324-340; *Mollandin v. Union Pacific Ry. Co.,* 14 Fed. 394. The law presumes that when men lay out land and dedicate it to the public for street purposes they contemplate the use of the street for all such usages as may arise in the course of time. *Magee v. Overshiner,* 150 Ind. 127; *Cater v. No. Tel. Ex. Co.,* 60 Minn. 539. It has been held in some cases that when the public acquires a street, it may be used for all street purposes consistent with the proper use of a street. *Julia Bld. Asso. v. Bell Tel. Co.,* 88 Mo. 258; *Parsons v. Waterville and Oakland St. Ry.,* 101 Me. 173. A distinction has been recognized, however, between the use of rural or country highways and the use of streets in cities and towns. *Kincaid v. Ind. Nat. Gas Co.,* 124 Ind. 577; *Penn. Ry. Co. v. Mont. Co. Pass. R. Co.,* 167 Pa. St. 62. *Contra, Lincoln v. Comm.,* 164 Mass. 1; *Hardman v. Cabot,* 7 L. R. A. (new series) 506. These courts hold that in the ordinary country highway the easement is one of passage merely. *Sterling's Appeal,* 111 Pa. St. 35; *Mackenzie's Case,* 74 Md. 47. And does not include the permanent and exclusive appropriation of any part thereof by the laying of water pipes, gas pipes, and the like. *Consumers Gas Trust Co. v. Huntsinger,* 14 Ind. App. 156; *Ward v. Triple St. Nat. Gas Co.,* 25 Ky. L. Rep. 116.

MASTER AND SERVANT—NEGLIGENCE OF SERVANT—SCOPE OF EMPLOYMENT. —BAMBERG V. INTERNATIONAL RY. CO., 103 N. Y. SUPP. 297. Plaintiff, a passenger on an open street car, was injured by the pole of a wagon belonging to defendant being driven into the car in a collision at a street crossing. The driver of the wagon disobeyed instructions, and permitted a boy to drive the team prior to the collision. The boy drove the team at a trot toward the crossing, and, seeing he was unable to stop in time to prevent the collision, called to the driver, who seized the reins, which had been at all times within his reach, but was unable to stop in time. *Held,* that the boy at the time of the accident, though not within the employ of the defendants, was engaged in their business, and that they were therefore liable, both for his negligence and the negligence of the driver.

MUNICIPAL CORPORATIONS—POLICE POWER—TRADING STAMPS.—CITY AND COUNTY OF DENVER V. FRUEAUFF, 88 PAC. 389 (COL.).—*Held,* that an ordinance forbidding any gift enterprise, defined to include the giving of any trading stamp or other device which shall entitle the purchaser of property to receive from any person or corporation other than the vendor any property other than that actually sold, is not justifiable as an exercise of the police power.

MUNICIPAL CORPORATIONS—PUBLIC IMPROVEMENTS—SUFFICIENCY OF BIDS. —STIMSON V. HANLEY, 90 PAC. 945 (CAL.).—*Held,* that where bids were

invited for the paving of a street as one work, bids for less than the whole work were not in response to the invitation, and might be disregarded.

Contracts to the lowest bidder are governed by statutes and they are designed rather for the benefit and protection of the public than the bidder. *The State ex rel. State Journal Co. v. McGrath,* 91 Mo. 386. Officials vested with the power usually must award the contract to the person submitting the lowest bid in response to the invitation, *Carter v. Kalloch,* 56 Cal. 335; *Dement v. Rokker,* 126 Ill. 174. Bids for a contract made up of several sections must be considered as for an indivisible contract, *Santa Rosa Lighting Co. v. Woodward,* 119 Cal. 30; *Vincent v. Ellis,* 116 Iowa, 609. In *In re Mahan,* 20 Hun. (N. Y.) 301, and *Matter of the Emigrant Industrial Savings Bank,* 73 N. Y. 395, it was held that a contract made up of several sections must be awarded to the lowest bidder for the whole, not to another bidder who omitted a substantial part of the work to be contracted for.

MUNICIPAL CORPORATIONS—STREETS—DUTIES.—MITCHELL V. TELL CITY, 81 N. E. 594 (IND.).—*Held,* a municipal corporation's duty to keep its streets and sidewalks reasonably safe for public travel is performed when it has prepared and maintained a way of sufficient width, which is smooth and convenient for travel.

