RECENT CASES

ALIEN—PERSONS WHO MAY BECOME CITIZENS BY NATURALIZATION—ALIEN WIFE OF FOREIGNER.—IN RE RIONDA, 164 FED. 368.—*Held,* an alien woman, married to an alien, although residing in this country and otherwise qualified, cannot become a citizen of the United States by naturalization.

The wife of an alien becomes a citizen upon the naturalization of her husband. *People v. Newell,* 38 Hum. 78. And it makes no difference whether the husband's naturalization takes place before or after the marriage. *Kane v. McCarthy,* 63 N. C. 299. The political *status* of the wife is the same as that of her husband. *Pequignot v. Detroit,* 16 Fed. 211; *Comitis v. Parkerson,* 22 L. R. A. 148. But in *Priest v. Cummings,* 16 Wend. 617, it was held that an alien wife may be naturalized without the concurrence of her husband. The relation of husband and wife is not inconsistent with one being an alien and the other a citizen. *Comitis v. Parkerson,* 22 L. R. A. 148.

ANIMALS—MAD DOGS—OWNER'S LIABILITY FOR INJURY.—VAN ETTEN V. NOYES, 112 N. Y. SUPP. 888.—*Held,* that while the owner of domestic animals, such as cattle, is generally liable for the unwarrantable entry by his animal upon another's land, one who owns or harbors a dog is not liable in trespass every time it goes upon another's land, the general rule being that the owner is not liable for harm done by his dog, unless it was of a mischievous disposition or vicious propensity, and the owner previously knew thereof, or was chargeable with notice that the dog was harmfully disposed; and hence, an owner is not liable for injury inflicted by a mad dog, where she did not know or have any reason to believe that the dog was mad, or had a vicious nature or harmful disposition. McLennan, P. J., *dissenting* in part.

The above ruling follows the weight of authority. *Dolph v. Ferris,* 7 W. and S. (Pa.) 317; *Van Leuven v. Lyke,* 1 N. Y. 515. There is, however, no absolute liability for trespasses of dogs, because their trespasses are not usually injurious to property. *Brown v. Giles,* 1 C. & P. 118. *Contra*: *Beckwith v. Shordike,* 4 Burrows 2092. To hold the owner liable he must know of the dog's vicious propensities. *Koney v. Ward,* 2 Daly 295; *Vrooman v. Lawyer,* 13 Johns 339. *Scienter* is the gist of the action. *Fairchild v. Bently,* 30 Barb. 147. And the fact that the injury is the first actually inflicted by dog is not a good defense. *Rider v. White,* 65 N. Y. 54.

BILLS AND NOTES—NEGOTIABLE NOTE—EXTENSION OF TIME OF PAYMENT.—FIRST NATIONAL BANK OF POMEROY, IA. V. BUTTERY, 116 N. W. 341 (N. D.).—A note by its terms was payable on or before a date named and contained a clause, "the maker's and indorser's consent that the time of its payment may be extended without notice," *held,* to be negotiable. Morgan, C. J., *dissenting.*

According to the Law Merchant, a note in order to be negotiable

must be payable unconditionally and at some fixed period of time. *Walker v. Woolen,* 54 Ind. 164. And the writers say, that if a note contains a provision that the payee or his assigns may extend the time of payment, its negotiability is destroyed. *Daniel on Negotiable Inst.* 5th Ed. p. 49. Nearly all the courts hold that such a provision in a note destroys its negotiability. *Second National Bank v. Wheeler,* 75 Mich. 546; *Woodbury v. Roberts,* 59 Ia. 348. But contrary to the weight of authority, it has been held in one jurisdiction, that such a provision does not destroy the negotiability of a note. *City National Bank v. Goodloe-McClelland Com. Co.,* 93 Mo. App. 123.

BILLS AND NOTES—PRESENTMENT FOR PAYMENT—PRESENTMENT BY TELEPHONE.—GILPIN V. SAVAGE, 112 N. Y. SUPP. 802.—Where a note was made payable at the home of the maker on a certain street, and at maturity he was called up there by telephone and asked what he was going to do about it, and replied that he could not pay it, and was informed that the note would be protested, *held,* that the demand over the telephone was a sufficient presentation for payment, the statutory right of the maker to the exhibition of the note being waived by his failure to insist thereon.

