RECENT CASES.

Corporations — Contracts between Companies having same Directors — Bonds — Purchase by controlling Directors at Discount. — *Coe* v. *East & W. R. R. Co. of Alabama*, and *Grant* v. *Same*, 52 Fed. Rep. 531 (Ala.) This is another case that may help to establish the line between valid and void contracts between corporations having the same directors. The facts are as follows: A railroad company leased a line belonging to an iron company, the consideration being the issue to it by the railroad company of certain stocks and bonds. The stockholders of the latter unanimously ratified the contract. The directors of the railroad company were at the same time directors and stockholders in the iron company. On a bill in equity to foreclose the whole mortgage of the railroad, the holders of certain of the bonds filed an auxiliary bill, praying that the bonds issued to the iron company be declared void in such foreclosure. The question was, How far is a contract between an agent acting for his principal and a third party valid, when the agent and the third party are really the same person? The court seems to have entertained no doubt as to its validity in this case: "As a whole I find that the transaction was valid, the parties were able to contract, and did contract. There appears to have been no fraud or deceit between the consenting parties, nor any intentional overvaluation, and the consideration was as nearly adequate as could be expected under such circumstances. * * * I conclude therefore that the transactions are unimpeachable on the part of the complainants." The apparent conflict between this ruling and the principle laid down in Morawetz (Priv. Corp., Section 528) seems to have been explained by the fact that the action complained of was subsequently ratified by the stockholders. The opinion is supported by a number of cases. Another point worthy of mention regards the purchase by the directors of the company's bonds at a discount. By forbearing to collect interest on bonds and by advances they had become the company's creditors to a large amount, which the stockholders authorized to be paid by the issue of new bonds. The directors had previously resolved that such bonds should not be disposed of at *less* than sixty-five per cent of their par value, which was the rate at which they then took them in satisfaction of their claims. This transaction was also upheld.

Description in Deed—"Contiguous Land"—Parol Evidence—Holston Salt and Plaster Co. v. *Campbell et al.*, 16 S. E. Rep. 274 (Va.) P, wishing to convey to G, in trust for the payment of his debts, all of his real estate, which consisted of a tract of land originally known as the "Preston Salt Works," covering three hundred acres, a number of other tracts touching it, and the piece in question situated three-quarters of a mile distant from the rest, but all used for the same purpose, executed a deed of "that tract or parcel of land lying in Smyth County, on the waters of the north fork of the Holston, commonly known as the 'Preston Salt Works Estate,' and containing six thousand nine hundred and ninety-five acres" (evidently meaning the *whole* property). G subsequently sold the salt works property to S, describing it as "being all the estate, right, title and interest which P conveyed to the said G by deed bearing date July 7, 1859, in the Preston Salt Works Estate, and the lands contiguous thereto"(meaning hereby the "Preston Salt Works Estate" only the original piece of three hundred acres). G's successor as trustee now sues in ejectment for the tract lying apart from the main body. The question then is, was this piece "contiguous" to the rest, so as to pass by the second deed? Although "contiguous" does not *necessarily* mean *touching*, as in the case of a building (*Arkell* v. *Commerce Ins. Co.*, 69 N. Y. 193), still this is its *primary* meaning, and it must be so construed in the absence of any words in the context modifying its signification. It seems to have been the intention of both the grantor and grantee in the second deed that the tract should pass. While equity might relieve in the case of mutual mistake to reform the deed, still a court of law cannot alter a deed, and parol evidence and records to prove the intentions of the parties are inadmissible. Judgment of the lower court for the plaintiff is therefore affirmed.

Park—What Constitutes Dedication.—Steel v. *City of Portland*, 31 Pac. Rep. 479 (Ore.). Lots were sold from a plat made at one Holladay's request by order of his trustee, in the centre of which was a solid tract of land marked "Park." This latter was enclosed by him and kept in order until 1883 or 1884, when the city of East Portland by its officers and agents took possession of it, and the city of Portland, successor in interest to the city of East Portland had since that time continuously cared for and improved it as a public park. The plaintiff, Steel, Holladay's successor in interest, brought this action to recover the park on the ground that the original owner of the land intended it as a private park and did not

dedicate it to public use. The court held that the owner by selling lots from the above-mentioned plat, and in reference to it, had dedicated the park to the public, and that plaintiff could not set up a different intent.

