RECENT CASES

CARRIERS—LIMITATION OF LIABILITY—NOTICE TO PASSENGER.—FRENCH v. MERCHANTS' & MINERS' TRANSP. Co., 85 N. E. 424 (MASS.).—*Held,* that defective eyesight is insufficient to excuse passenger from acquainting herself with the contents of her ticket, but that she must have it read to her.

The more moderate rule appears to be that by mere acceptance of ticket, the purchaser does not bind himself to all terms printed thereon in absence of actual knowledge of them. *Kent v. Baltimore & O. R. Co.,* 10 West. Rep. 459 (Ohio); *Potter v. The Majestic,* 56 Fed. 244. In like manner, the burden of proof of passenger's knowledge rests upon the railroad, *Baltimore & O. R. Co. v. Harris,* 12 Wall. 65; so that where a passenger is unable to read and no explanation is made by agent of railroad, the terms on ticket are not binding. *Mauritz v. N. Y., L. E. & W. R. Co.,* 23 Fed. 765. The harsher rule is, that a passenger is bound by conditions whether read or not. *Boylan v. Hot Springs R. Co.,* 132 U. S. 146; and likewise by the legal effect, whether known or not. *Gulf C. & S. F. Ry. Co. v. Riney,* 92 S. W. 54 (Tex.). The most reasonable rule, however, seems to be that a passenger should be bound only where it is carelessness not to have read the terms of the ticket or to have had them read to him. *Louisville, N. A. & C. Ry. Co. v. Nicholai,* 42 Ind. App. 119; *Aplington v. Pullman Co.,* 97 N. Y. S. 329.

CONTEMPT—CRIMINAL INTENT—ESSENTIALITY.—STATE v. HOWELL, 69 ATL. 1057 (CONN.).—A newspaper editor and manager was not aware of the publication in his paper of certain articles tending to obstruct the administration of justice. *Held,* that he could be convicted of contempt of court for such publication.

The offense "contempt of court" has many of the important characteristics of common law crimes. For example, proceedings for contempt have for their purpose the punishment of wrongdoers. *Ex parte Gould,* 99 Cal. 360. And the offense is one which may be pardoned. *State v. Sauvinet,* 24 La. Ann. 119. But inasmuch as the offense is one against the organs of public justice, and is therefore a special and peculiar public wrong, it has some essential differences from the ordinary common law crimes. For instance: A conviction for contempt of court is no bar to proceedings for criminal conspiracy on the same cause, since the contempt proceeding is a special one. *State v. Ossulaton,* 2 Stra. 1107. And for the same reason, criminal intent, which is so important to the ordinary common law crimes, is not necessary to a conviction for contempt of court. *People v. Wilson,* 114 Mass. 230; *People v. Wilson,* 64 Ill. 195. The case at hand illustrates this difference; and it is one of a very few cases where there has been conviction for constructive acts alone

DAMAGES—MEASURE OF DAMAGES—INJURIES TO THE PERSON.—MORRIS v. ST. PAUL RY. Co., 117 N. W. 500 (MINN.).—In estimating the damages in an action for injuries to a person resulting in a miscarriage it was *held,* that the pain and suffering which the mother would have suffered when

the child was born in the natural course of events, cannot be deducted from the pain and suffering occasioned by the miscarriage, which resulted from the defendant's negligence.

The general rule in these cases undoubtedly is that whether the defendant's conduct be wanton and intentional, or negligent merely, he is liable for the entire consequences of his tortious act, including the woman's suffering and impaired health due to and consequent upon the miscarriage. *Mann Car. Co. v. Dupre,* 54 Fed. 646; *Shartle v. Minneapolis,* 17 Minn. 308. It has been said, however, that the measure of damages is the difference between what actually was suffered as a result of the injury and miscarriage, and the pain and suffering which would have been suffered if the child had been born at the proper time. *Joyce, Dann,* S. 185. The authority for this rule seems to be a statement in *Hawkins v. Front St. Ry. Co.,* 3 Wash. 592, 600, where it is said, "and so we have no doubt that, if Mrs. Hawkins shows impairment of health and suffering growing out of the death and premature birth of her child, which would not have attended its birth at the usual time, . . . respondents can recover for her suffering and impaired health." See also, *Berger v. Railway Co.,* 95 Minn. 84.