It is well settled that the right to an actual presentment of the note when payment is demanded is waived by failure to ask for it, and declining to pay the note on other grounds than its non-presentment. *Waring v. Betts,* 90 Va. 46. And it has always been the rule that where a bill or note is made payable at a particular place, it is necessary that the demand of payment should be made at the place specified. *Smith v. McLean,* 4 N. C. 509. That a demand over the telephone connected with the place specified is a proper demand, is the subject of judicial decision for the first time in the case at hand. But though there is no previous direct authority for this decision, it is quite consistent with decisions in other cases in which the courts have recognized the telephone as a business necessity. *Wolfe v. Mo. Pac. R. Co.,* 97 Mo. 473; *Nat. Bank v. Smith,* 21 Pa. Co. Ct. 1.

CARRIERS — INJURIES — PERSON ACCOMPANYING PASSENGER.— COLE'S ADMINISTRATOR V. CHESAPEAKE & O. RY. CO., 113 S. W. (KY.) 822.—*Held,* a carrier is not liable for the death of one who falls from a moving train after accompanying a passenger into the car, in the absence of evidence that its servants had either actual or constructive notice that deceased intended to leave the train and did not intend to take passage thereon.

One who goes to a train in charge of a lady and child, is entitled to sufficient time to enable him to escort her to a seat and to then leave the train, and the railway company is liable for injuries sustained by him where the employees failed to notify him to get off. *Doss v. Mo. K.,* 59 Mo. 270. A person who boarded a train merely to assist another to a seat, must give notice of his intention to get off in order to hold the company liable for not giving him time to get off. *Dillingham v. Pierce,* 31 S. W. 203 (Tex.); *Yarnell v. K., C., Ft. S. & M. Ry. Co.,* 113 Mo. 520.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF THE LAW.—CORRIGAN V. KANSAS CITY, 111 S. W. 115.—The charter of the city of Kansas City

authorized the imposing of a special tax for park purposes on all the real estate exclusive of improvements; and under such provision of the charter an ordinance was passed which imposed a tax only on so much of the real estate as was taxable for general city purposes; the result being the omission of church, city and railroad properties. *Held,* that such ordinance did not deny the property owners taxed thereunder the equal protection of the law within the Fourteenth Amendment to the Federal Constitution. Burgess, Graves and Woodsen, J. J., *dissenting.*

This decision is apparently a departure from the doctrine laid down by the courts of this country, that an ordinance which involves official discretion as to whom rights and liabilities shall vest, is void, offending as it does the Fourteenth Amendment. *St. Louis v. Heitzberg Packing Co.,* 141 Mo. 375; *In re Wo Lee,* 26 Fed. 471. Legislation discriminating against some and favoring others, is prohibited. *Barbier v. Connolly,* 113 U. S. 27. A law which exempts all property of like nature or condition, falling naturally into a particular class does not necessarily offend constitutional provisions. *Pacific Express Co. v. Siebert,* 142 U. S. 351. But an arbitrary classification of property or persons for the purpose of taxation is not permitted. *Singer Mfg. Co. v. Wright,* 33 Fed. 121.

CONSTITUTIONAL LAW—TAXATION—FAILURE TO LIST PROPERTY.—TRAVELER'S INS. CO. V. BOARD OF ASSESSORS ET AL., 47 So. 439 (LA.).—*Held,* that the state may subject to the doom of the assessors a taxpayer who has failed to furnish a list of his property to the assessor as required by law, but not where the failure to make such return was without fraudulent intent and from an honest belief that what property he had was not taxable.

Statutes requiring taxpayers to furnish a list of their taxable property to the assessor, and subjecting them to the doom of the assessor for a failure or refusal to do so, have in the past been regarded as valid. *Lincoln v. City of Worcester,* 8 Cush. 55; *State v. Apgar,* 31 N. J. L. 358. Even statutes imposing penalties other than estoppel from questioning the valuation of the assessor, have been upheld by some courts. *Fox's Appeal,* 112 Pa. St. 337. The principal case, however, follows the rule recently laid down by the Supreme Court of the United States, which is that, where one acts in good faith, such statutes do not afford due process of the law within the Fourteenth Amendment to the *Constitution of the United States. Central of Georgia Ry. v. Wright,* 207 U. S. 127. The principles upon which that decision is based, are that the assessment of a tax is a judicial act, and therefore, before the assessment on omitted property can be made, notice to the taxpayer, with opportunity to be heard somewhere in the process is essential. *Davidson v. New Orleans,* 96 U. S. 97; *Security Trust & Safety VaultCo. v. City of Lexington,* 203 U. S. 323.