Breach of Contract — Pleading — Nominal Damages. — *Acheson* v. *Western Union Tel. Co.*, 31 Pac. Rep. 583 (Cal.). Defendant undertook to transmit a telegram for plaintiff, and made a mistake, for which this action for damages was brought. Defendant demurred, but the demurrer was overruled and judgment given for plaintiff for want of answer. The court held that the demurrer should have been sustained, for no consideration was alleged for defendant's undertaking to transmit the message, and the contract was not accepted by common law or by statute, for it was neither under seal nor in writing, and reversed the judgment for the full amount of damages prayed for, on the ground that special damage was not shown and nominal damages only were recoverable on the complaint.

Elections — Ballots. — *Miller* v. *Pennoyer et al.*, 31 Pac. Rep. 830 (Ore.). One of the People's party candidates for elector was subsequently nominated by the Democratic party and his name was printed in both groups of electors. The Oregon statute, commonly called the "Australian Ballot Law," provides that "the name of each person nominated shall be printed in *but one place.*" It makes it the duty of the county clerks to "cause to be printed all ballots to be used or voted" under the act. A writ of mandamus was applied for to restrain the Secretary of State from counting the ballots on which this name appeared twice. The court held, that the printing of the name twice was contrary to the provisions of the act, but that, since the statute did not declare such ballots to be void, it did not vitiate the ballots; that a technical mistake of a county clerk should not defeat a voter's right to exercise his elective franchise. "Such a construction of the law would not only render an election invalid on account of an honest mistake of a county clerk but would open the door to the gravest fraud. It would place the power in the hands of a dishonest officer to disenfranchise the voters of his county as well as to cause the defeat of any particular candidate. To defeat the will of the people or a particular candidate it would only be necessary to furnish the electors or a part of them with ballots slightly variant or differing from those prescribed by law. Unless the law is clearly mandatory or in some way declares the consequences of a departure

from its provisions the court ought not to defeat the will of the people when fairly expressed because of some technical error or mistake in the form of the ballot."

Mutual Benefit Insurance — Rights of Beneficiaries — Joint Tenancy.—Farr et al. v. *Trustees of Grand Lodge of the A. O. U. W. of State of Wisconsin et al.* 53 N. W. Rep. 738. Peck, the father of plaintiff, had his life insured with the defendants for two thousand dollars, payable to the plaintiff and her mother,—they being the daughter and wife respectively of Peck, who survived the wife by ten years. When he died the plaintiff made formal demand for the payment of the policy for two thousand dollars. Defendants paid one thousand dollars and claimed that the other thousand dollars reverted back to the estate because of the death of the mother, under the laws of the State, which provided that "all grants and devises of lands made to two or more persons shall be construed to create estates in common and not in joint tenancy, unless expressly declared to be in joint tenancy," also that "the preceding section shall not apply to mortgages, nor to devises, or grants made in trust, or made to executors, or to husband and wife." The question was whether the policy was payable to the mother and daughter severally, or as an entirety, as tenants in common, or as joint tenants. The court held that because of the close analogy to property held in joint tenancy the policy was payable as an entirety. And so we conclude that this insurance in joint tenancy with the right of survivorship is within the exception of our own statute in analogy to devises, and that the doctrine of the common law governs it.

Disqualification of Judge.—In *Heinlen* v. *Heilbron*, 31 Pac. Rep. 838 (Cal.), it was claimed that while the suit was pending, the judge bought lands which formed a part of the same original tract to which the land in suit belonged, but no evidence was offered to show that the title to the judge's land in any way depended on the result of the suit. The court held that while it is necessary that a judge shall always be wholly disinterested, yet he has no right to refuse to act except when he is positively disqualified. The fact that a judge has acted is conclusive that in his own opinion he is competent to do so and the presumption of integrity which attaches to any act performed under his oath is too strong to be overcome by mere inference, and that these facts could not sustain a charge of interest.