FRAUD—DECEPTION CONSTITUTING FRAUD.—ALDRICH V. SCRIBNER, 117 N. W. 581 (MICH.).—*Held,* that if a representation is false in fact, and actually deceives the one to whom it is made, it is actionable fraud, though made in good faith and with every reason to believe it is true. Montgomery, Blair and Ostrander, JJ., *dissenting.*

The general rule is that an action is maintainable for damages sustained from a false representation made by the defendant knowing it to be false, or without belief in its truth, or recklessly without caring whether it be true or false. *Derry v. Peek,* L. R. 14 App. Cas. 327; *Cooper v Schlesinger,* 111 U. S. 148; *Kountze v. Kennedy,* 147 N. Y. 124. There can be no fraud without moral delinquency. *Crowell v. Jackson,* 53 N. J. Law, 656. It is not enough to show that the representations were made through mistake, ignorance, or carelessness, or without reason to believe that they were true. *Mentzer v. Sargeant,* 115 Ia. 527. In Michigan it is immaterial whether the false representation is made innocently or fraudulently, if by its means the party to whom it is made is injured. *Totten v. Burhans,* 91 Mich. 495. False statements have been held actionable if they were made without reasonable grounds to believe them to be true. *Trimble v. Reid,* 97 Ky. 713; *Rowell v. Chase,* 61 N. H. 135; *Ramsay v. Wallace,* 100 N. C. 75. If the defendant stated as of his own knowledge, material facts susceptible of knowledge which were false, although he did not know them to be false, that he believed them to be true is no defence. *Litchfield v. Hutchinson,* 117 Mass. 195; and this Mass. doctrine has been followed in Indiana, Minnesota, Wisconsin, New Hampshire and New Jersey.

LANDLORD AND TENANT—WASTE—LIABILITY OF LESSEE—ACTS OF STRANGER.—RIMOLDI V. HUDSON GUILD, 110 N. Y. SUPP. 881. *Held,* that removal by a stranger of things fixed to the freehold without knowledge of the lessee does not render the latter liable for voluntary waste.

The courts seem to differ on this question, but still the decided weight

of opinion is against the above decision. *Powell v. D. S. & G. R. Ry. Co.*, 16 Or. 33; contra, *Coale v. Hannibal & St. Joseph Ry Co.*, 60 Mo. 227. In general, the courts hold that an action on the case may be maintained either against the tenant who suffered the waste or the stranger who committed it. *Parrott v. Barney*, Fed. Cas. No. 10,773a. The courts that hold the lessee responsble hold him so for all injuries done during his term, with the exception of the acts of God or of public enemies and the acts of the lessor himself. *White v. Wagner*, 7 Am. Dec. 674 (Md.); 1 Wash. *Real Property*, § 34, 35. This liability rests upon the principles of public policy. *Wood v. Griffin*, 46 N. H. 230; *Randall v. Cleaveland*, 6 Conn. 328.

MASTER AND SERVANT—LIABILITIES FOR INJURIES TO THIRD PERSONS—ACTS OF SERVANT.—CUNNINGHAM V. CASTLE, 111 N. Y. SUPP. 1057.—Where, in an action for injuries through being struck by an automobile owned by the defendant and operated by his chauffeur, it appeared that the chauffeur was using the machine at the time of the accident for his own purposes, it was *held*, that defendant was not liable. Houghton, McLaughlin, J. J., *dissenting.*

The general rule of law that one person receiving an injury by the negligence of another, must look for his remedy to him by whose negligance the injury was occasioned, is subject to the exception, that if the negligent person is a servant acting within the scope of his master's business, the person sustaining the injury can hold the master responsible. *Chcago, Ry. Co. v. West*, 125 Ill. 320; *Ochsenbein v. Shapley*, 85 N. Y. 214. But the test of the master's liability in these cases is not whether a given act was done during the existence of the servant's employment, it is whether such act was done by the servant while engaged in the service of, and while acting for the master in the prosecution of the master's business. *Lima Ry. Co. v. Little*, 67 Ohio St. 91; *Brown v. Jarvis*, 166 Mass. 75.

