RECENT CASES

ARSON—ACTS CONSTITUTING.—STATE v. MARTIN, 127 N. W., 896 (NEBR.).—*Held*, that a tenant who wilfully and maliciously sets fire to and burns a storehouse, the property of his landlord of which the tenant is in possession, is guilty of arson, as defined in section 54 of the criminal code.

The common law is that arson is an offense against the possession rather than the property itself, and one who is in the possession and actual occupancy under a lease of the house alleged to have been burned by him, cannot be guilty of arson. *State v. Young*, 139 Ala., 136. This is supported by the case of *Allen v. State*, 10 Ohio St., 287, in which it is distinctly said that nothing is more firmly settled by authority than that a tenant who burns the building of which he is in possession, is not guilty of arson. But this common law rule has been superseded by statute and in the codes by the doctrine that a tenant may commit arson by burning his own dwelling house. *State v. Moore*, 61 Mo., 276. In the case of *Lipschitz v. People*, 25 Colo., 261, it is said that the burning of a building belonging to another, but occupied by the party who burns it, is arson. The modern rule is that one in possession of a house as tenant who wilfully burns it, is guilty of arson. *Kelley v. State*, 70 S. W., 20; *Shepherd v. People*, 19 N. Y., 537; *Garret v. State*, 109 Ind., 527.

ATTORNEY AND CLIENT—NEGLIGENCE OF ATTORNEY—ACTIONS—PLEADING.—FRENCH ET AL. V. ARMSTRONG, 76 ATL. REP., 336 (N. J.).—*Held*, that in a declaration against an attorney for negligence, it need not be averred that his fees were paid.

As a general rule, a client who has suffered damages as the result of his attorney's negligence may recover in an action at law. *Spangler v. Sellers*, 5 Fed., 882; *Newman v. Schueck*, 58 Ill. App., 328. And it is well settled that in a declaration against an attorney for negligence an averment of payment is not necessary. *Cavillaud v. Yale*, 3 Cal., 108; *Eccles v. Stephenson*, 3 Bibb. (Ky.), 517. However, if the case does not show the capacity in which the party acted, then the courts hold that an allegation of consideration is necessary. *Dartnell v. Howard*, 10 Eng. Com. Law, 351.

BILLS AND NOTES—SIGNING CHECKS IN BLANK—LIABILITY.—125 N. Y. SUPP., 94.—*Held*, that the signer of a blank check is not liable to a third person where the check has been stolen and completed by the thief.

As a general rule, it is immaterial that a negotiable instrument has been stolen, the maker thereof being liable to a *bona fide* purchaser for value. *Shipley v. Carroll*, 45 Ill., 285; *Goodman v. Simonds*, 20 How. (U. S.), 343. But where the negotiable instrument has not been completed and is wrongfully put into circulation by another, there is a conflict of opinion

as to the maker's liability. Many states hold, with the principal case, that a *bona fide* holder cannot recover thereon. *Knoxville Nat. Bank v. Clark,* 51 Iowa, 264; *Greenfield Sav. Bank v. Stowell,* 123 Mass., 196. On the other hand, a long line of decisions holds the maker liable under such circumstances. *Joseph v. National Bank,* 17 Kansas, 256; *Garrard v. Haddam,* 67 Pa. St., 82. On this point the Supreme Court has held there could be no recovery. *Ward v. Steele,* 6 Wall. (U. S.), 80. Where the mere signature is stolen, the general rule is that the signer is not liable to an innocent purchaser. *Nance v. Lary,* 5 Ala., 370. So that where a person writes his name on a piece of paper for identification purposes, and another, without authority, writes a promissory note over the signature, an innocent holder for value cannot recover. *Caulkins v. Whisler,* 29 Iowa, 495. But in any case, it is well settled that where a note or check in blank or imperfect in form is delivered and accepted, it operates as authority to the legal holder to fill in the blanks. *Moiese v. Knapp,* 30 Ga., 942.

CORPORATIONS—RESPONSIBILITY FOR ACTS OF AGENTS.—ST. LOUIS, I. M. & S. RY. CO. v. FRISBY, 129 S. W., 291 (ARK.).—*Held,* that where a corporation is forbidden by law to do a certain thing, the acts of all the agents that contributed to the thing done will be considered as the acts of the corporation.

