RECENT CASES

ATTORNEY AND CLIENT—DISBARMENT OF ATTORNEY—GROUNDS.—IN RE O'SULLIVAN, 107 N. Y. SUPP. 462.—*Held,* an attorney who received from a woman $300 to obtain the release of her husband from prison, agreeing to return $250 if he did not secure the pardon, and thereafter failing to secure the release, did not return the money, but appropriated it to his own use, was guilty of misconduct requiring his disbarment. Laughlin, J., *dissenting.*

An attorney-at-law is an officer of the court, admitted under its rules, and is liable to be disbarred for dishonorable conduct or any single criminal act, as may show that trust and confidence cannot be reposed in him as such. *Percy's Case,* 36 N. Y. 651. And if he does not conduct himself with fidelity to his clients, the court is not only warranted, but required, to disbar him, *Strout, Petitioner, v. Proctor,* 71 Me. 288. So where an attorney neglects and refuses to pay over money due to his client, after demand, this will be such a breach of professional duty as to require disbarment. *People ex rel. Hungate v. Cole,* 84 Ill. 327; *Wilson v. Popham,* 91 Ky. 327. But where an act is merely discreditable, the court will not take judicial notice of it and disbar him. *Dicken's Case,* 67 Pa. 169. Or where acts sufficient for disbarment have been committed, but the proof fails to disclose any bad motive for the commission thereof, either from the act itself or from the circumstances, disbarment is not authorized, *The State ex rel. Fowler v. Finley,* 30 Fla. 325.

CARRIERS—CARRIAGE OF LIVE STOCK—LIABILITY.—TEX. CENT. R. CO. V. G. W. HUNTER & CO., 104 S. W. 1075 (TEX.).—*Held,* a carrier of live stock is not an insurer against loss, except that due to an act of God, the public enemy, or the inherent qualities of the goods shipped, as in the case of inanimate freight; but the distinction is made that a carrier of live stock is further relieved from liability, in the absence of negligence, for loss due to the natural propensities and habits of the stock.

Carriers of animals are common carriers, subject to the same responsibilities as carriers of other classes of property. *Mo. Pac. R. Co. v. Harris,* 67 Tex. 166; *Myrick v. Mich. Cent. R. Co.,* 107 U. S. 102. But *L. S. & M. S. R. Co. v. Perkins,* 25 Mich. 329, holds that railroad companies are not by the common law, common carriers of live stock and can only make themselves such by assuming to convey as common carriers; while *Railroad Co. v. Hedges,* 9 Bush. (Ky.) 645, intimates that carriers of live stock are not insurers in any respect, but holds that the mere proof of an injury establishes a *prima facie* case. But the better rule seems to be that the common law liability of a common carrier to deliver live stock is not different from that where the delivery of merchandise is concerned. *St. L. & S. E. R. Co. v. Dorman,* 72 Ill. 504; *Rixford v. Smith,* 52 N. H. 355. And so a railroad is bound, at common law, as a common carrier, to receive and transport live animals as other property, and is liable, after receiving them as insurer against loss from any cause, except the act of God, the public enemy, or the inherent character or vicious propensities of the animals themselves. *G. C. &*

S. F. Ry. Co. v. Trawick, 68 Tex. 314; *The Ga. R. R. v. Spears,* 66 Ga. 485. Thus, where the cause of the damage, for which recovery is sought, is not connected with the inherent nature or vicious propensities of the animals undertaken to be carried, the carrier is liable. *McCoy v. The K. & D. M. R. Co.,* 44 Iowa, 424; *Lindsley v. M. & St. P. R. Co.,* 36 Minn. 539. And further, the *onus* is on the carrier to account for the stock delivered to it and lost during transit, without affirmative proof of negligence by the shipper, except in the case of special contracts. *McBeath v. Wab. St. L. & Pac. Ry. Co.,* 20 Mo. App. 445.

CARRIERS—PASSENGERS' BAGGAGE—CARRIERS AS WAREHOUSEMEN.—KRESSIN V. CENTRAL RY. CO., 103 N. Y. SUPP. 1002.—*Held,* that where baggage is carried on the train with the passenger so that he is present upon its arrival, he must take it away as soon as practical; and if, for his own convenience, he chooses to leave it with the carrier, the latter becomes a warehouseman.