DEEDS—DELIVERY—NECESSITY.—FORTUNE V. HUNT, 63 S. E. (N. C.) 82.—Where the grantor gave the deed to a third person with a direction to take and keep it, and, if the grantor never called for it, to deliver it to the grantee, and the grantor died without more being done, *held,* that there was no delivery of the deed and that the intention of the grantor that the instrument should be good as a deed would not take the place

of delivery, and make it operative. Delivery is to a large extent, a question of intention. *Crain v. Wright,* 114 N. Y. 307. If the grantor intended to divest himself of the title the delivery is good. *Miller v. Lullman,* 81 Mo. 311. But delivery of a deed to be valid must be such as deprives the grantor of all control of the instrument. *Porter v. Woodhouse,* 59 Conn. 568. Accordingly, it is generally held that regardless of intention, there is no delivery when a deed is given to a third party to deliver to the grantee unless called for by the grantor in the meantime. *Harman v. Harman,* 70 Fed. 894. Further, since delivery is the act of the grantor by which he expresses his intention to divest himself of title, it must be made during his life. *Richardson v. Woodstock Iron Co.,* 90 Ala. 266.

DEEDS—EXECUTION IN BLANK—INSERTIONS OF NAME AFTER DELIVERY. —EMSTEIN V. HOLLADAY-KLOTZ LAND AND LUMBER CO., 11 S. W. 859 (Mo.).—*Held,* that the delivery of the deed with the name of the grantee left blank, with parol authority to the purchaser to fill in the blank, passes title to the land, even though the name of the subsequent grantee is inserted after delivery.

The general rule is that a deed for land is invalid when it is acknowledged and delivered without the name of the grantee appearing therein. *Whitaker v. Miller,* 83 Ill. 381. But the grantor may authorize some one by parol to fill in the grantee's name before delivery. *Cribben v. Deal,* 21 Or. 211; *Devlin on Deeds,* Sect. 456. And some jurisdictions require this authority to be in writing. *Upton v. Archer,* 41 Cal. 85. In either case when not inserted before delivery, the deed passes no interest. *Allen v. Withrow,* 110 U. S. 119. Analogous to the case at hand, one jurisdiction held, that if a party delivers a deed duly executed with parol authority to fill blanks, he is estopped from denying its validity against a subsequent purchaser for value without notice. *Ragsdale v. Robinson,* 48 Tex. 379.

DISCOVERY—PHYSICAL EXAMINATION—POWER OF COURT.—LARSON V. SALT LAKE CITY ET AL., 97 PAC. 483 (UTAH).—*Held,* that in the absence of a statute authorizing it, a court of law has no power to compel one suing for a personal injury to submit to a physical examination by a physician appointed by the court.

The decisions are not uniform, but there is a weight of authority in favor of the power of the trial courts to issue such an order, under proper restrictions. *Graves v. Battle Creek,* 95 Mich. 266; *Miami & Montgomery Turnpike Co. v. Baily,* 37 Ohio St. 104. Some of the foremost tribunals in this country, however, including the Supreme Court of the United States, have held that the court has no such inherent power, and in the absence of statutes cannot compel a physical examination. *Camden & Suburban R. Co. v. Stetson,* 177 U. S. 172; *McQuigan v. D., L. & W. R. Co.,* 129 N. Y. 50; *Stack v. N. Y., N. H. & H. R. Co.,* 177 Mass. 155. Even where the power is asserted, no one has an absolute right to have it exercised, but it lies in the discretion of the court. *O'Brien v. La Crosse,* 99 Wis. 421. Statutes now exist in several of the states, conferring this power upon the trial courts. *McGovern v. Hope,* 63 N. J. L. 76; *Lyon v. Manhattan R. Co.,* 142 N. Y. 298.

DIVORCE—ALIMONY—JUDGMENT IN PERSONAM—NON-RESIDENT DEFENDANT.—HOOD V. HOOD, 61 S. E., 471 (GA.).—*Held,* that a judgment *in personam* for temoprary alimony and attorney's fees cannot be lawfully rendered in a divorce suit brought against a non-resident husband, who is not served with process within this state and does not appear in the case, but is only constructively served by publication.