It is a well-known principle that corporations, from their very nature, can only act through the intervention of agents. *Potter on Corporations,* Sect. 125. And so, although *ultra vires,* a corporation is charged with the same responsibility as a natural person for the torts of its agents. *Denver, etc., R. Co. v. Harris,* 122 U .S., 597. Furthermore, even though the particular act was wilful and not directly authorized, if within the general scope of the agency the corporation will be liable. *Pennsylvania Co. v. Weddle,* 100 Ind., 138. Also for any public offense which it can commit in its corporate character, a corporation may be indicted the same as a natural person. *Thompson on Corporations,* Vol. 7, Sect. 8398; *Commonwealth v. Pulaski Co.,* 13 Ky. L. R., 468. However, when a statute forbids an act to be done, providing a penalty for the guilty corporation, and makes the agent liable criminally, the corporation cannot be held liable as an accessory before the fact to the act of the agent. *State v. Railway,* 145 N. C., 495. In the case of railroads the whole power and authority of the corporation *pro hac vice* is vested in conductors (in their relation to passengers) and as to passengers on board the cars the conductors are to be considered the corporation itself. *Bass v. Railroad Co.,* 36 Wis., 463; *Randolph v. Railroad Co.,* 18 Mo. App., 609.

COURTS—JURISDICTION—TORTS COMMITTED IN OTHER STATES.—LOUISVILLE & N. R. CO. v. MCCASKELL, 53 So., 348 (MISS.).—*Held,* the rule that the criminal and penal laws of one state will not be enforced by the courts of another state, because such laws have no extraterritorial effect, applies only where the purpose is to punish an offense against the public justice, and does not apply where the purpose is to afford a private remedy to one injured by a wrongful act; and hence punitive damages may be awarded by the courts of one state for a wrong done in another state.

Penal laws have been defined as being those imposing punishment for an offense committed against the state and which the executive of the state has the power to pardon. *American, etc., Co. v. Ellis,* 156 Ind., 212; *Hutchinson v. Young,* 80 App. Div. (N. Y.), 246. This seems to be the definition accepted by the principal case, but the definition seems too restricted. For it is held by many courts that all statutes imposing a penalty, pecuniary or otherwise, as a punishment, are penal in their nature, whether enforced by civil or criminal procedure. *Woolverton v. Taylor,* 132 Ill., 197; *Hall v. Norfolk & W. R. Co.,* 44 W. Va., 36; *United States v. Chouteau,* 102 U. S., 603. Moreover, the penal laws of a state are strictly local in their character and effect, and are not enforcible beyond the jurisdiction of the state. *Peterson v. Walsh,* 1 Daly (N. Y.), 182; *Commonwealth v. Green,* 17 Mass., 515. The same is true among nations. *The Antelope,* 10 Wheat., 66. And this principle applies when an action is brought in one state to recover under the laws of another state which provide for increased damages, such damages being considered a penalty. *Langdon v. Railroad Co.,* 58 Hun. (N. Y.), 122; *Taylor, Farr & Co. v. Telegraph Co.,* 95 Ia., 740; *Bettys v. Railroad Co.,* 37 Wis., 323. Although a modification has been made to this rule, the recovery of a penalty having been allowed in one state for a cause of action arising under a statute of a foreign state, where similar statutes existed in the two states. *Boyce v. Wabash Railway Co.,* 63 Ia., 70.

CRIMINAL LAW—JUDICIAL NOTICE—FACTS OF COMMON KNOWLEDGE.—FLANDERS V. COMMONWEALTH, 130 S. W., 809.—*Held,* that where accused is charged with selling a decoction having the ingredients of intoxicants in violation of a statute, the court takes judicial notice of the fact that common beer is a malt liquor.

There is a great conflict of opinion on this point. Many of the states hold that judicial notice will be taken of the fact that common beer is intoxicating. *Pedigo v. Com.,* 24 Ky. Law Rep., 1029; *State v. Effinger,* 44 Mo. App., 81; *State v. Morehead,* 32 R. I., 272. The courts are almost evenly divided on the matter, however, and it is held in many jurisdictions that such a question is a matter of evidence. *State v. Sioux Falls Brewing Co.,* 5 S. D., 39; *Klare v. State,* 43 Ind., 483; *Blatz v. Rohrbach,* 116 N. Y., 450. Other intoxicants that may be judicially noticed are whiskey. *Freiberg v. State,* 94 Ala., 91. Brandy, *State v. Wadsworth,* 30 Conn., 55. Gin, *Com. v. Peckham,* 68 Mass., 514. Ale, *Johnston v. State,* 23 Ohio St., 556. Wine, *State v. Parker,* 80 N. C., 439. Alcohol, *Snider v. State,* 81 Ga., 753. But it has been held that evidence is necessary to prove that cider is intoxicating. *Hewitt v. People,* 87 Ill. App., 367. And evidence is necessary regarding rice beer. *Bell v. State,* 91 Ga., 227.