RAILWAYS—ACCIDENTS AT CROSSING—EVIDENCE—ADMISSIBILITY—PRIOR SIMILAR OCCURRENCE.—WOODWORTH V. DETROIT UNITED RY., 116 N. W. 549 (MICH.).—*Held*, that where the decedent's wagon caught between rail of the track and the planking of a diagonal crossing so that a car ran into it, evidence that other rigs had been struck at the same crossing from the same cause within two years is admissible, notwithstanding the defendant admitted full knowledge of the condition of the crossing for six months previous to the accident in question, for it was proper to show negligence in view of the danger.

Testimony may be given by witnesses familiar with the place of the accident as to narrow escapes they have had at the same crossing, for the purpose of showing the nature of the crossing. *Chi. & N. W. Ry. Co. v. Netolicky*, 67 Fed. 665. But in *Menard v. Bos. & Me. Rd. Co.*, 150 Mass. 386 evidence offered to show that other accidents had occurred at same crossing within a short time were not admissible. And evidence of similar occurrences on other occasions is not admissible to raise a presumption that the place where the accident occurred was defective or dangerous. *The Clev., Col., Cin. & Indianapolis Ry. Co. v. Walnut*, 114 Ind. 527; *Tiffin v. St. Louis, I. M. & S. Ry. Co.*, 93 S. W. 564 (Ark.). So, in an action for injuries received at a crossing, it is not competent for a witness to testify as to the occurrence of an

accident to himself at the same crossing several years before, as such testimony, though tending to prove that the crossing was dangerous, would not tend to prove negligence of the railway company, which could be predicated only by the manner in which the train was run across the crossing. *Cohn v. N. Y. Cent. & H. R. R. Co.*, 36 N. Y. Supp. 986.

SPECIFIC PERFORMANCE—PURCHASE OF REALTY—DEFECT OF TITLE.—BODCAW LUMBER CO. V. WHITE, 46 So. 782 (LA.).—*Held*, that in an action for specific performance, to the end of compelling a buyer to accept title, the court declines to grant the relief asked on the ground that the title tendered is suggestive of future litigation.

Formerly a court of equity would not refuse a decree for specific performance on the ground that the title was doubtful and liable to attack, where the court itself entertained a favorable opinion. But it is now an invariable rule that a purchaser shall not be compelled to accept a doubtful title. *Bispham's Principles of Equity*, § 378 (7th Ed.). While the general principle is settled, courts have not given a uniform meaning to the word "doubtful." It has been said that the title, like Caesar's wife, ought to be free from suspicion. *Sug. V. and P.* 577 (8th Am. Ed.); but in *Kullman v. Cox*, 167 N. Y. 411, specific performance was decreed although three of seven judges thought the title doubtful. In England, *Pyrke v. Waddingham*, 10 Hare 1, has defined a doubtful title as one which may be reasonably questioned by competent persons although the court entertains a favorable opinion. And this is the usual statement of the rule although the Vice Chancellor in *Rogers v. Waterhouse*, 4 Dreed 329, says that the opinion of the court in favor of the title must be so clear that it cannot be apprehended that another judge may form a different opinion. And see *Chauncey v. Leominister*, 172 Mass., 340, which seems to regard the mere possibility of an adverse claim sufficient to render a title doubtful. It has been said that if the doubts are upon a question connected with the general law, the court is to judge whether the general law is or is not settled, if the doubts arise upon the construction of a particular instrument, the court will not resolve the doubt, but will refuse specific performance. *Pyrke v. Waddingham, supra.* Followed by *Alexander v. Mills*, 6 Ch. 124, holding that the court is bound to say one way or the other what is the general law, including the construction of an Act of Parliament. But this has been qualified by *In re Thackway*, 40 Ch. D. 34, which declared that it must appear that even as to construction of general law, there are no decisions or dicta of weight which show that another judge might come to a different conclusion. And this view is ably supported in a well-considered opinion in *Lippincott v. Wikoff*, 54 N. J. Eq. 107.