It is a general rule that when a passenger fails to claim his baggage within a reasonable time after the arrival at its destination, the extraordinary liability of the carrier is changed to that of an ordinary bailee for hire. *Chicago & Alton Ry. Co. v. Addizoat,* 17 Ill. App. 632. A "reasonable time" within the meaning of this rule depends upon what is the usual course of business at the place where the baggage arrives, the customs of the company, the manner of transporting baggage from the station, and all the circumstances surrounding the case. *Ouimit v. Henshaw,* 35 Vt. 605; *Mote v. Chicago & N. W. R. R. Co., 27* Iowa 22. It has been held in a number of cases that it is the duty of the passenger to present his check and receive his baggage immediately upon its arrival, making due allowance for delay caused by the crowded state of the depot at the time. *K. C. F. S. & M. P. Co. v. McGahey,* 63 Kan. 344; *G. H. & San Antonio R. R. Co. v. Smith,* 81 Texas, 479. And it seems that a passenger cannot extend the strict and rigid liability of a common carrier as an insurer by postponing the time of taking possession of baggage for his own convenience, or on account of peculiar circumstances. *Chicago, R. I. & P. R. Co. v. Boyce,* 73 Ill. 510; *Steamboat v. Smart,* 107 Pa. 492. If the baggage is sent on ahead to be held until the arrival of the next train, or is held on request until the passenger can conveniently send for it, the carrier holds it merely as a warehouseman. *Laffray v. Grummond,* 74 Mich. 186; *Ga. Ry. & Banking Co. v. Thompson,* 86 Ga. 327. However, the carrier must perform its duty to the passenger, and it is not discharged from liability as an insurer until the baggage has been put in a proper place, ready for delivery, and the passenger has been given a reasonable opportunity, under the existing circumstances, to claim it. *Dininny v. N. Y. & N. H. R. Co.,* 49 N. Y. 546; *Toledo, St. Louis & K. C. R. Co. v. Tapp,* 6 Ind. App. 304.

CARRIERS—PERSONAL INJURIES—ASSAULTS BY EMPLOYEES.—ZECCARDI V. YONKERS R. CO., 83 N. E. 31 (N. Y.).—Plaintiff was a passenger on defendant's car. The conductor quarreled with another passenger and ejected him, whereupon he and the conductor engaged in a fight upon the ground, the car being stopped at the time. Plaintiff, not knowing what the fight was about, stepped between to separate them, when the motorman assaulted him. *Held:* defendant owed him no duty. Chase and Hiscock, J.J., *dissenting.*

The law implies a contract upon the part of a carrier of passengers for

the protection of the party carried from the insults and wanton utterances of strangers, fellow-passengers, the carrier and its servants. *Winnegar v. Central Passenger Railway Co.*, 85 N. Y. 547. And the best considered cases hold that the carrier is liable even for torts committed outside the scope of servant's authority. *Bryant v. Rich*, 106 Mass. 180; *Indianapolis N. R. Co. v. Cooper*, 6 Ind. App. 202; *White v. Railroad Co.*, 115 N. C. 631; *Goddard v. G. T. R. Co.*, 57 Me. 202. The difficulty arises in determining when the relation has ceased; in *Central Railway Co. v. Peacock*, 69 Md. 257, when the passenger started to go to the office of the carrier while the horses of the car were being changed, the relation was held to have ceased, and in *State v. Grand T. R. Co.*, 58 Me. 176, where the train was stopped on a side-track, the passenger surrendered his rights as such when he got off the car. But the majority of cases seem to take the *contra* view, saying that the railroad company owes a peculiar duty to its passengers for hire. *Atchison, etc., R. R. Co. v. Shean*, 18 Colo. 368. And it is not necessary that a person should be on the train in order to be regarded as a passenger. He has the right to stand or walk around. *J. M. & I. R. R. Co. v. Riley*, 39 Ind. 568. If the actual transit has been interrupted for the time being, the relation continues, even though the passenger leave the car. *Conroy v. C., etc., R. R. Co.*, 96 Wis. 243. So if he leaves at a regular station from motives of either business or curiosity. *Chicago, R. I. & P. R. R. Co. v. Sattler*, 64 Neb. 636. So if he leave to eat his meals in a nearby hotel. *Watson v. Oxanna Land Co.*, 92 Ala. 320.