ELECTIONS—BALLOTS—VOTER'S INTENT.—DURGIN V. CURRAN, 77 ATL., 689 (ME.).—*Held,* that in passing on the validity of a ballot not marked according to law, a court cannot consider the voter's intention as manifested by the marking.

Provisions of the election law which are not essential to a fair election are held to be formal and directing only, unless declared to be man-

datory by the law itself. *State v. Van Camp*, 36 Nebr., 91; *De Berry v. Nicholson*, 102 N. C., 465. And so, in general, the courts hold statutes regarding the marking of ballots directory only, and construe them liberally, giving effect, as far as possible, to the voter's intention. *Parker v. Orr*, 158 Ill., 609; *State v. Elwood*, 12 Wis., 551. For instance, a Latin or a Greek cross may be used under a statute requiring ballots to be marked with "a cross—for example an (X)." *Coulehan v. White*, 95 Md., 703. But two parallel horizontal lines will not suffice for a cross. *Chistopherson v. Manister*, 117 Mich., 125. A statute specifying that black ink be used is sufficiently complied with by using a pencil or ink of any color. *Houston v. Steele*, 98 Ky., 596; *Contra, People v. Bourke*, 30 Misc. (N. Y.), 461. Furthermore, according to some authorities, a ballot marked at the wrong side of the candidate's name should be counted. *Mauck v. Brown*, 59 Nebr., 382; *State v. Fawcett*, 17 Wash., 188. *Contra, Curran v. Clayton*, 86 Me., 42; *McKittrick v. Pardee*, 8 S. D., 39.

EMINENT DOMAIN—DAMAGES—TIME OF ASSESSMENT—ENHANCEMENT OF VALUE BY IMPROVEMENT.—UNITED STATES V. CERTAIN LANDS IN TOWN OF NARRAGANSETT, 180 FED., 260.—*Held*, that where the government, before instituting condemnation proceedings by the filing of a petition, had practically completed the end of a breakwater adjoining claimant's property, thus creating, under the shelter of the breakwater, a wharf site, which was taken away by the subsequent condemning of part of the upland adjacent to the alleged wharf site, the rule that damages are to be assessed as of the date of condemnation did not apply, so as to entitle the owner of the upland to damages as of the date of condemnation, and as enhanced by the wharf site, created by the work; it being certain from the beginning of the work that the upland would be condemned, and the alleged wharf site not being available as such without the approval of the Secretary of War, which could not reasonably be expected in view of the location of the government improvements.

In *May v. City of Boston*, 158 Mass., 21, a case directly in point, it is said, "Where damages for land taken under a statute for the purposes of a public park are to be estimated, as in cases of laying out, altering or widening highways under the Public Statutes, 51, § 3, which provides that the damages shall be fixed at the value of the land before such laying out, alteration or widening; the owner is to be compensated by the payment of the fair value at the time of the taking. It is the purpose of the Legislature not to permit owners to recover damages at a value enhanced by a public improvement which owes its existence to the change of use of the very land to be paid for." But in *Harlan v. Hogsett*, 60 Nebr., 362, it is said that damages for lands appropriated for a highway accrue at the date of the taking without regard to the time when the road is actually opened. This may be taken as the general rule. *Bauman v. Ross*, 167 U. S., 548; *Benedict v. City of New York*, 98 F., 789; *Southern Ry. Co. v. Cowan*, 129 Ala., 577. However, in *Mavory v. City of Boston*, 193 Mass., 425, it is said, "The owner of land taken for public use cannot recover therefor an enhanced value which it has acquired merely by reason of the taking, or as the result of the improvement which the taking of that particular

land for the specific purposes for which it is taken contemplates; for in the very nature of things its appropriation is a condition precedent to the existence of the improvement, and it cannot share in the effect of the change to create which it must be used."

HOMICIDE—EVIDENCE—CONDUCT OF ACCUSED.—STATE v. LEO, 77 ATL., 523 (N. J.).—*Held*, that evidence that accused, in a prosecution for killing his wife, at the time of her funeral looked on her dead body, touched and kissed it, was inadmissible to show the existence of love for her during life.