A decree for temporary alimony is a judgment *in personam. Rigney v. Rigney,* 127 N. Y. 408. As a general proposition, service of process by publication in actions *in personam* is insufficient, as it creates no personal liability in the person so served. *Cook v. Cook,* 56 Wis. 1. The legislature may authorize constructive service by the court within its jurisdiction, but has no authority to authorize such notice upon non-residents. *Darcy v. Ketchum et al.,* 11 Howe 165. And a decree rendered against a non-resident under constructive notice may be held void in a foreign state as not constituting "due process of law" under the Fourteenth Amendment. *Eliot v. McCormick,* 144 Mass. 10.

FRAUDS, STATUTES OF—SALES OF PERSONALITY—CORPORATE STOCK.—SPRAGUE V. HOSIE, 118 N. W. 497 (MICH.).—*Held,* that shares of corporate stock which have been issued, are "goods" within the Statute of Frauds.

Although shares of stock are personal property, it has been held that they are not goods within the Statute of Frauds. *1 Thomp. Corp.,* Sect. 1068. In England, the weight of authority is that they are not goods. *Humble v. Michell,* 11 A. & E. 205; *Heseltine v. Siggers,* 1 Exch. 856; *Watson v. Spratley,* 10 Exch. 222. And Georgia follows this authority. *Rogers v. Burr,* 105 Ga. 432. But the United States courts as a whole, favor the other view. *North v. Forest,* 15 Conn. 400; *Gooch v. Holmes,* 41 Me. 523; *Baltzen v. Nicolay,* 53 N. Y. 467; *Fine v. Hornsky, 2* Mo. App. 61; *Ely v. Ormsby,* 14 Barb. 570.

HUSBAND AND WIFE—ALIENATION OF AFFECTIONS—RIGHT OF ACTION BY WIFE.—WORKMAN V. WORKMAN, 85 S. E. 997 (IND.).—*Held,* that a wife may maintain an action for damages for the malicious alienation of her husband's affections.

The modern tendency is to hold that the loss of her husband's *consortium,* gives to the wife a right of action within the meaning of the statutes enabling her to sue alone for an injury to her person, property or personal rights. *Nolan v. Pearson,* 191 Mass. 283; *Wolf v. Frank,* 92 Md. 138. Some decisions hold that also she possesses this right at common law, even to the extent of suing alone. *Foot v. Card,* 58 Conn. 1. But in other cases where the right at common law was claimed, the necessity of joining the husband in the action was acknowledged as a disability, which the statutes have now removed. *Bennett v. Bennett,* 116 N. Y. 584. Some courts deny altogether the existence of this right of action, either at common law or under such statutes. *Duffies v Duffies,* 76 Wis. 374; *Morgan v. Martin,* 92 Me. 190; *Hodge v. Wetzler,* 69 N. J. L. 490.

INSURANCE—ACCIDENT INSURANCE—ACCIDENTAL MEANS.—SCHMIDT V. INDIANA TRAVELERS' ACC. ASS'N., 85 N. E. 1032.—Where one who carried accident insurance died of circulatory failure and paralysis of the heart

brought on by physical exertion in the rarified atmosphere of a mountain resort, where he had gone for his health, *held,* that since he died from doing what he intended to do though the result was not anticipated, his death was not the result of accidental means, and no recovery could be had on the accident policy.

An accident is generally defined as an unforseen event which happens without the design or aid of a person. *Williams v. U. S. Mutual Acc. Ass'n.,* 38 N. Y. St. Rep. 378. But in order to recover on an accident insurance policy, it is not enough that the injury was unforseen and without design. *Reynolds v. Equitable Acc. Ass'n.,* 49 Hun. (N. Y.) 605. The means which produced the injury must have been accidental. *U. S. Mutual Acc. Ass'n. v. Barry,* 131 U. S. 100. A person may do certain acts which may produce what is commonly called an accident, but unless in the acts which preceded the injury something unexpected or unusual happens, the means cannot be said to be accidental. *Clidero v. Scottish Acc. Ins. Co.,* 39 Scot. L. Rep. 303. So where one died from an injury received while swinging indian clubs, it was held that if the injury resulted from the use of the clubs in the ordinary way of taking exercise, such injury could not be attributed to accidental means; but if, as was the case, the injury was caused by a sudden movement while using the clubs due to an unforseen obstruction, then the means was accidental and a recovery could be had. *McCarthy v. Travelers' Ins. Co.,* (U. S.) 1879, 7 Rep. 486.