CONTRACT—ATTORNEY AND CLIENT—LIABILITY FOR EXPENSES.—ARGUS CO. V. HOTCHKISS ET AL., 107 N. Y. SUPP. 138.—*Held*, an attorney's negotiation for work to be done in a law suit is the act of an agent for a known principal, and for the expenses thereof he does not become personally liable. Chester and Cochrane, J.J., *dissenting*.

There has been great divergency in the holdings of the courts upon the relationship of attorney and client. An attorney at law has authority by virtue of his employment, to do in behalf of his client all acts, in and out of court, necessary or incidental to the prosecution and management of the suit. *Moulton v. Bawker*, 115 Mass. 36. A person is included by the acts and omissions of his attorneys where no fraud or unfairness appears. *Lawson v. Bettison*, 12 Ark. 401; *State v. Lewis*, 9 Mo. App. 321. Therefore the demands of the attorney are those of the client, when they pertain to the progress of the case. *Lee v. Buckheit*, 46 Wis. 246. And he is not liable for acts performed in good faith. *Campbell v. Brown, et al.*, Fed. Cases, 2355. While, in *Sims v. Brown*, 6 Thompson & Cook 5, the relation between attorney and client was said to be the same as principal and agent, and the authority of the attorney extends only to the control and prosecution of the case. *Ratican v. Union Depot Co.*, 80 Mo. App. 528. Therefore, when an attorney borrowed money in order to pay court expenses, so as to save his client's rights, the attorney was liable for the debt. *Bell v. Mason*, 10 Vt. 509. And in *Trimmer v. Thomson*, 41 S. C. 125, a case analogous to above case, it was held that when an attorney procured printing to be done in a case, he is personally responsible to the printer for the work so done, unless he shows that he was contracting as agent for his client.

CRIMINAL LAW—JURISDICTION OF OFFENSE—LOCALITY OF OFFENSE.—COMMONWEALTH V. BALL ET AL., 104 S. W. 325 (KY.).—*Held,* where deceased was shot in one state, and died in another state, the crime was committed in the state where the shooting occurred, and the courts of that state have jurisdiction.

Homicide is committed in the state where the felonious act occurs, although death takes place in another state. *U. S. v. Guiteau,* 10 Fed. 161; *State v. Garrison,* 147 Mo. 548. So, where a mortal blow is struck in a United States fort and death occurs in the state outside the fort, the state has no jurisdiction over the homicide. *State v. Kelly,* 76 Me. 331. But there is a contrary view, for homicide is only completed when death occurs. *U. S. v. Bladen,* Fed. Cas. No. 14,605; *Commonwealth v. Linton,* 2 Va. Cas. 205. And a statute giving the state authority to convict a citizen of another state or country for homicide, where the injured party died within the state, the injuries having been inflicted upon the high seas or in another state, is constitutional. *Commonwealth v. Macloon,* 101 Mass. 1. But a statute is also valid which declares that prosecution may be maintained in a state where the fatal blow has been struck, although death occurs elsewhere. *Green v. State,* 66 Ala. 40. And, where one stands in one state and shoots a person in another state, the murder is committed in the latter state and its courts alone have jurisdiction of the offense. *State v. Hall,* 114 N. C. 909.

DAMAGES—MEASURE—DESTRUCTION OF GROWING CROPS.—BERARD ET AL. V. ATCHISON & N. R. CO. ET AL., 113 N. W. 537 (NEB.).—*Held,* the measure of damages for the destruction of a growing crop is the value of the crop at the time of its destruction.

The measure of damages for the destruction of a growing crop is the value of the crop in the condition it was in at the time of the injury. *Colo. Con. L. & W. Co. v. Hartman,* 5 Colo. App. 150; *Richardson v. Northrup,* 66 Barb. (N. Y.) 85. For a growing crop has an approximate value, at every stage of its growth, and the measure of damages is the value of the crop at the time of its destruction with lawful interest from that time to the present. *Clarke v. Banks,* 6 Houst. (Del.) 584; *Ry. Co. v. Lyman,* 57 Ark. 512. And, in estimating the value of growing crops destroyed, it is proper to take into consideration the fact that the land was very fertile and productive, and that it had for a number of years produced better crops, and they had brought better prices than the average. *Economy Light & Power Co. v. Cutting,* 49 Ill. App. 422. But, in *Shotwell v. Dodge,* 8 Wash. 337, in an action for damages for the loss of a hop crop, the measure of damages is said to be the market value of the crop alleged to be lost, over the cost of producing, harvesting and marketing. And the measure of damages is the market value of the crop at the time of its injury, less the fitting of it for market, and diminished by whatever the value of the portion saved, if any, may be. *Smith v. C. C. & D. R. R. Co.,* 38 Ia. 518. But evidence of what the value of a crop would have been if it had matured is of too speculative a character to form a proper basis for damages. *I. & G. N. Ry. Co. v. Benitos,* 59 Tex. 326.