Upon a trial for murder, the prevalent rule is that evidence tending to show the accused's feelings toward the person killed is admissible, to show a motive for the crime. *People v. Kern*, 61 Cal., 244. So on the prosecution of a man for the murder of his wife, it is proper to show the character of the relations between them. *Siberry v. State*, 39 N. E. (Ind.), 936. This may be done by showing the pendency of a divorce action, *Binns v. State*, 57 Ind., 46, or by proof of the adultery of accused and another, *St. Louis v. State*, 8 Nebr., 405. By analogy to the rule of a declaration against interest, the conduct of accused and another female on the day of the burial may be shown. *State v. Hinkle*, 6 Clarke (Ia.), 380. Also, that on the day after the homicide, defendant shed no tears, and was indifferent. *Greenfield v. People*, 85 N. Y., 75; *semble*, *People v. Bemis*, 51 Mich., 422. But it has been held that statements made by accused to third persons after the homicide are not admissible as evidence in his own behalf. *State v. Talbert*, 41 S. C., 526. However, statements in his own interest, and by analogy, his conduct, three or four minutes after he had shot deceased, are admissible, as part of the *res gestae*. *Harrison v. State*, 20 Tex. App., 387.

INDEMNITY—CONTRACT—WHAT CONSTITUTES.—HILLIARD v. NEWBERRY ET AL., 68 S. E., 1056 (N. C.).—*Held*, that a bond to indemnify plaintiff against any damage he may suffer by reason of a mortgage on land, which was also a promise to pay a certain sum by a certain date, was not strictly a contract of indemnity.

Indemnity may be defined as the obligation or duty resting on one person to make good any loss or damage another has incurred while acting at his request or in his behalf; *Vandiver v. Pollak*, 107 Ala., 547, and differs from contracts to pay a certain sum of money or to do a certain act in that, the case of a bond or contract conditioned to indemnify damage must be shown before the party indemnified is entitled to recover, whereas, a cause of action accrues on a bond or contract to do a certain act as soon as there is a default in performance, whether the obligee or promisee has suffered damage or not. *Northern Assurance Co. v. Borgelt*, 67 Nebr., 282; *Henderson-Achart Lith. Co. v. Shillito*, 64 Ohio St, 236. It is undoubtedly true, as a general proposition, that in order to recover upon a bond or agreement to indemnify and save harmless, actual damage must be proved and shown. *Churchill v. Hunt*, 3 Denio (N. Y.)

321; *Aberdeen v. Blackmar*, 6 Hill (N. Y.), 324. A distinction, however, is recognized between an affirmative covenant for a specific thing and one of mere indemnity against damage by reason of the non-performance of the thing specified. *Gilbert v. Wiman*, 1 Const. (N. Y.), 550. It was held in *In the matter of Isaac Negus*, 7 Wend. (N. Y.), 499, that where a bond is given intended as a bond of indemnity, but containing an express covenant that the obligee will pay a certain sum of money at a certain time, an action lies for the breach, although it is not shown that he has been damnified, unless from the whole instrument it manifestly appears that the sole object was a covenant of indemnity. The principle established in the decision, where it has been held that if a bond be conditioned for the payment of money at a certain day, though really given by way of indemnity, and that fact appearing on the face of it, is that the debt accrues from the day mentioned in the condition, and does not await the damnification. *Port v. Jackson*, 17 Johnson (N. Y.), 239.

INJUNCTION—STRIKES—UNLAWFUL ACTS.—SCHWARCZ V. INTERNATIONAL LADIES' GARMENT WORKERS' UNION ET AL., 124 N. Y. SUPP., 968.—*Held*, that a strike ordered to drive non-union employees out of a trade unless they join the union is unlawful, and will afford ground for injunction.

Whether a strike will afford ground for injunction depends on the legality of its immediate purpose. *Miller v. U. S. Printing Co.*, 91 N. Y. Supp., 185. In general, workmen have a right to combine for their own protection, and a lawfully conducted strike to enforce reasonable demands will not be enjoined. *Queen Insurance Co. v. State*, 86 Texas, 250. This includes the right to strike on employers' refusal to discharge non-union workmen. *Jersey City Printing Co. v. Cassidy*, 63 N. J. Eq., 759; *National Protective Assn. v. Cumming*, 170 N. Y., 315. If the immediate purpose is unlawful, however, an injunction will issue to restrain all unlawful acts and orders. *Curran v. Galen*, 152 N. Y., 33. Any interference by a combination with the right of the employer to have laborers flow freely to him comes within this purpose. *Purvis v. Local No. 50 United Brotherhood of Carpenters and Joiners*, 214 Pa., 348. As does also an attempt to deprive a mechanic of the right to work for others unless he will join a particular union. *Erdman v. Mitchell*, 207 Pa., 79. Or an edict to employers that they will not be permitted to run their plant with non-union workmen. *Otis Steel Co. v. Labor Union*, 110 Fed., 698; *Franklin Union No. 4 v. People*, 220 Ill., 355. Or the use of force, threats, or intimidation by former employees to cause other employees to leave the service of employers. *Knusden v. Benn et al.*, 123 Fed., 636. But the use of enticement and persuasion without force, threats, or intimidation will not afford ground for injunction. *Butterick Pub. Co. v. Typographical Union*, 100 N. Y. Supp., 292.

