RECENT CASES

ARSON—EVIDENCE—MOTIVE.—STATE v. BARRETT, 65 S. E. 894 (N. C.).—In a trial for the burning of a barn it was *held*, that the state could, to establish the motive of the accused, show that bad feelings existed between accused and the owner of the barn and the reason for it, and the owner may testify that he has opposed the accused's application to a membership in a society.

In general, where arson has been committed and circumstances point to the accused as the perpetrator, any facts tending to show a motive for the crime are admissible in evidence. *People v. Murphy*, 135 N. Y. 450. Unfriendly feelings between the accused and the owner of a building may be shown; *Shepherd v. People*, 19 N. Y. 537; but it is improper to inquire into the cause of the quarrel as it would tend to arouse a prejudice against the defendant. *State v. Hannett*, 54 Vt. 83. It has also been held improper to inquire into the unfriendliness of defendant's family with the prosecutor's wife to show motive. *Bell v. State*, 74 Ala. 420. However, the existence of friendly relations without reference to the time at which such feelings were entertained, cannot be shown to establish a want of motive. *Commonwealth v. Cornelly*, 7 Pa. Super. Ct. 77. And conversations may be admitted to show defendant's threats as to the future; *People v. Lattimore*, 86 Cal. 403; and notwithstanding the lapse of a long time between the acts of manifesting hostile relations and the commission of the offense, such difficulties may be shown to connect the person with the offense. *Hudson v. State*, 61 Ala. 333.

CONSTITUTIONAL LAW—PERSONAL LIBERTY—MEASUREMENT UNDER BERTILLON SYSTEM.—DOWNS v. SWANN, 73 ATL. 653 (MD.).—*Held*, that to photograph and measure under the Bertillon system a person arrested on a felony charge, but before conviction, does not violate the personal liberty secured him by the Constitution of the United States.

A sheriff may lawfully take photograph and measurements of an accused person if in his discretion it is necessary to prevent his escape. *State v. Chamberlain*, 154 Ind. 599. And a supposed criminal whose photograph has been taken by the police, cannot have an exhibition thereof enjoined on the ground that his right of privacy has been invaded. *Owen v. Partridge*, 82 N. Y. Supp. 248. Some of the courts hold that if a person is under arrest or within the court's jurisdiction, generally there arises no necessity for taking photograph of accused before his trial and conviction. *Schulman v. Whitaker*, 117 La. 703. And in conflict with the case at hand it has been held that the police department has no authority to take measurements. *Gow v. Bingham*, 107 N. Y. Supp. 1011.

CONSTITUTIONAL LAW—PERSONAL AND CIVIL RIGHTS—PROHIBITING RIGHT TO ENGAGE IN LAWFUL OCCUPATION—COLLECTION OF GARBAGE.—SMITH ET AL v. CITY OF SPOKANE, 104 PAC. 249 (WASH.).—*Held*, that an

ordinance creating a city crematory for garbage, and making the collection of same by those not its officers unlawful, falls within the police power, and does not deny the constitutional right to engage in a lawful occupation.

The police power, or authority to make those rules which tend to protect the health, life, and safety of the people, extends to every relation in the state. *Cooley's Const. Law,* 3rd ed., pp. 250, 251. The courts are the final judges of this power. *Mugler v. Kansas,* 123 U. S. 623; *In re Jacobs,* 98 N.. Y. 98. Everything prejudicial to the health or morals of a city may be removed. *Thurlow v. Commonwealth,* 5 How. 504, 571. Cities may prohibit peddling of certain kinds. *Shelton v. City of Mobile,* 30 Ala. 540. But the attempt of a government to appropriate any industry not of a public nature is an invasion of constitutional rights. *Herman v. State,* 8 Ind. 545.

CONTRACTS—BUILDING CONTRACTS—WAIVER OF BREACH.—RYAN V. CURLEW CO., 104 PAC. 218 (UTAH).—*Held,* that the fact that the contractee in a building contract specifying the manner in which the work should be done, made no objections as the work proceeded, did not preclude him from asserting, when sued for the contract price, that the work had not been done in accordance with the contract.