DIVORCE—REVIEW—EFFECT OF DEATH OF SUCCESSFUL PARTY.—CHATTERTON ET AL. V. CHATTERTON, 83 N. E. 161 (ILL.).—*Held,* that a husband against whom a decree of divorce was granted at the suit of the wife, may, after the

death of the wife, sue out a writ of error to review the decree, though it does not appear from the record that the wife left property in which the surviving husband will take an interest on the decree being reversed.

There is a conflict in the holdings of the court upon this subject. An action to procure a judgment of divorce is a purely personal one, and cannot survive the death of either party, and a court is deprived of the power to review. *Kirschner v. Dietrich,* 110 Cal. 502. Such death operates to abate the action. *Barney v. Barney,* 14 Iowa 189. A motion to set aside a decree after death of one of the parties will be denied, *Watson v. Watson,* 1 Hun. 267. But a separate action in the nature of a bill of revivor may be brought, which will bring all the heirs and interested persons in to defend. *Groh v. Groh,* 171 N. Y. Supp. 985; *Zoellner v. Zoellner,* 46 Mich. 511. But there must be sufficient grounds for granting a new trial. *Roberts v. Roberts,* 19 R. I. 349. While in *Israel v. Arthur,* 8 Colo. 85, it was held that a decree could be reviewed on a writ of error, whether property rights are affected or not. *Boyd's Appeal,* 38 Pa. St. 241. But it will not lie against anyone but him who was a party or privy to the first judgment. *Wren v. Morse et al.* 7 Ill. 72. And when a court once acquires full jurisdiction, during the life-time of both parties, the death of one after trial will not abate the suit; it is but an irregularity. *Danforth v. Danforth,* 118 Ill. 236.

DYING DECLARATIONS—ADMISSIBILITY.—STATE v. HOOD, 59 S. E. 971 (W. VA.).—*Held,* that it is no ground for excluding a dying declaration that it does not appear that the declarant does not believe in God, and rewards and punishments after death.

The first reported case of a dying declaration being admitted as evidence was in 1722, in *Rex v. Reason,* 1 Strange 499. Common law was that one who does not believe in the existence of a Supreme Being who will punish false swearing in a future world is incompetent, and consequently, dying declarations would not be admissible. 1 *Greenleaf Ev.* Sec. 157; *State v. Ah Lee,* 8 Ore. 218. But many states hold that this rule has been abrogated, *People v. Sanford,* 43 Cal. 29, and that a situation so solemn and so awful as impending death is considered by law as creating an obligation equal to that imposed by an oath, *Dixon v. State,* 13 Fla. 636, but the use of profane language immediately preceding the statement is hardly to be reconciled with such an assumption. *Tracy v. People,* 97 Ill. 101. And a disregard of the law of God in his outpourings of blasphemy should surely affect the credibility of the declaration when admitted. *Nesbit v. State,* 43 Ga. 238. Some cases go further and say no reliance whatever should be placed on them, *State v. Elliott,* 45 Iowa 486, and the extreme ruling is that non-belief in God renders them inadmissible, but the law will presume such belief until contrary is proved, *Donnelly v. State,* 26 N. J. L. 463.

EASEMENTS—EXTENT OF RIGHT—BURDEN OF PROOF.—ATTERBURY V. MCCLURE, 104 S. W. 958 (KY.).—*Held,* that the long and uninterrupted use of a roadway across the land of the defendant casts upon him the burden of showing that it was merely permissive.

