RECENT CASES.

Assignment — Negotiable Paper — Right of Holders — Indemnity.— Citizen's Bank v. *Kendrick et al.; Dority* v. *Franklin Bank et al.*, 21 S. W. Rep. 1070 (Tenn.) These suits were brought in chancery to settle the insolvent estates of the two defendants. The Franklin Bank, in which Kendrick, Pettus & Co., had deposited $32,000 had indorsed the latter's paper to the extent of $75,000. Both became insolvent, and holders of the paper claimed that they were entitled to a full *pro rata* out of each of the insolvent estates, whose assets in both cases amounted to about one-fourth their liabilities. The bank claimed a right to hold the deposit as an indemnity against what it might have to pay as indorser. The court held that it is well settled that if both maker and indorser of negotiable paper become insolvent and voluntarily assign for the benefit of their creditors, the holder is entitled to receive a full *pro rata* from the estate of each, provided the sum does not exceed the true amount of the debt, and that, in case the indorser holds a deposit of the maker, he is entitled to retain it as an indemnity, and his liability to pay, and the insolvency of the maker are sufficient, without more, to justify an equitable set-off.

Aggravated Assault — What Constitutes.— Kiersey v. *State*, 22 S. W. Rep. 37. It is pleasant to note that the Supreme Court of Texas has decided that a man has a legal right to ask a woman for a kiss and to insist upon her granting it. The defendant was to be "best man" at the marriage of his friend to a young widow. Having secured a marriage license and the services of a justice of the peace, he proceeded to the widow's home only to find that the bridegroom-elect had failed to put in an appearance. After considerable waiting, defendant went in pursuit of the truant lover, but failing to find him he found something to drink and returned to the widow's home in a convivial frame of mind. Meeting her at the door and acquainting her with the failure of his search, he offered to mingle his joy with her sorrow in a kiss of consolation, to which she ungratefully excepted and closed the door in his face. He, nothing daunted, opened the door, followed her into the house and urged his claim, even kneeling beside her chair. The

law was allowed to take its course, he was prosecuted and found guilty of aggravated assault, but on appeal the court held that his conduct did not constitute an assault.

Consolidation of Actions — Injunction.— Gulf C. & S. F. Ry. Co. v. *Bacon et al.*, 21 S. W. Rep. 783 (Tex.) Appellants, averring that separate suits were brought by each of the appellees, when they were either partners or the right to sue belonged to one only, below the jurisdictional amount of the county court, before a justice of the peace, petitioned for an injunction to consolidate the two suits, alleging that such a magistrate would refuse to do so and was disinclined to decide such suits correctly. Held, that it could not be assumed that the justice of the peace would refuse to accord to appellant any legal right, and that, since it had the right to have the suits consolidated before trial, an injunction for that purpose was properly refused by the lower court.

Judgment for Costs — Clerk's and Witnesses' Interest in.— Hoover et al. v. *Missouri Pac. Ry. Co.*, 21 S. W. Rep. 1076 (Mo.) Plaintiff recovered judgment and costs against defendant in lower court, but, in accordance with a stipulation entered by the parties, judgment was rendered in the Supreme Court, taxing plaintiff with costs. The clerk of the lower court and witnesses, filing affidavits to show plaintiff's insolvency, asked that the costs be retaxed. Held, that the judgment for costs was not rendered in their favor, and the fact that officers of the court and witnesses have acquired in some sense a beneficial interest in a judgment gives them no right to interfere in a compromise between the parties.

Public Schools — Eligibility of Women.— Commonwealth v. *Jenks*, 26 Atl. Rep. 371 (Penn.) The Board of Control of the Philadelphia public schools refused to approve the selection of a woman to an office to which she was eligible by the Constitution of Pennsylvania, and also by the rules of the board relating to experience. Petition for mandamus to compel the board to approve her selection. Held, that the board had discretionary powers in determining the choice of teachers. That the constitution and rules did not require the selection of a woman simply because she becomes an applicant. Although a woman should not be rejected solely on account of her sex, yet, the board in its selection, should take into account the character of the pupils of the school, and the sex of the applicants, so far as it concerns the maintenance of discipline.

Religious Societies — Change of Faith by Members.— Smith v. *Pedigo*, 33 N. E. Rep. 777 (Indiana). The members of a Baptist church became divided over a question of theology. The minority faction submitted their claims to the governing body of the Baptist church at large, which adjudged their views to be right according to the faith of their organization. The majority, however, took possession of the church property and forcibly excluded the minority. Action to recover possession. The court held that where property is dedicated to the use of a church having an established faith, it cannot be appropriated by members who have adopted a different faith, that the constitutional provisions for freedom of worship do not give members a right to reject the doctrines of their church and at the same time to enjoy all the privileges of members of such church. The court took into account the decision of the governing body of the church and gave it great weight: not that it was conclusive on civil courts, but that it was a safer guide on such questions than any judgment they might determine on.

Liability of Tenant — Condemnation of Leasehold Estates.— In *Corrigan* v. *City of Chicago*, 33 N. E. Rep. 746 (Ill.), it was held that the condemnation by a city of the whole of leased premises, determines the tenant's liability for rent, although the condemnation of a part only does not. As his share of the compensation paid by the city, the tenant is entitled to the value of his leasehold estate at the time of the condemnation.

Verdict — Affidavit by Juror to Impeach.— Flood v. *McClure*, 32 Pac. Rep. 254 (Idaho). This was a case of a jury arriving at a verdict in a civil action for damages by agreeing to abide by a "quotient" verdict. The court held that a verdict so reached was a verdict "by a resort to the determination of chance" within the meaning of the Idaho statute, and that it should therefore be set aside. The court held that under the same statute the affidavit of a juror could be admitted to impeach the verdict.