Mere knowledge of a breach of contract does not constitute a waiver but there must be a formal release. *Pope Mfg. Co. v. Rubber Goods Mfg. Co.,* 97 N. Y. Supp. 73. But it has been held that objection that work was not satisfactory comes too late if not made till after work was done. *Lyons v. Dymond,* 23 La. Ann. 709. This rule has been followed on ground that failure to reject defective construction amounts to a waiver. *Ashland Lime Co. v. Shores,* 105 Wis. 122. Some courts hold that an amount necessary to make the work such as contract calls for may be deducted from the contract price. *Katz v. Belford,* 77 Cal. 319.

CORPORATIONS—NUISANCE—LIABILITY TO PRIVATE INDIVIDUALS.—PICKENS V. COAL RIVER BOOM & TIMBER CO., 65 S. E. 865 (W. VA.).—*Held,* that a state charter giving a corporation power to do work which would otherwise be a nuisance, absolves the corporation from any liability as a public nuisance, but does not exempt it from liability for damages to an individual. Williams, J., *dissenting.*

A corporation acting under a charter giving it a power to do a public act is not liable for injuries to property rights of individuals. *Bailey v. Philadelphia, W. & B. R. Co.,* 44 Am. Dec. 593. Nor is a corporation responsible for the disturbance or injury to a franchise of another corporation if it exercises its powers in a manner contemplated by its charter. *Bordentown & Turnpike Road Co. v. Camden & A. Railroad & Transportation Co.,* 17 N. J. Law 314. But this is not so if it has in some way forfeited its charter rights or the charter has been rightfully modified by some statute. *Gowen v. Penobscot R. Co.,* 44 Me. 140. Nor does the charter afford any protection to those acting under it, if it is

either unconstitutional or void. *Chenango Bridge Co. v. Paige,* 83 N. Y. 178. But if the injury was direct and the work for which the corporation was chartered was constructed with private capital and for private emolument, the corporation is liable for damages to property. *Trenton Water Power Co. v. Raff,* 36 N. J. Law 335. Nor in such a case is the charter a defense against a suit by a town. *Hooksett v. Amoskeeg Mfg. Co.,* 44 N. H. 105. For unless the charter expressly grants the corporation the right to operate so as to render it a nuisance, the mere fact of incorporation confers upon it no greater rights than those of a natural person in the same situation. *Powell v. Brookfield P. B. & Title Mfg. Co.,* 104 Mo. App. 713. And the fact that there was no wilful or unnecessary damage does not free it from liability. *New Albany & S. R. Co. v. Huff,* 19 Ind. 315. And this is true, although no remedy is provided for in its charter. *Indiana Cent. R. Co. v. Boden,* 10 Ind. 96. But if a certain remedy is provided in the statute, that remedy only can be given. *Hazen v. Essex Co.,* 66 Mass. 475.

COURTS—PREVENTING INJURY TO REAL PROPERTY—JURISDICTION OF COURT.—CALIFORNIA DEVELOPMENT CO. V. NEW LIVERPOOL SALT CO., 172 FED. 792.—A court of equity having jurisdiction of the parties may, it was *held,* enjoin a continuing injury to real property within its jurisdiction by flooding caused by the improper construction of works maintained by defendant for diverting the water of a river into a canal, although such works are across the boundary within the republic of Mexico.