JUDGMENTS—CONCLUSIVENESS—RECORD.—CHILDRESS V. CARLEY ET AL., 46 So. 164 (MISS.).—*Held,* that a judicial record, purporting on its face to be complete as required by law, is in law not the subject of impeachment. Whitfield, C. J., *dissenting.*

The utmost verity it attached to judgments and they are not the subject of impeachment, where made by the proper tribunal acting within its jurisdiction, except by a direct attack by the authority of the state. *Kelley v. Dresser,* 93 Mass. 31. A judicial record cannot be affected by parol. *Kendall v. Powers,* 4 Metc. 553. The record, showing nothing irregular on its face, will be conclusively presumed to be correct in case of any collateral proceedings. *Dequindre v. Williams,* 31 Ind. 444; *Stroyer v. Richmond,* 16 Ohio St. 455. Mere irregularities in entering the judgment will not subject it to impeachment; provisions for filing and entering a judgment roll being looked upon as merely directory and not imperative. *Bennett v. Couchman,* 48 Barb. 73.

MASTER AND SERVANT—DUTIES DISTINGUISHED—NEGLIGENT DEPARTURE FROM REASONABLY SAFE METHOD OF WORK.—PORTLAND GOLD MINING CO. V. DUCE, 164 FED. 180.—*Held,* that as between master and servant, the duty of using a reasonably safe place, of so operating reasonably safe machinery, and of so conforming to an established and reasonably safe method of work, that injury will not be inflicted negligently is the duty of those to whom the work is intrusted and is no part of the positive duty of the master.

All that can be required of a master is that he use reasonable care to avoid exposing his servant to extraordinary risk. *Wonder v. B. & O. R. Co.,* 32 Md. 411. The duty of using a reasonably safe place and so operating

a reasonably safe machine, that neither the place nor the machine shall be dangerous by their negligent use or operation, is the duty of the servant to whom the operation is intrusted not that of the master. *American Bridge Co. v. Leeds,* 144 Fed. 605; *Eichele v. St. Paul Furniture Co.,* 40 Minn. 263.

MASTER AND SERVANT—INJURY TO SERVANT—"FELLOW SERVANT."—LATSHA V. SHAMOKIN & E. ELECTRIC RY. CO., 70 ATL. 1002 (PA.).—*Held,* that the superintendent of an electric railway company taking out a car to test it, acting as a motorman, is not a fellow servant of a motorman injured by the negligence of the superintendent while so operating the car.

It is the duty of a master to exercise such care in the conduct of his business as will render it reasonably safe to his servants. *Baltimore, etc., Ry. Co. v. Henthorne,* 73 Fed. 634. It is well settled that the master may delegate the performance of this duty to a vice-principal, and when this is shown, the master will be bound by the acts of the vice-principal the same as though he had undertaken the performance of the duty in person. *Tyson v. South, etc., Alabama Ry. Co.,* 61 Ala. 554. But the same person may under different circumstances be a fellow-servant; the test is not one of grade but whether the employee was engaged in the performance of the duty imposed by law upon the master, when the injury complained of occurred. *Conley v. City of Portland,* 78 Me., 217; *Stockmeyer v. Reed,* 55 Fed. 259.

MASTER AND SERVANT—INJURIES TO SERVANT—FELLOW SERVANTS.—GEORGIA COAL & IRON CO. V. BRADFORD, 62 S. E. 193 (GA.).—A teamster employed by a coal and iron company, to assist in hauling a boiler from the furnace plant of the company to its coal mines, was struck by a locomotive operated in connection with the plant. *Held,* that he was a fellow servant with the engineer and fireman of the locomotive, all being employes of a common master, engaged in labor for the furtherance of the general purpose of the business.