It is a well-established rule that the mere permissive use of the land of another for any length of time will not ripen into a prescriptive right and may be prohibited or discontinued at the pleasure of the owner. *Hagerle v.*

Beebe, 123 Iowa 620; *Belser v. Moore,* 73 Ark. 296. But it is held that the use of a way for the statutory period, unexplained, raises the presumption that it is used under a claim or assertion of right, and not by permission, and casts upon the owner of the soil the burden of showing that it is merely permissive. *Hammon v. Zehner,* 23 Barb. 473; *Clement v. Battee,* 65 N. J. L. 674. *Pavey v. Vance,* 56 Ohio St. 162. Some courts have held that the use of land, whenever one sees fit and without asking leave, is an adverse use. However, the use of a way without objection or hindrance is not inconsistent with its use by permission. It must appear that the use was enjoyed under such circumstances as to indicate that it was claimed as a right and not regarded by the parties as a mere privilege revocable at the pleasure of the owner of the soil. *C. B. & Q. R. R. Co. v. Ives,* 202 Ill. 71; *Conyers v. Scott,* 94 Ky. 123.

FALSE IMPRISONMENT—ARREST ON CRIMINAL CHARGE—DAMAGES—ELEMENTS OF COMPENSATION.—CLARK V. TILTON, 68 ATL. 335 (N. H.).—*Held,* that the measure of damages would be the amount which would compensate plaintiff for the injury he had sustained because of the arrest, and not such damages as resulted to him by the suppression of the criminal prosecution.

It seems that the courts have been far from uniform in allowing the expenses incurred in the prosecution of cases of torts to be recovered as damages. *Bank v. Williams,* 62 Kan. 431; *Wilson v. Town of Granby,* 47 Conn. 59. In general, the principle which seems to guide the courts in this regard is the distinction drawn as to the malice or negligence of the act complained of. *Clark v. Wolfe,* 115 Ga. 320; *Eatman v. Railroad Co.,* 35 La. Ann. 1018. In actions for false imprisonment, however, the courts have allowed counsel's fee and costs necessarily incurred because of the false imprisonment to be considered with other expenses in the jury's estimate of damages, even though no bad faith or litigious conduct on the part of the plaintiff appears. *Stewart v. Kimball,* 43 Mich. 443; *Parsons v. Harper,* 16 Gratt. 64. And as a general rule it is held that the measure of damages in these cases is the actual expense incurred. *Duggan v. B. & O. R. R.,* 159 Pa. St. 248; *Woodfolk v. Sweeper,* 2 Humphr. 88.

GARNISHMENT—SUMMONS—WHEN ISSUED.—WEBSTER MFG. CO. V. PENROD, 114 N. W. 257 (MINN.).—*Held,* that a garnishee summons is issued when delivered by the plaintiff or his attorney to the proper officer for service upon the garnishee, and when the writ is sent to the officer by mail, delivery is not completed until received by him.

In those states in which the issuing of the writ is the commencement of the action, "issuing" is generally construed to mean the delivery of the writ to the sheriff with the intent to have it served. *Wilkins v. Worthen,* 62 Ark. 401. And a writ is said to be "delivered" within the meaning of this rule when it is placed in the hands of the proper officer or deposited in a place designated or provided by the officer for that purpose, or put in the course of delivery. *Mich. Ins. Bank v. Eldred,* 130 U. S. 693; *Webster v. Sharpe,* 116 N. C. 466. So, as it is held in some states that when a letter is placed in the post-office it passes out of control of the sender and into that of the person to whom it is addressed, *Taylor v. Merchants Life Ins. Co.,* 9 How. 390, by analogy, the writ is deemed by some courts to be delivered to the officer when it is mailed, addressed to him. *Burdich v. Green,* 18 Johns. 14.

However, the delivery of the writ will not constitute the commencement of the action unless there is a *bona fide* intention at the time of delivery of having it served. *Burnell v. Babbitt,* 65 N. H. 168; *West v. Engle,* 101 Ala. 509.