INSURANCE—ESTOPPEL TO AVOID POLICY—FAILURE TO RESCIND.—STATE LIFE INS. CO. V. JONES, 92 N. E., 879 (IND.).—*Held*, that to successfully defend suit by the beneficiary of a life insurance policy upon grounds of false representations of the application and broken warranties, an insurance company must show that the contract has been rescinded and the premiums

tendered back, because such a contract is not void, despite provisions therein that the contract shall be void if warranties are broken or false representations made, but is only voidable at the action of the insurer.

The word "void" as used in clauses in an insurance policy means voidable at the option of the Insurance Co., and the retention of the premiums paid for an insurance policy, with knowledge of a condition broken, is an election to treat such policy as valid and not to insist upon a forfeiture. *Glens Falls Ins. Co. v. Michael,* 167 Ind., 659. Also in *Hunt v. State Ins. Co.,* 66 Nebr., 121, it is said, if the insurer with knowledge of the facts by reason whereof it is entitled to insist upon forfeiture, continues to recognize the policy as in force, or does any act inconsistent with insistence upon the forfeiture, the forfeiture is waived, and may not be relied upon thereafter. But a waiver cannot be inferred from silence and the mere omission of the insurer to repudiate and annul the policy and acquaint the insured that it claims the forfeiture, is not, as a matter of law, a waiver of the right to claim it. *Titus v. Glens Falls Ins. Co.,* 81 N. Y., 410. The case of *Amer. Cent. Ind. Co. v. Antram,* 86 Miss., 224, says the retention of premiums will not waive an insurance policy procured by false representations as to material matters, made with fraudulent intent; such contracts are absolutely void. But *Queen Ins. Co. v. Young,* 86 Ala., 424, holds that if the company after full knowledge of the breach, enters into negotiations or transactions with the insured, which recognize and treat the policy as still in force, or induces the insured to incur trouble or expense, it will be regarded as having waived the right to claim the forfeiture. This is supported by the great weight of authority, that if an insurance company retains the premiums and by its acts treats the policy as valid it waives the right to forfeiture. *Hanover Ins. Co. v. Bohn,* 48 Nebr., 742; *Sharp v. Scottish Union, etc., Co.,* 136 Cal., 542.

LICENSES—AS TO REAL PROPERTY—REVOCABILITY.—BAYNARD V. EVERY EVENING PRINTING CO., 77 ATL., 885 (DEL.).—*Held,* that at law a license cannot create or transfer any interest in land; and it is revocable, though granted for a valuable consideration, and though money may have been expended on the faith of it.

In general a mere naked license is revocable at the pleasure of the licensor. *Noftager v. Barkdoll,* 148 Ind., 531; *Hetfield v. Central R. Co.,* 29 N. J. L., 571; *Baldwin v. Taylor,* 166 Pa. St., 507. This rule applies even though the license be given under seal. *Williamston, etc., R. Co. v. Battle,* 66 N. C., 540. Moreover, according to the weight of authority the fact that a valuable consideration is given for a license does not render it irrevocable. *Wiseman v. Lucksinger,* 84 N. Y., 31; *Cook v. Ferbert,* 145 Mo., 462; *Thoemke v. Fiedler,* 91 Wis., 386. Several states, however, hold that the payment of a valuable consideration for a license creates a vested right which cannot be revoked. *Van Ohlen v. Van Ohlen,* 56 Ill., 528; *Burrow v. Terre Haute & L. R. Co.,* 107 Ind., 432. There is also a conflict of authority as to the revocability of licenses where money has been expended on property licensed. Some authorities hold that in such

a case an estoppel to revoke arises. *Clark v. Glidden*, 60 Vt., 702; *Rhodes v. Otis*, 33 Ala., 578. While on the other hand about an equal number hold that such expenditure of money does not render the license irrevocable. *Collins Co. v. Marcy*, 25 Conn., 239; *Minneapolis Mill Co. v. Railway*, 51 Minn., 304. But a license which is coupled with an interest in land is irrevocable. *Funk v. Haldeman*, 53 Pa. St., 229; *Long v. Buchanan*, 27 Md., 502.