The weight of authority seems to be that where a court has jurisdiction over the parties, it may issue an injunction to enjoin a nuisance arising in another jurisdiction. *Ewing v. Ewing,* 9 App. Cas. 34; *Monnett v. Turpie,* 132 Ind. 482; *Alexander v. Tolleston Club,* 110 Ill. 65. The jurisdiction of a court may be determined by the place where the injury is received. *Georgia Central R. Co. v. Dorsey,* 116 Ga. 719. It was held in *Stillman v. White Rock Mfg. Co.,* Fed. Cas. No. 13446, where there was an injury to mills situated in one state by acts done in another, the courts of the state in which the injury was done had a right of action which they could enforce by injunction in the other state. Equity courts of one state may also assume jurisdiction where a less circuitous and better remedy can be given than is afforded by another state; *Richardson v. Williams,* 56 N. C. 116; or grant relief in case of a doubtful jurisdiction. *Adriance v. New York,* 1 Barb. 19 (N. Y.). But there is no jurisdiction to enjoin the doing of the threatened acts in another state nor to compel the undoing of the same if done. *At. & Pac. Tel. Co. v. B. & O. A. Co.,* 46 N. Y. Super Ct. 377.

CRIMINAL LAW—EVIDENCE—EXHIBITION OF CHILD TO JURY.—STATE V. HUNT, 112 N. W. 902 (IA.).—*Held,* that in a prosecution for seduction, it is error to exhibit prosecutrix's child, only a few months old, to the jury to determine a supposed resemblance to the defendant.

It is well settled that evidence of a resemblance of a child to its putative father, being but matter of opinion, is inadmissible. *Eddy v.*

Gray, 4 Allen. 435 (Mass.); *People v. Carney*, 29 Hun. 47 (N. Y.). There is, however, a decided conflict as to whether a bastard child may be exhibited to the jury for the purpose of showing resemblance to the defendant. It was held in *Gilmanton v. Ham*, 38 N. H. 108; *Scott v. Donovan*, 153 Mass. 378, and *Crow v. Jordan*, 49 Ohio St. 655, that it was proper to introduce the bastard child, while in *Robnett v. People*, 16 Ill. App. 299, and *Hanawalt v. State*, 64 Wis. 84, the contrary was held. Some states make a distinction as to the age of the child, and in *Hilton v. State*, 41 Tex., Cr. R. 190, a child seven months old, was too young to be admitted in evidence for proof of resemblance to its putative father. The same was held of a child six weeks old. *Clark v. Bradstreet*, 80 Me., 454.

DISCOVERY—IN EQUITY—STATUTORY REMEDY.—KEYSTONE LUMBER YARD v. YAZOO & M. V. R. CO. ET AL, 50 So. 445 (MISS.).—*Held*, that the chancery court has jurisdiction of a bill for discovery, though plaintiff may have legal means of obtaining proof.

The theory of a bill of discovery in equity is that it lies only where courts of law are unable to compel disclosure of the party's knowledge. *Heath v. Erie Ry. Co.*, 9 Blatchf. 316; *Riopelle v. Doellner*, 26 Mich. 102. This rule has been followed in many federal and state courts. *Cecil Nat. Bk. v. Thurber*, 59 Fed. 913; *Norwich & W. R. Co. v. Storey*, 17 Conn. 364; *Law v. Thorndyke*, 37 Mass. 317; *Fitzhugh v. Everingham*, 2 Edw. Ch. (N. Y.) 605. The same is held in *Brown v. McDonald*. 110 Fed. 964; but this decision was reversed by the Circuit Court of Appeals in 133 Fed.. 897. Such a bill was held demurrable in *Souza v. Belcher*, 3 Edw. Ch. (N. Y.) 117; *contra*: *Wood v. Hudson*, 96 Ala. 469. But following decisions have allowed the bill even where there is a complete remedy at law. *Kelley v. Boettcher*, 85 Fed. 59; *Garden City Sand Co. v. People*, 118 Ill. App. 372; *Miller v. U. S. Casualty Co.*, 61 N. J. Eq. 110; *Elliston v. Hughes*, 38 Tenn. 225.

HOMICIDE—ASSAULT WITH INTENT TO KILL—DEFENSE—DRUNKENNESS. —CHOWNING v. STATE, 121 S. W. 735 (ARK.).—*Held*, that in defense of a prosecution for assault with intent to kill, it may be shown that at the time of the assault accused was so drunk that he could not have entertained the intent necessary to constitute the crime.