It is the duty of a municipal corporation to see that its sidewalks and streets are reasonably safe only, and not as to preclude all possibility of accident. *City of Rockford v. Hilderbrand,* 61 Ill. 155; *Town of Centerville v. Woods et al.,* 57 Ind. 192. And a city is bound to keep its walks in reasonable repair for their entire width. *City of Atlanta v. Milan,* 95 Ga. 135. But *Tritz v. Kansas City,* 85 Mo. 632, holds that a city is bound to keep only so much of its sidewalk in repair as is necessary to render it safe for travel. But defects in sidewalks and streets must be such that a person using ordinary prudence will incur danger in passing over them. *City of Aurora v. Pulfer,* 56 Ill. 270.

NEGLIGENCE—TELEGRAPH COMPANIES—DELIVERY OF MESSAGE—W. U. T. CO. V. GAMBLE, 101 S. W. 1166 (TEX.) Where a telegraph company neglected to deliver a message addressed to one "Gamble," addressee's correct name being "Gambill," and he being well known in the town, *held,* that the company was not relieved of the duty of delivering a message to the addressee.

When the addressee of a telegram is not at the place of address, it is not sufficient for the company to leave the telegram at the place of address, but it must use reasonable diligence to find him. *W. U. T. Co. v. De Jarles,* 8 Tex. Civ. App. 109. So also it was held in the case of *W. U. T. Co. v. Wood,* 56 Kan. 737, that when the person to whom the message was addressed, was out of town, so that personal delivery could not be made, it was the duty of the company to deliver the message either to those in charge of the business, or to the members of his family at his residence. The law has even been carried so far as to say, that even though the telegraph company made an ineffectual attempt to find the addressee, it is liable, when as a matter of fact, the addressee lived in the town. *W. U. T. Co. v. McKibben,* 114 Ind. 511, and in the case of *W. U. T. Co. v. Newhouse,* 6 Ind. App. 422, it was held not sufficient to leave the telegram at the specified address, when the addressee could have been found by looking in the city directory. The greatest care must be used in locating the addressee, as in the case of *Herran v. W. U. T. Co.,* 90 Iowa 129, where the telegraph company might have located the addressee by greater diligence. The court in *Pope v. W. U. T. Co.,* 9 Ill.

App. 283, said that it would be a limitation upon the duty of the telegraph company to say that a message need only be delivered at the place where addressed.

NEGLIGENCE—UNPROTECTED TURNTABLE—INJURY TO CHILD.—THOMPSON V. BALTIMORE & O. R. Co., 67 ATL. 768 (PA.). Where a railroad erects on its own land a turntable, *held,* that it is under no duty to take special precaution for the safety of children, though the turntable may tend to attract them and expose them to danger. Mestrezat, J., *dissenting.*

A landowner is under no obligation to keep his lands safe for a mere trespasser. *Hounsell v. Smyth,* 7 C. B. N. S. 731. From this general doctrine there was a departure in the famous "turntable cases." In the original of these, *Sioux City, etc., R. Co. v. Stout,* 17 Wallace 657, the Supreme Court of the U. S. decided that a landowner who makes changes on it in the course of its beneficial use, which tend to attract children and expose them to danger, is under a duty to take special precaution for their safety. Where railroad turntables have been left insecurely fastened, and children have been hurt while playing on them, the railroad company has been held liable in the following jurisdictions: Minn., Mo., Kan., Ga., Wash., Cal., S. C., and Neb. The tendency of later decisions is decidedly against the imposition of such a duty. In *Gillespie v. McGowan,* 100 Pa. 144, it is said that if such a doctrine were carried to its logical conclusion it would charge the duty of protection of children upon every member of the community except the parent. A number of states support the doctrine that the fact that the trespasser is an infant of tender years affords no reason for modifying this rule, and charging the landowner with a duty which does not otherwise exist. *The Delaware, etc., R. Co. v. Reich,* 61 N. J. L. 635. The doctrine of the "turntable cases" has also been disapproved in N. Y., Va., Mass., N. H., R. I., Mich., W. Va. and Texas.

NOTES—FORGERY—FRAUD—DECEIT.—BIDDEFORD NAT. BANK V. HILL, 66 ATL. (ME.) 721.—*Held,* that where a person, not intending to sign a promissory note, but by fraud and deceit has been tricked into signing an instrument which afterwards proves to be a promissory note, such instrument is a forgery, although the signature affixed thereto is genuine.