The principal case applies the strict rule to be found in the Massachusetts decisions, that the relation of fellow servant is not confined to two servants working in company and having the opportunity to control and influence the conduct of each other, but extends to every case in which, deriving their authority and compensation from the same source, they are engaged in the same business, though in different departments. *Holden v. Fitchburg R. Co.,* 129 Mass. 268. Some courts, however, give a more liberal construction to this doctrine, holding that if the departments of the two servants are so far separated that the possibility of the two servants coming in contact, while performing their usual duties, could not be said to be within the contemplation of the person injured, the master will not be exempt from liability. *N. Pac. R. Co. v. Hambly,* 154 U. S. 349; *Chicago & N. W. R. Co. v. Morando,* 93 Ill. 302. In many states what is known as the "department" rule prevails, and servants engaged in different departments of the same business are not regarded as fellow servants. *Sullivan v. Mo. Pac. R. Co.* 97 Mo. 103; *Kielley v. Belcher S. M. Co.,* 3 Sawyer 437.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—TAKING MANIFEST RISK TO SAVE PROPERTY.—THOMPSON V. SEABOARD AIR LINE RY., 62 S. E. 396 (S. C.).—*Held,* that it is not contributory negligence *per se* for one whose property is endangered to take a manifest risk to save it, unless the risk was wanton and unreasonable.

A person may attempt to save his property which is threatened or imperiled. *Liming v. Ill. Cent. R. Co.,* 81 Iowa 246; *Hall v. Huber,* 61 Mo. App. 384. But the weight of authority is that one cannot take an obvious risk which is likely to result in serious injury without being guilty of such negligence as will preclude a recovery for personal damages sustained in so doing. *Morris v. Ry Co.,* 148 N. Y. 182; *Cook v. Johnson,* 58 Mich. 437. The taking of a moderate degree of personal risk, however, even in the face of obvious danger, would probably not be regarded as a fault in some circumstances. *Sherman and Redfield on Negligence,* § 85. The test generally is whether a reasonably prudent man would have acted in like manner. *Rexter v. Starin,* 73 N. Y. 601; *Pegram v. Searboard Air Line Ry.,* 139 N. C. 303.

RAILROADS—JOINT USE OF TRACKS—LIABILITY FOR INJURIES FROM NEGLIGENT OPERATION OF TRAINS.—HANBLE *v.* ATCHISON, T. & SF. E. RY. CO., 164 FED. 41.—*Held,* that where the trains of one railroad company in charge of its own employes run over the tracks of another company under a contract that they shall obey the orders of the train dispatcher of the latter company, such contract does not relieve the company so using the tracks from liability for injuries caused to third persons by the negligence of its employes operating its trains in no way attributable to any order of the train dispatcher.

Atwood v. Chi., R. I. & Pac., 72 Fed. 447, held, that where the defendant company has no right or power to direct the movement of its trains over the tracks of the other company it could not be held responsible to third parties on the doctrine of *respondeat superior,* for any negligence of the men in charge of train, even though they were their own employes. *Clark v. Geer,* 86 Fed. 447, however, holds that where trains of one company in charge of its own employes run over the tracks of another company under contract, that they shall obey the orders of the train dispatcher of the latter company, such contract does not relieve the company so using the tracks from liability for negligence of its own employes. *Chi., R. I. & Pac. v. Greves,* 56 Kan. 601.

SUICIDE—AIDING.—SAUNDERS V. STATE, 112 S. W. 68 (TEX.).—*Held,* that one who furnishes another the means for committing suicide, knowing that he intends to kill himself, is not guilty of a crime.

At common law, one who assisted another to kill himself was guilty of murder. 4 Bl. Com. 189. But owing to the technical rule, that the principal must first be tried and convicted, he escaped punishment. *Rex. v. Russell,* 1 Moody C. C. 356. In many jurisdictions in this country, one who, with knowledge, assists another to commit suicide, is guilty of murder as a principal. *Commonwealth v. Bowen,* 13 Mass. 356. Even furnishing poison to another, knowing that he intends to commit suicide, is regarded as a mode of administering it. *Blackburn v. State,* 23 Ohio St. 146. Where this crime

is regulated by statute, it has been held that every person who deliberately assists another in the commission of self-murder, is guilty of manslaughter in the first degree. *State v. Ludwig,* 70 Mo. 412.