Proof of intent is essential in such a prosecution. *Ward v. State*, 58 Neb., 719. And where one is incapable of forming the specific intent necessary, he cannot commit assault with intent to murder. *State v. Di Guglielmo*, 4 Pennewill (Del.) 336. And drunkenness may be considered by the jury, since it may have produced a state of mind unfavorable to premeditation, though not so great as to make him incapable of a deliberate purpose. *Lancaster v. State*, 70 Tenn. 575. But intoxication cannot reduce assault with intent to murder to a mere assault. *Jeffries v. State*, 9 Tex. App. 598. And it has been held that intoxication which does not amount to insanity is no defense in such a prosecution. *Little v. State*, 42 Tex. Cr. R. 551.

INJUNCTION—PROSECUTION OF ACTION.—VAN RIEMPST V. WEIHER, 116 N. Y. SUPP. 218.—Where a tenant sued to cancel a lease, claiming it was induced by fraud, and alleged facts which, if established, might entitle him to a cancellation, *held,* that he was entitled to have an action brought by the landlord in the municipal court for rent, stayed until determination of the action for cancellation. Clark and Scott, JJ., *dissenting.*

It is well established that fraud, accident, mistake, and discovery are grounds upon which an injunction may be allowed to stay proceedings at law. *Diller v. Rosenthal,* 6 Luz. Leg. Reg. 33 (Pa.). However, equity will not enjoin an action at law when the party seeking the injunction has a good defense at law. *Savage v. Allen,* 54 N. Y. 458. Thus, the weight of authority, contrary to the ruling of the case under discussion, seems to be, that where the facts relied on for an injunction against a common law action are available as a defense to the action, an injunction will not be granted. *Peacock v. Irvine,* 42 So. 894 (Fla.). But, although the facts set up in the bill to enjoin an action at law may be used in defending against that action, equity will not refuse relief unless the remedy thereby offered is adequate. *Bissell v. Beckwith,* 33 Conn. 357. Thus, if an action at law gives an unfair advantage to the adverse party, equity will interfere and grant relief by injunction. *Lindley v. Russell,* 16 Mo. App. 217; *Long Dock Co. v. Bentley,* 37 N. J. Eq. 15. Likewise, injunction may be sought to restrain a suit at law where the latter only involves a portion of the controversy, or is liable to leave an apparent record title clouding the legal title in issue. *Shaw v. Chambers,* 48 Mich. 355.

INTOXICATING LIQUORS—ILLEGAL SALES—DEVICES—CLUBS.—STATE V. CITY CLUB, 65 S. E. 730 (S. C.).—*Held,* that when a so-called club is a mere device to evade the law against the sale of intoxicating liquors, and its real or main purpose is to provide liquors for its members at a price paid, or agreed to be paid, there is a sale.

The rulings enforced upon this holding throughout the country appear to vary considerably. It has been held, that, despite the fact that the club is organized in good faith and not as a mere device to evade the law, a social club, whether incorporated or not, which dispenses liquors to its members at a price paid, or agreed to be paid, is within the statute requiring dram shops to be licensed. *South Shore Country Club v. State,* 228 Ill. 75. And without qualification, the distribution of intoxicating liquors among the members of a club is a sale within the law. *State v. Johns,* 118 N. W. 295. But, *contra,* the furnishing of intoxicating liquors, without profit, by a club organized and existing in good faith with a limited and selected membership, does not constitute a sale within the meaning of the statute. *People v. Adelphi Club,* 149 N. Y. 5; *Commonwealth v. Ewing,* 145 Mass. 119. Again it has been held that a statute applying to barrooms also applies to social clubs, for a ruling prohibiting a barroom from keeping open on Sunday also prohibits a social club from keeping open its rooms on Sunday for the purpose of selling liquors to its members. *Beauvoir Club v. State,* 148 Ala. 643.