Resulting Trust — When Arises — Parol Evidence — Statute of Frauds — Improvements as Consideration. — *Seiler* v. *Mohn*, 16 S. E. Rep. 496 (W. Va.). One of the ordinary cases of resulting trusts is where one party takes the title, while another pays the consideration. The Supreme Court of West Virginia has somewhat extended the doctrine in this case. S made a written agreement with K, the owner of a certain tract of land, for its transfer to S, credit to be given him for a certain time for the purchase money. S thereupon took possession, and built a house and made other valuable improvements on it, but soon found himself unable to pay the price of the land. He therefore made a verbal agreement with M and R, who were to pay for the land, get a deed, and each have a one-third interest in it,—S to receive his third in consideration of the improvements he had made. M and R in fact agreed with K upon the price to be paid by them. But subsequently, without the knowledge of S, they bought the land and took a deed of the whole interest to themselves, disregarding any claim that S might have on the property. S therefore brought suit to have M and R declared trustees for him for his undivided third interest. Although he had paid no part of the real purchase money, and although his contract with M and R was merely verbal, still a parol contract was considered sufficient to support a trust implied by law, and his improvements on the land were held equivalent to the payment of a consideration. Furthermore, M and R's dealings were held to be in pursuance of their agreement with S. A decree declaring the trust for S was therefore granted.

Impeachment of Verdict. — *Chicago & I. Coal Co.* v. *McDaniels*, 32 N. E. Rep. 728 (Ind.). In this case the misconduct of the jury is assigned as one of the reasons why a new trial should be granted. An affidavit was presented showing that the verdict was arrived at in this manner: That the jurors agreed that a vote should be taken and the different amounts voted by the jurors should be added together and the sum divided by twelve; that this quotient should be the amount of damages assessed against the defendant, and that this quotient was adopted as the damages. Counsel objected to the method of proof of the facts set forth in the affidavit, and asserted that the presumptions were that the verdict was arrived at in a lawful manner; and since no one has a right to be in the jury-room during the deliberations of the jury, the one making the affidavit must disclose how he gained his information before the court will receive and consider it. The

court held that the affidavit stated as a fact that the quotient method was used in assessing the damages and that although some authorities "enunciate a doctrine which would exclude proof by affidavit in regard to the manner in which a verdict was arrived at without the affiant disclosing his means of information, this court has adopted a different rule which we think is the correct one." The presumption is that the affidavit is true, for it cannot be presumed that a person would made an affidavit charging that an unlawful verdict has been rendered, and take the liability for making such an affidavit when the jurors could prove it to be untrue. The fact that the verdict is for $10,964.56 also supports the truth of, and is consistent with, the facts stated in the affidavit.

Wills—Intent of Testator—Advancements.—Hammett et al. v. *Hammett et al.*, 16 S. E. Rep. 293 (N. C.). The section in question of the testator's will read as follows: "That when all the assets of my estate have been sold and converted into money, as hereinbefore provided, * * *, and when all of the debts and of the expenses of the execution of this will and of the administration of my estate have been paid, then my said executors and executrix shall distribute the rest and residue of said assets among my children as follows: * * *. If it be found that any child has overdrawn his or her equal share of my estate, then he or she is to refund the excess to my said executors or executrix." The payments here referred to were sums of money advanced by the testator to his different children during his lifetime, and for which he had taken promissory notes, which, however, were not directed to be collected in the will. The only ground for the claim that it was the testator's intention that these payments should be treated not as advancements (to be kept unconditionally), but as loans, lay in the last clause of the above quoted section: "That if it be found that any child has overdrawn his or her share, he or she shall refund the excess * * *." The whole estate as collected was insufficient to pay the debts, and therefore there was no residuum. As, however, this whole section of the will depended for its effect on the existence of a residuum, it was held to be mere surplusage, and the same as if stricken from the will. The clause referred to was therefore held inadmissible to prove the intention of the testator.