INTOXICATING LIQUORS—SALES WITHOUT LICENSE—EVIDENCE.—STATE V. BROWN, 102 S. W. 394 (ARK.).—On trial for selling liquor without a license, a witness testified that he asked the accused to sell him some whiskey; that the accused replied that he could not sell, but that he would loan him some; that the accused let the witness have two bottles of whiskey; that nothing was said as to when the same was to be returned or paid for; that about an hour and a half later, the witness returned and asked the accused what it cost to get whiskey there, and gave the accused that sum, and told him that when he made an order for whiskey, to get the witness some, and keep that in place of what he had got. *Held,* a sale as a matter of law. Battle, J., *dissenting.*

A sale implies a transfer of property for money. And, as a general rule, when a statute refers in terms to contracts of sale, it has no application to contracts of exchange. *Massey v. State,* 74 Ind. 368. And, while under the code of some states a "loan" would be as between the parties a "sale" as distinguished from a mere bailment, it would not be a sale within the meaning of a statute prohibiting the sale of intoxicating liquor without license, which, because of its being penal in its nature, must be strictly construed. *Skinner v. State,* 97 Ga. 690. These courts, however, will not countenance an attempted evasion of a statute, and it is generally for the jury to determine whether there was a sale or a *bona fide* exchange. *Robinson v. State,* 59 Ark. 341; *Coker v. State,* 91 Ala. 92. But there are many courts that hold that the intention of the legislature to inhibit the sale of liquor, in the broadest sense of that term, includes barter and exchange. *Keaton v. State,* 36 Tex. Cr. 259; *Sparks v. State,* 99 S. W. 546. It is said that practically there is no difference between the terms. And to make such a refinement the turning-point of the interpretation of a statute, contrary to the plain intent of the legislature, would be a violation of all sound rules of construction. *Howard v. Hanis,* 8 Allen 297. It has been held that a loan is a sale and this was without any limitation. *Tombeaugh v. State,* 98 S. W. 1054 (Tex.); *Keaton v. State,* 36 Tex. Cr. 259.

JUDGMENTS—VACATING—MERITORIOUS DEFENSE.—BRANDT V. LITTLE, 91 PAC. 765 (WASH.).—*Held,* that where an independent action is brought to vacate a judgment as obtained without jurisdiction, a showing that the defendant has, or at the time of judgment had a defense, is none the less necessary because the judgment may have been so obtained, especially if the lack of jurisdiction does not appear on the face of the record.

It seems to be the general rule in this country that a Court of Equity will not set aside a judgment, void for want of jurisdiction of the court rendering it, unless the party asking it has, or presents, a meritorious defense. *Meyer v. Wilson,* 166 Ind. 651; *White v. Crow,* 110 U. S. 183. However, it has been held in a number of states that a judgment rendered against a person who has not been served with process and by a court which has no jurisdiction over the parties is absolutely void, and that it is not incumbent upon the plaintiff, seeking to restrain its enforcement, to allege and prove a valid defense to the cause of action. *Mosher v. McDonald & Co.,* 128 Iowa 70;

Blakeslee v. Murphy, 44 Conn. 188. But equity will not interfere to enforce a mere technical right. *Gregory v. Ford,* 14 Cal. 138; *State v. Hill,* 50 Ark. 458. And it has been held that, although the judgment is void for want of service on the defendant, a Court of Equity will not relieve until it is averred and proved that if the relief is granted, a result would be attained different from that reached by the judgment complained of. *Colson v. Leitch,* 110 Ill. App. 509; *Hockaday v. Jones,* 8 Okla. 156.

LEASE—COVENANT AGAINST ASSIGNMENTS—BREACH.—HERZIG V. BLUMENKROHN, 107 N. Y. SUPP. 570.—A lease to B. contained a covenant against assignments without the lessor's written consent, and reserved to the lessor the right to re-enter for breach thereof. Before the commencement of the lessee's term, and without the lessor's consent, the lessee leased the same premises to defendant C. for the same term at the same rent by a lease which, except for the date and names of the parties, was a precise copy of the original lease. *Held,* that such second lease, though containing a covenant that the lessee should surrender on the last day of the term, and reserving to B. the right of re-entry for condition broken, constituted an assignment of the original lease, and not a sub-lease, and was therefore a breach of the covenant against assignment in the original lease. Ingraham, J., *dissenting.*