LANDLORD AND TENANT—LEASE—CREATION OF LIEN.—BRADFORD ET AL v. ROBERTS, 104 PAC. 391 (COLO.).—*Held,* that a lease on a farm, giving the lessor a share of the crops and the right, on the lessee's failing to do the necessary work, to do it himself and deduct the value thereof from the lessee's share of the crops, does not create a lien for the value of such labor in the lessor's favor, and a chattel mortgage of the lessee on his interest is good as against the lessor.

The landlord's lien on crops for rent and advances is created by a lease of lands to be cultivated for a specific portion of the crops. Where by the lease the lessee is to gather and deliver the lessor's share to him, but fails, and the lessor does the necessary work, he has a lien for so doing. *Secrest v. Stivers,* 35 Ia. 580. But a lease contract, providing that no grain should be sold or removed by the lessee, but such as remained should be bought by the lessor, gives the latter no lien which he can enforce against a *bona fide* mortgagee of the hay crop, without notice of the terms of the lease. *Marshall et al v. Luiz et al,* 115 Cal. 622. And a lease giving landlord first lien on the property of lessee as security for rent is, in effect, a chattel mortgage, and if unrecorded gives a title inferior to that created by an assignment for the benefit of lessee's creditors. *Packard v. Chicago Title & Trust Co.,* 67 Ill. App. 598. Nor does a provision that lessee shall dispose of no produce until payment of the rent and other items, reserve a lien, and the produce may be attached as the property of the lessee. *Beers v. Field,* 69 Vt. 533.

LANDLORD AND TENANT—LIABILITY FOR RENT—DESTRUCTION OF BUSINESS.—O'BYRNE V. HENLEY, 50 So. 83 (ALA.).—If the premises are leased for the purpose of carrying on a certain business and such business is totally destroyed, it is analogous to a physical destruction of the premises, and the liability of the tenant to pay rent ceases.

The common law rule was that the tenant was liable for rent even though the premises were destroyed by an unforeseen or inevitable accident, or by an act of the public enemy, unless otherwise stipulated. Taylor on *Landlord and Tenant,* Sect. 377. However, where there was a stipulation that the tenant should not be liable for rents if the premises or business should be destroyed by such causes, it was held that acts of the law were not included in this stipulation, but must be expressly stipulated in order to be effective. *Abadie v. Berges,* 41 La. Ann. 281. It is pretty well established that liability for rent does not cease because of an interference by law subsequent to the lease, unless expressly provided. *McLarren v. Spalding,* 2 Cal. 510; *Nichols v. Byrne,* 11 La. 170. And this is true even though such law is passed before the commencement of the term. *Kerley v. Mayer,* 31 N. Y. Supp. 818. When the interference with the beneficial enjoyment is through no fault of the lessor, but through acts of private persons, there is still liability for rent. *Birch v. Favilla,* 101 N. Y. Supp. 970. But, upon the other hand, if the interference with or destruction of the beneficial interest to the tenant is by the lessor, the tenant may abandon the premises and have a good defense against a claim for rent. *O'Neil v. Manget,* 44 Mo. App. 279; *Myers v. Bernstein,* 104 N. Y. Supp. 348. Yet

there is no such defense if the tenant does not abandon the premises after such constructive eviction. *Higbie Co. v. Weeghman Co.*, 126 Ill. App. 97. And to be justified in abandoning, the interference must be persisted in and continued at the time of abandonment. *Ryan v. Jones*, 20 N. Y. Supp. 842.

LIBEL AND SLANDER—HOLDING PUBLIC OFFICIAL UP TO REPROACH.—CHURCH V. NEW YORK TRIBUNE ASS'N., 118 N. Y. SUPP. 626.—It was *held* to be libelous *per se* if a publication fairly imputed that a public officer was guilty of shirking and disregarding his duties, thereby holding him up to reproach and ridicule.