Intent to defraud is the essence of the crime of forgery. *State v. Redstake,* 39 N. J. 365; *Comm. v. Henry,* 118 Mass. 460. It has been said that every instrument that fraudulently purports to be what it is not is a forgery when the falseness relates to a material fact. *The Queen v. Ritson,* 1 L. R. C. C. 200; *State v. Kattleman,* 35 Mo. 105. If a man sign his own name with the intention that it shall be taken for the name of another of the same name, it is forgery. *Meade v. Young,* 4 T. R. 28; *Barfield v. State,* 29 Ga. 127. A mere false representation, however, where the signature is not false, is not sufficient to constitute the crime. *Rex v. Story, Russ & Ry.,* 81. And where the instrument is genuine and the fraud of defendant consists in holding himself out as the party who made it, forgery is not committed. *The King v. Hevey,* 1 Leach. (3rd ed.) 268. But if the writing is done for another and his designs are fraudulent so as to make it forgery if he had written it himself, the instrument is a forged one. *Caulkins v. Whisler,* 29 Iowa 495; *People v. Drayton,* 41 App. Div. 40. "It is not necesary that the fraudulent intent should be in the mind of the one whose hand holds the pen." *Comm. v. Foster,* 114 Mass. 311; *Gregory v. State,* 26 Ohio St. 510.

SCHOOLS AND SCHOOL DISTRICTS—FAILURE TO PROVIDE SCHOOL FACILITIES.—BOARD OF EDUCATION OF FRELINGHUYSEN TP. V. ATWOOD, 65 ATL. (N. J.) 999.—*Held,* that the failure of a board of education to provide for the transportation of children living remote from the school-house, pursuant to section 111 of the school law (P. L. 1902, p. 108), is not a failure "to provide suitable school facilities and accommodations," within the meaning of section 120 of the same act (P. L. p. 111).

TAXATION—PUBLIC LANDS—SALE.—MINT REALTY CO. V. CITY OF PHILADELPHIA ET AL., 66 ATL. 1130 (PA.).—*Held,* where the United States sells real estate, reserving title to itself, until all payments are made, and conditions performed, such real estate is not taxable until the vendee has made all the payments and performed all the conditions. Mestrezat and Potter, JJ., *dissenting.*

United States lands are not subject to taxation or private transfer or ownership, until entry of the purchase which is completed by the patent. *Sands v. Davis,* 40 Mich. 14. Although lands entered in the proper land offices of the United States become subject to taxation from the issuance of the certificate of entry, and the payment of the purchase price without regard to the issuance of the patent. *Smith v. Hollis,* 46 Ark. 17. While lands on Pawnee Indian reservations sold by the United States partly on credit, are taxable from date of the sale. *Edgington v. Cook,* 32 Neb. 551. And lands purchased from the United States and paid for, are liable to be taxed, the same resting entirely upon an agreement between the United States and State, although a patent for the lands has not been given. *Astrom et al. v. Hammond,* Fed. Cas. No. 596.

WATERS AND WATER COURSES—DIVERSION—STATUTORY PROVISION—CONSTITUTIONALITY.—MCCARTER V. HUDSON COUNTY WATER CO., 65 ATL. 489 (N. J.).—*Held,* that the act of May 11, 1905 (P. L. 1905, p. 461), whereby it is made unlawful for any persons or corporation to transport through pipes, conduits, etc., the waters of any fresh-water lake, pond or stream of this state into any other state is constitutional.

WATERS—RIPARIAN OWNERS—USE OF WATER—MONTECITO VALLEY WATER CO. V. CITY OF SANTA BARBARA ET AL., 90 PAC. 935 (CAL.). Where upper riparian owner diverted and distributed water to others for irrigating of otherwise arid lands, *held,* that a riparian proprietor is not entitled to take water from a stream for use on land which was valueless for agricultural purposes.

A riparian owner is not liable for a reasonable use of water passing his land, whether for his own purposes or for sale to others, and the reasonableness of his use is a question of fact, *Gillis v. Chase,* 67 N. H. 161; *Jones v. Aqueduct,* 62 N. H. 488; *Snow v. Parsons,* 28 Vt. 459, that depends upon the circumstances of every case, *Davis v. Getchell,* 52 Me. 602; *Tyler v. Wilkinson,* 4 Mason 401. All waters of a stream may be used for natural purposes that are necessary to man's existence, but only part of the water may be used for purposes not necessary, as irrigation and manufacturing, *Evans v. Merriweather,* 4 Ill. 492; *Stein v. Burden,* 29 Ala. 127; but riparian owners cannot, even in the irrigation of their lands, consume the water to the detriment of riparian proprietors below, *Arnold v. Foot,* 12 Wend. 330; *Cook v. Hull,* 3 Pick. 269. The use of water for irrigation is an artificial use, not a natural use, and the natural use must take precedence, *Gillett v. Johnson,* 30 Conn. 180; *Wadsworth v. Tillotson,* 15 Conn. 366.