Originally a reversion in the primary lessee of some fragment of his estate was needful to support a sub-lease, though it might be a day, *Crusoe v. Bugby,* 3 Wilson 234, an hour, or even a minute, *Poutney v. Holmes,* 1 Strange 404, but this rule is at present extended, and a reservation in the first lessee of a right of entry for breach of covenant brings about the same result, *Stewart v. Long Island R. R. Co.,* 102 N. Y. 601, being based on an early English case, *Doe v. Bateman,* 2 Barn. & Ald. 168, but there is an apparent conflict in New York itself, *Bedford v. Terhune,* 30 N. Y. 454. This latter view is based on the reversionary interest retained by the lessee, *Collamer v. Kelly,* 12 Iowa 319; that is, that a contingent reversionary interest to be availed by an entry for breach of condition is sufficient to change the character of an apparent assignment to a sub-lessee, *Dunlap v. Ballard,* 131 Mass. 161, but this principle is apparently predicated on statutory grounds, for it is contrary to common law, for such was not a reversion nor an estate, but a mere chose in action, *Southard v. Central R. R. Co.,* 26 N. J. L. 21, and could not be aliened or assigned or pass by grant of reversion, 2 *Washburn Real Prop.* 451; *Hoyt v. Ketcham,* 54 Conn. 60; and the modern view, irrespective of statute, follows the main case, *Sexton v. Chicago Storage Co.,* 129 Ill. 318.

MASTER AND SERVANT—ACTIONS FOR WRONGFUL DISCHARGE—OTHER EMPLOYMENT AS A GROUND FOR REDUCTION OF DAMAGES.—BEISSEL V. VERMILLION FARMERS' ELEVATOR CO., 113 N. W. 575 (MINN.).—*Held,* where the employee is wrongfully discharged prior to the termination of his contract of employment, in an action to recover the stipulated wages for the entire term covered by the contract, the employee is not required to allege and prove that in the *interim* he was unable to obtain other employment.

Where a servant is discharged before the expiration of his term of service, and endeavors, but is unable to obtain other employment, the measure of damages is the sum fixed by the contract of such unexpired term. *Southwick v. Bernhard,* 17 N. Y. Supp. 478. And, while a party is bound

to use reasonable diligence in obtaining other employment, he is not bound to accept employment of a substantially different character. *Hinchcliffe et al. v. Koontz,* 121 Ind. 422. But if he does accept employment of a different character, the wages received may be shown in mitigation of damages for the wrongful discharge. *Stevens v. Crane,* 37 Mo. 487. And, in mitigation of damages, where an employee, discharged before the expiration of his term of service, brings an action for wrongful discharge, and the defense in part is that he received compensation in other employments during the unexpired portion of the term, the burden of showing such compensation and the value thereof is upon the employer. *World's Columbian Exposition v. Richards* 57 Ill. App. 601. And though a servant is bound to use reasonable efforts to obtain employment elsewhere, the burden of showing that, by reasonable efforts, he might have obtained such employment is upon the employer. *Emery et al. v. Steckel,* 12 Pa. State, 171; *Barker v. Knickerbocker Life Ins. Co.,* 24 Wis. 630.

MUNICIPAL CORPORATION—MAINTENANCE OF POLICE STATION.—WILCOX V. CITY OF ROCHESTER, 82 N. E. (N. Y.) 1119.—Where a city exercises a governmental function in maintaining a police station, used in part as a jail for prisoners, as well as in part for the accommodation of its police force, *held,* that it is not liable for the negligence of an employee in charge of an elevator therein.

A municipal corporation exercises two classes of functions, private and governmental, *Hourigan v. Norwich,* 77 Conn. 358, this distinction being clearly defined and well recognized, *Bailey v. Mayor,* 3 Hill 531, but in the application lies the conflict. When the duty enjoined relates to some act in the doing of which the city has some special interest apart from the public generally, *Merrifield v. Worcester,* 110 Mass. 216, it is the English rule, *Mersey Docks v. Gibbs,* etc., 11 H. L. Cases 685, as well as the American, that the municipal corporation is liable for an injury sustained, *Briegle v. Philadelphia,* 135 Pa. St. 451, but when the duty relates to acts which, in their nature, are for the benefit of the public, *Finch v. Board,* 30 Ohio St. 37, and the city is representative and agent of the public, it is not liable, *Hill v. City of Boston,* 122 Mass. 344; this latter view was also held by Chief Justice Marshall in *Fonle v. Alexandria,* 3 Pet. 398. And the duty and function of keeping, *Brown v. Guyandotte,* 34 W. Va. 299, and maintaining a city prison is purely such a governmental act, *Gray v. Griffin,* 111 Ga. 361, and a police officer is generally regarded as a public officer, *Craig v. Charleston,* 180 Ill. 154; *Vaughtman v. Waterloo,* 14 Ind. App. 649.