The general rule is, that words are actionable *per se* which impute to an official a wilful neglect of duty. *Scougale v. Sweet*, 124 Mich.. 311. It is even stronger evidence of a libel *per se* if this neglect is characterized as being culpable and from improper motives. *Larabee v. Minn. Tribune Co.*, 36 Minn. 141. And whether the publication amounts to a criminal charge or not, as long as it tends to bring another into ridicule or disgrace, it is actionable *per se*. *Washington Times Co. v. Downey*, 26 App. D. C. 258. But to render such words actionable at all, they must be published during his term of office. *McKee v. Wilson*, 87 N. C. 300. *Contra*: *Russell v. Anthony*, 21 Kans. 450. And in determining whether the language is libelous *per se*, it should be construed as a whole and its ordinary meaning given to it. *Daily v. N. Y. Herald Co.*, 151 Fed. 114. No criticism of a person holding a public office is libelous unless it is malicious. Townsend on *Slander and Libel*, Sect. 254. Thus, if the words are published in good faith and in the belief that they are true, public policy exempts one from liability. *Bearce v. Bass*, 88 Me. 521.

MUNICIPAL CORPORATIONS—POLICE POWER—ORDINANCES—VALIDITY.—STATE V. PERRY, 65 S. E. 915 (N. C.).—*Held*, that under its police power to protect the public health, a city may establish and control public markets at which perishable food, such as fresh fish, shall be sold, and may prohibit the vending by retail of such perishable food except at the public markets.

The right to establish markets has been treated as a branch of the sovereign power. *Bowling Green v. Carson*, 10 Bush. 64 (Ky.); *Cougot v. City of New Orleans*, 16 La. Ann. 21. Still, in other jurisdictions, cities are given power under their charters to establish markets. *St. John v. City of New York*, 13 N. Y. Super. Ct. 315. On the other hand, the right of regulating markets is necessarily a municipal police power. *City of New Orleans v. Morris*, 3 Woods C. C. 107 (La.). But an ordinance regulating the same may be declared void for unreasonableness, where it is oppressive, unequal, unjust, or altogether unreasonable. *City of Lamar v. Weidman*, 57 Mo. App. 507. In *Village of Buffalo v. Webster*, 10 Wend. 99 (N. Y.), it was held that a by-law, that meat should not be sold except at a designated place, was good, not being a restraint of the right to sell meat, but a regulation of that right. Likewise the city of New Orleans may prohibit the sale of oysters in the city, except at certain designated stands. *Morano v. City of New Orleans*, 2 La. 217. In *Jack-*

sonville v. Ledwith, 26 Fla. 163, there was a limitation to the rule that the restricting of the sale to public markets of perishable food is not an illegal restraint of trade or a monopoly, in that reasonable facilities for selling at public markets must be given. And it has been held that such restrictions are altogether void as being in restraint of trade and unreasonable. *St. Paul v. Laidler,* 2 Minn. 190.

PERPETUITIES—VALIDITY OF CHARITABLE TRUST—REMOTENESS.—RUSSELL V. GIRARD TRUST CO., 171 FED. 161.—A settlor deposited $2,000 in trust for the benefit of the State of Pennsylvania. It was to be invested until it should so accumulate, together with any other sums deposited with the trustee, that the whole debt of the state might be paid off. The indebtedness of the state at the time was $40,000,000. *Held,* that the trust was void as it might exceed the limitation of the rule of remoteness or accumulations.

The general rule seems to be that where there is an immediate gift to trustees for certain charitable purposes, but the application will not take effect except on the occurrence of an event uncertain in its nature, the gift is valid, and the court will allow the trustee to hold the fund a reasonable time to await the happening of the contingency. *Jones v. Habersham,* 107 U. S. 174; *Appeal of Goodrich,* 57 Conn. 275. As in *Almy v. Jones,* 17 R. I. 265, it was held that a bequest to take effect when sufficient money was raised to found an art institute was valid as a reasonable time would be allowed for the performance of the conditions. But it has been held that all devices or grants, whether for charitable purposes or otherwise, must vest within the time limited by the rule against perpetuities. *Jocelyn v. Nott,* 44 Conn. 55. The English rule is the same as the American, but provides that a future gift conditional upon an uncertain event is subject to the rule against perpetuities and is void *ab initio. In re White's Trusts,* 33 Ch. Div. 449.