MUNICIPAL CORPORATIONS—CHANGE OF GRADE—COMPENSATION—SETTING OFF BENEFITS.—IN RE BRADLEY, 125 N. Y. SUPP., 142.—*Held*, that in a proceeding to appraise damages for the change of grade of a village street, under Village Law (Consol. Laws, c. 64) § 159, benefits by the paving of the newly graded street cannot be set off against the damages done by the regrading.

At common law it is well settled that there is no liability for injuries caused by the damage done in changing the grade of a street. *Terre Haute v. Turner*, 36 Ind., 522; *Lee v. Minneapolis*, 22 Minn., 13. But in most states express provisions are made by legislative enactment for damages resulting from a change of grade. *Cummings v. Dixon*, 139 Mich., 269; *Comesky v. Village of Suffern*, 81 N. Y. Supp., 1049. Furthermore, it is well settled by common law, if not provided by statute, that if a particular property is benefited directly by a public improvement, the benefits may be set off against damages. *Seattle v. Methodist Protestant Church Bd. of Home Missions*, 138 Fed., 307; *Ft. Wayne v. Hamilton*, 132 Ind., 487. So, if the property is directly benefited as much as damaged, there can be no recovery. *Hopkins v. Ottawa*, 59 Ill. App., 288. However, the rule laid down in the principal case, that benefits which may be conferred by subsequent improvements cannot be set off against immediate damages, is in accord with the authorities. *Brucky v. Lake*, 30 Ill. App., 23; *Fuller v. City of Mt. Vernon*, 171 N. Y., 247. And in the same manner, future benefits are not to be set off against immediate damages. *Rudderow v. Philadelphia*, 166 Pa. St., 241. As to the benefits accruing to residence property from its increased value for business purposes. *Dallas v. Kahn*, 9 Tex. Civ. App., 19.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—IMPUTATION.—BEAUCAGE V. MERCER, 92 N. E., 774 (MASS.).—*Held*, that contributory negligence of one party to a joint enterprise, including such an enterprise as use of an automobile, is imputed to the other, if within the scope of the enterprise.

Negligence in the conduct of another will not in general be imputed to the person injured, if he neither authorized such conduct nor participated therein nor had the right or power to control it. *Chicago Union Traction Co. v. Leach*, 117 Ill. App., 169; *Koplitz v. St. Paul*, 86 Minn., 373; *Laso v. Lancaster Co.*, 77 Nebr., 466. But if the act of a third person which contributed to the injury was, upon the principles of agency, or co-operation in a joint enterprise, the act of the person injured, recovery may be precluded. *Knightstown v. Musgrove*, 116 Ind., 121. In order to

constitute a joint enterprise within this rule there should exist a community of interest and an equal right to direct and control the movements and conduct of each other. *Cunningham v. Thief River Falls,* 84 Minn., 21; *Elyton Land Co. v. Minges,* 89 Ala., 521. As to whether a parent's negligence is to be imputed to an infant of tender years the authorities are in conflict. It is sometimes held that the negligence of the parent or guardian is to be imputed to the infant. *Foley v. N. Y. C. & H. R. R. Co.,* 78 Hun. (N. Y.), 248; *Meeks v. So. Pac. R. R. Co.,* 52 Cal., 602. *Contra, Robinson v. Cone,* 22 Vt., 213; *G. H. & H. Ry. Co. v. Moore,* 59 Tex., 64. A similar conflict exists in the case of husband and wife, some courts holding that the negligence of a husband is to be imputed to his wife. *Peck v. Railroad Co.,* 50 Conn., 379; *Yahn v. City of Ottumwa,* 60 Ia., 429. *Contra, Sheffield v. Central Union Telephone Co.,* 36 Fed., 164; *Hoag v. Railroad Co.,* 111 N. Y., 199. In general the negligence of a carrier whether public or private, will not be imputed to a passenger. *Little v. Hackett,* 116 U. S., 366; *Louisville, etc., Packet Co. v. Mulligan,* 25 Ky. L. Rep., 1287; *Borough of Carlisle v. Brisbane,* 113 Pa. St., 544; *Nesbit v. Town of Garver,* 75 Ia., 314.