TAXATION—SITUS FOR TAXATION—DEBTS DUE NON-RESIDENTS.—LIVERPOOL & LONDON & GLOBE INS. CO. V. BOARD OF ASSESSORS ET AL., 47 So. 415 (LA.).—*Held,* that debts due on open account to a non-resident are taxable at the domicile of the debtor when they have arisen out of business carried on in the taxing state and form part of the capital of the business. Breaux, C. J., and Monroe, J., *dissenting.*

As a general rule, the *situs* of personal property for taxation is determiend by application of the maxim, *mobilia sequuntur personam. Barber v. Farr,* 54 Ia. 57. A legal fiction, however, is to be resorted to only when convenience and justice so require. *Metropolitan Life Ins. Co. v. New Orleans,* 205 U. S. 398. And the *situs* of the evidence of a debt is immaterial in determining the *situs* of a debt. *Kirtland v. Hotchkiss,* 100 U. S. 491; except that general usage makes some evidence acquire the character of property which is taxable where found. *State Tax on Foreign Bonds,* 15 Wall. 300. The fact that the law of the place where the debtor is will make him pay, only gives the debt validity. *Adams v. Batchelder,* 173 Mass. 258. Protection of the law and taxation are reciprocal. 1 *Cooley on Taxation,* 22. The state may tax all property over which it has jurisdiction, regardless of whether the owner is a resident within the state. *Johnson v. Bradley, Watkins Tie Co.,* 27 Ky. Law, 540. That two states should tax the same property on different and more or less inconsistent principles, infringes no rule of Constitutional law. *Knowlton v. Moore,* 178 U. S. 41.

TELEGRAPHS AND TELEPHONES—DAMAGES FOR MENTAL ANGUISH—RELATIONSHIP BETWEEN THE PARTIES.—LEE V. WESTERN UNION TEL. CO., 113 S. W. 55 (KY.).—*Held,* that damages for mental anguish, caused by the failure of a telephone company to deliver a message, announcing death or sickness could not be recovered unless the relationship between the parties was that of parent and child, husband and wife, sister and brother, or grandparent and grandchild.

The general rule of law is that damages for mental anguish alone cannot be recovered. *Blount v. Western Union Tel. Co.,* 126 Ala. 105; *Summerfield v. Western Union Tel. Co.,* 87 Wis. 1. But in those jurisdictions that allow recovery for mental anguish alone, the relation between the parties is usually one of those mentioned in the case at hand. *Western Union Tel. Co. v. Cline,* 8 Ind. App. 364. And, if not, notice must be given that a failure to deliver promptly would cause mental anguish. *Western Union Tel. Co. v. McMillan and ux.,* 30 S. W. 298 (Tex.). Even notice was not required in one jurisdiction, and a wife was allowed to recover damages for mental anguish, caused by failure to deliver a message, announcing the death of her husband, and the consequent failure of his uncle to be present with her at the funeral. *Bright v. Tel. Co.,* 132 N. C. 317. And it was held that damages for mental anguish were not limited to instances where the message related to sickness and death. *Green v. Tel. Co.,* 136 N. C. 489. But the tendency seems to be to limit a recovery

for mental anguish to cases where the parties are closely related by blood. *Wadsworth v. Tel. Co.,* 86 Tenn. 695.

THEATRES AND SHOWS—IMPLIED CONTRACTS AS TO SAFETY.—SCOTT V. UNIVERSITY OF MICH. ATHLETIC ASS'N., 116 N. W. 624 (MICH.).—*Held,* that an athletic association owning a spectators' stand which had been erected by a competent builder, and before use was pronounced safe by engineers, did not, as a matter of law, exercise reasonable care to prevent injury to a spectator, caused by collapse of the stand.

The general rule is that the owner of a public resort contracts to exercise reasonable care to keep the premises in a safe condition. *Brotherton v. Manhattan Beach Imp. Co.,* 48 Neb. 564. In the application of this rule some interesting results have been developed; for example, it has been held that the owner of a grandstand was chargeable with negligence because he had failed during three years to have the structure examined by a competent builder and architect. *Fox v. Buffalo Park,* 47 N. Y. Supp. 788. And in an action against the proprietor of a theatre, it was held that reasonable care had been exercised in construction, although the floor of the gallery was given a pitch of 55 degrees, and the railing was only three feet high. *Dunning v. Jacobs,* 36 N. Y. Supp. 453. But in England, it was said that the owner of a stand did not simply contract to use reasonable care to keep the stand safe, but impliedly warranted that due care has been exercised in constructing the stand. *Francis v. Cochrell,* 5 L. R. Q. B. 184.