TELEGRAPHS — MENTAL ANGUISH — DAMAGES.— LYLES V. WESTERN UNION TELEGRAPH CO., 65 S. E. 832 (S. C.).—*Held,* that damages may be recovered for mental anguish alone resulting from the non-delivery of a message, although this mental anguish was not suffered until after the message had been delivered.

An examination of the adjudged cases shows that the great weight of authority is against recovery of damages for mental suffering resulting from negligent delay upon the part of the company, unless the mental suffering is coupled with other injuries. *Chase v. W. U. Tel. Co.,* 44 Fed. 554. *Contra*: *W. U. v. Cline,* 8 Ind. App. 364. And if the law expressly provides that a company is liable for all actual damages sustained by its failure to transmit a message within a reasonable time, a recovery for mental suffering is not included. *Francis v. W. U. Tel. Co.,* 58 Minn. 252. For the mental suffering is too uncertain and speculative to be an element of damages. *W. U. v. Wood,* 57 Fed. 471. And the fact that there was not suspense during the delay, but only mental anguish subsequent to delivery does not affect the rule. *Kester v. W. U. Tel. Co.,* 55 Fed. 603. But

in cases when there was extreme delay under extreme circumstances, it has been held that there can be a recovery for such suffering. *Young v. W. U.*, 107 N. C. 370. Or if there was a wanton or malicious purpose on the part of the company's agents, there may be a recovery. *Crawson v. W. U. Tel. Co.*, 47 Fed. 544. Also there can be a recovery if the agent can see upon the face of the message that mental anguish will probably result if not promptly delivered. *Reese v. W. U.*, 123 Ind. 294; *Sherrill v. W. U.*, 116 N. C. 655. Some courts have gone so far as to say that where there is a right of action for breach of contract, there is also a right to recover damages for mental suffering resulting therefrom. *W. U. v. Henderson*, 89 Ala. 510. In another court the doctrine was peculiarly applied, and it was said that the sender may recover for the mental suffering of his wife, but not his own, resulting from failure to deliver. *W. U. Tel. Co. v. Cooper*, 71 Tex. 507.

TRUSTS—ABSOLUTE GIFT—INTENT.—VICKERS V. VICKERS, 65 S. E. 885 (GA.).—*Held*, that an absolute gift will not be cut down by implication into a trust merely because the donor, at the time he made the gift, hoped and believed that the donee would permit him to participate in the beneficial interest of the property.

A case similar to the above has arisen before which held that, where a purchase of real estate is made in the name of a wife, her husband paying the consideration for the same, no trust, express or implied, will arise, even though there may have been a mutual understanding to the contrary at the time the purchase was made. *Johnson v. Johnson*, 16 Minn. 512. And likewise where a husband assigns a judgment to his wife, he cannot afterwards assert that she held the same in trust for him. *Bunt v. Jones*, 45 Mich. 392. These rulings seem to be contrary to that hard and fast principle of trusts that where one pays the purchase price and the conveyance is taken in the name of another, a resulting trust in favor of the one who paid the purchase price will arise; but this appears to be the rule only in the case where the purchaser and trustee were strangers. *Carter v. Challen*, 83 Ala. 135. But, by the doctrine of advancement, the rule seems to be well settled that where the above conditions have arisen, no trust will be declared if the parties stood in the position of *loco parentis;* and this applies to husband and wife. *Viers v. Viers*, 175 Mo. 444; *Hamilton v. Hubbard*, 134 Cal. 603. And in accord, where one conveys his interest in property, real or personal, absolutely, he cannot afterwards impose a trust upon the grantee. *Alden v. Withrow*, 110 U. S. 119.