PARTNERSHIP—DE FACTO CORPORATIONS.—LIABILITY OF STOCKHOLDERS.—JENNINGS V. DARK, 92 N. E., 778 (IND.).—*Held,* that the stockholders of an illegal and unauthorized corporation are liable as partners, but stockholders of a *de facto* corporation acting in good faith under the belief that they are a corporation are not so liable.

A *de facto* corporation has the same capacity as a *de jure* corporation to enter into contracts, and it is sufficient to show a *de facto* existence in order to sustain an action by or against an association as a corporation. *Georgia Southern and F. R. Co. v. Mercantile, etc., Co.,* 94 Ga., 306; *Buffalo & Allegheny R. Co. v. Cary,* 26 N. Y., 75. It is sufficient to show a *de facto* existence in order to defeat an action against stockholders or members of an association as individuals on a note or other contract made by them as a corporation. *Humphrey v. Mooney,* 5 Colo., 282; *Stout v. Tulick,* 48 N. J. Law, 599; *Cochran v. Arnold,* 58 Pa. St., 399. But the failure of a *de facto* corporation to pay the state the county licenses to do business prior to the purchase of certain goods, does not affect its status as a *de facto* corporation, or render its stockholders liable as partners. *Owensboro Wagon Co. v. Bliss,* 132 Ala., 253. Where persons attempt to form a corporation, but fail to comply with the law with respect to the formation of corporations, the persons are liable as partners. *Cincinnati Cooperage Co. v. Bates,* 96 Ky., 356; *Simons v. Ingram,* 78 Mo. App., 603; *Hyatt v. Van Ripper,* 105 Mo. App., 664.

REWARDS—POWERS OF SCHOOL BOARDS—OFFERING REWARDS.—LUCHINI V. POLICE JURY, 53 SOU., 68 (LA.).—*Held,* that school boards are created for the purpose of furthering the education of the youth of the state, and are not authorized to offer rewards for the detection and punishment of crime, and any act of theirs having that as its object is *ultra vires.*

A school district is a corporation of quasi-municipal character. *Los Angeles High School District v. Same,* 148 Cal., 17. A corporation being

created for a specific purpose, must look to its charter, which is, as it were, the law of its nature, to ascertain the extent of its capacity. It can make no contracts forbidden by its charter, but can only make those which are necessary to effectuate the purposes of its creation. *Marshall on Corps.*, Sec. 64; *Blair v. Perpetual Insurance Co.*, 10 Mo., 559. A resolution of the county commissioners offering a reward for the finding of a missing man is in excess of their legal power, and does not authorize a contract between the county and a third person. *Scheiber v. Von Arx*, 87 Minn., 298. And a school board can exercise no other powers than those expressly granted, or which are necessarily implied from those granted. *Cumberland County District v. Fogelman.* 76 Ill., 189.

TELEGRAPHS AND TELEPHONES—NON-DELIVERY OF MESSAGES—LIMITATION OF LIABILITY.—WESTERN UNION TELEGRAPH COMPANY V. SMITH, 130 S. W., 622 (TEXAS).—*Held*, that the failure of the sender of a message to have it repeated does not preclude a recovery of damages caused by the negligence of a telegraph company in changing the address of the message and thereby causing its non-delivery, though the message was written on the company's blank, stipulating that the company should not be liable for the non-delivery of any unrepeated message beyond the amount received for sending the same.

On this question the authorities are in conflict. Many courts hold that a company by a stipulation on its blank may limit its liability for ordinary negligence, unless the sender have the message repeated from the terminal to the sending station. *Primrose v. West. Union Tel. Co.*, 154 U. S., 1; *Ellis v. American Tel. Co.*, 13 Allen (Mass.), 226; *Contra*: *West. Union Tel. Co. v. Crawford*, 110 Ala., 460; *Wertz v. West. Union Tel. Co.*, 8 Utah, 499. But the rule as to what constitutes negligence differs in several jurisdictions. In Texas the rule is that they are not liable unless the plaintiff show affirmatively the negligence of the company. *West. Union Tel. Co. v. Hearne*, 77 Texas, 83. Some courts recognize no degree of negligence. *Brown v. Postal Tel. Co.*, 111 N. C., 187; *Reed v. West. Union Tel. Co.*, 135 Mo., 661. Kansas holds they cannot limit their liability for "gross negligence," and the burden is on the company, to show they were not negligent. *West. Union Tel. Co. v. Crall*, 38 Kan., 679. Other states hold that they can only limit their liability for mistakes occasioned by causes over which they had no control. *Gillis v. West. Union Tel. Co.*, 61 Vt., 461; *West. Union. Tel. Co. v. Tyler*, 74 Ill., 168. Some jurisdictions hold, however, that such a stipulation by a telegraph company cannot limit its liability or the liability of its servants for non-delivery or for unreasonable delay in delivering. *West. Union Tel. Co. v. Way*, 83 Ala., 542; *West. Union Tel. Co. v. Broesche*, 72 Texas, 654; *Hibbard v. West. Union Tel. Co.*, 33 Wis., 558.

TRUSTS—CONSTRUCTIVE TRUSTS—FRAUD.—RUHE V. RUHE, 77 ATL., 797 (MD.).—*Held*, that property obtained through the fraud of a third person is held under a constructive trust for the person defrauded by the person receiving it, though the latter be innocent.

Where property is obtained by fraud and held by the person committing the fraud, the wrong-doer will be converted into a trustee *ex maleficio*. *Angle v. Chicago, St. Paul, etc., Ry.*, 151 U. S., 1; *Piper v. Hoard*, 107 N. Y., 73. This is true even though the representations be false in fact, though made without any fraudulent intent. *Wingerter v. Wingerter*, 71 Cal., 105. And to constitute such a trust it is not necessary that a confidential relationship exist between the parties. *Christy v. Sill*, 95 Pa. St., 380; *Nat. Bank v. Johnson*, 51 Nebr., 546. But the American authorities seem to be in conflict with the principal case, for they hold that in general a constructive trust will not be declared because of the fraud of a third person when no fraud can be shown against the grantee of the property. *Beach v. Dyer*, 93 Ill., 295; *Pomeroy's Equity Jurisprudence*, Vol. 2, page 629. The English authorities, on the other hand, are in accord with the principal case. *Bridgman v. Green*, 2 Ves., 627; *Huguenin v. Basely*, 14 Ves., 289. But if the person guilty of the fraud was acting as agent of the grantee, the fraud is attributed to the grantee. *Graves v. Spier*, 58 Barb. (N. Y.), 349; *Barker v. Barker*, 27 Nebr., 135. And where money belonging to a principal and given to an agent for a particular purpose, was received from the agent by a third party, who had no knowledge of the actual ownership, but for an illegal purpose, the third party was held a trustee *de son tort* for the principal. *Stock and Grain Exchange v. Bendinger*, 109 Fed., 926.

WATERS AND WATER COURSES—POLLUTION OF STREAM—RIGHTS OF RIPARIAN OWNER'S.—SHOFFNER V. SUTHERLAND, 68 S. E., 996 (VA.).—*Held*, that where an operator of a sawmill threw sawdust into a stream, so that the deposits of sawdust in the stream discolored the water, and in warm weather gave it an offensive odor, causing live-stock to refuse to drink it and making the water unwholesome and less fit for domestic purposes, and where physicians believed that the decaying sawdust deposits affected the purity of the water and generally caused disease along the stream where it was found, such use of the stream was in violation of the rights of a lower riparian owner and he could sue.

By the weight of authority every riparian owner is entitled to have the water in a stream which passes through his land in an unpolluted condition, and the upper riparian owner cannot by any unreasonable use of the stream contaminate the water so as to injure the lower riparian owner. *Montana Co. v. Gehring*, 75 Fed., 385; *McGennes v. Adriatic Mills*, 116 Mass., 177; *Strobel v. Kerr Salt Co.*, 164 N. Y., 303. The question as to what is a reasonable and what is not a reasonable use of the stream is generally a question of fact for the jury to decide. *Phillips v. Sherman*, 64 Me., 171; *Red River Roller Co. v. Wright*, 30 Minn., 249. Some courts have, however, decided that the mere maintaining of a sawmill on a stream is not an unreasonable use. *People v. Elk River Mill Ech. Co.*, 107 Cal., 221; *Jacobs v. Allard*, 42 Vt., 303. Any riparian owner whose rights have been invaded may sue. *Carhart v. Auburn Gas Co.*, 22 Barb. (N. Y.), 297. One of the reliefs which the riparian owner is entitled to by virtue of the injury he has sustained as a result of the pollution is an

action for damages. *The Weston Paper Co. v. Pope,* 155 Ind., 394. Where the pollution is of a continuous nature, and the prospects are that injury will be caused in the future, courts of equity will issue an injunction to restrain the cause of such injury. *Indianapolis Water Co. v. American Strawboard Co.,* 53 Fed., 970; *Platt Bros. Co. v. City of Waterbury, 72* Conn., 531.