RECENT CASES

ASSIGNMENTS—PARTIAL ASSIGNMENTS—VALIDITY.—CROSS V. PAGE & HILL CO., 133 N. W., 178, (MINN.).—*Held,* that though, where a debtor refuses to recognize an assignment, an independent action by the assignee against the debtor will not lie when only a part of the debt was assigned, the rule does not apply where the debtor on notice does not object.

An assignment of a chose in action is valid as between the assignor and assignee, notice to the debtor being necessary only in order to avoid postponement in favor of subsequent assignees for value. *Jackson v. Hamm,* 14 Colo., 58; *Board of Education v. Duparquet,* 50 N. J. Eq., 234; *Phillip's Est.,* 205 Pa., 515. But it is a well established rule of courts of law that an assignment of a part only is void unless made with the consent or ratification of the debtor. *Mandeville v. Welch,* 5 Wheat. (U. S.), 277; *Getchell v. Maney,* 69 Me., 442; *Carter v. Nichols,* 58 Vt., 553. The reason being that it is unfair to the debtor to allow a creditor to split up his causes of action into many parts, the assignment may be held good as against the assignor while void as to the debtor, or if no injury can accrue to the debtor it may be valid. *Gibson v. Cooke,* 20 Pick. (Mass.), 15; *Canty v. Latterner,* 31 Minn., 239; *Smith v. Oldham,* 5 Mo., 483. This reason being of no force in equity, the weight of authority supports an assignment *pro tanto* in equity. *Pomeroy's Equity Jurisp.,* Sec. 169, 1280; *National Exch. Bank v. McLoon,* 73 Me., 498; *Moody v. Kyle,* 34 Miss., 506; *Peugh v. Porter,* 112 U. S., 737. *Contra, Gibson v. Finley,* 4 Md. Ch., 75; *Burnett v. Crandall,* 63 Mo., 410. Equitable partial assignments are also enforced in admiralty. *The Elmbank,* 72 Fed., 610. But vague and indefinite partial assignments, as bills of exchange and uncertified checks, are generally not valid in equity without the consent of the debtor. *Story v. Hull,* 143 Ill., 506; *Covert v. Rhodes,* 48 Ohio St., 66; *Christmas v. Russell,* 14 Wall. (U. S.), 69. *Contra, Gordon v. Muchler,* 34 La. Ann., 604. The equitable doctrine is now recognized in many states in law actions. *Grain v. Aldrich,* 38 Cal., 514; *Brown v. Dunn,* 50 N. J. L., 111; *Risley v. Phenix Bank,* 83 N. Y., 318. The doctrine at law being for the benefit of the debtor, there is no reason why a partial assignment should not be good when he assents. 2 *Story, Equity Jurisp.,* Sec. 1043; *Marziou v. Pioche,* 8 Cal., 536; *Bourne v. Cabot,* 13 Metc. (Mass.), 305; *St. Louis Bank v. Noonan,* 88 Mo., 377.

CORPORATIONS—ACTS OF OFFICERS—PRIVATE TRANSACTIONS.—GREGMOORE ORCHARD CO. V. GILMOUR, 140 S. W. PUP. 763(Mo.).—*Held,* knowledge which comes to an officer of a corporation through his private transactions, and beyond the range of his official duties, is not notice to the corporation, though the officer obtaining the knowledge is at the time the corporation's managing agent.

The general rule is that notice of a fact acquired by an agent while acting for his principal, operates constructively as notice to the principal.

This doctrine applies with particular force to corporations. *Frenkel v. Hudson,* 82 Ala., 158. In a strict sense a corporation, from its nature, can only have constructive notice, or knowledge of facts. *Plumb v. Fuitt,* 2 Anstr., 432. The most comprehensive rule is that notice communicated to or knowledge acquired by the officers, or agents, of a corporation, when acting in their official capacity, or within the scope of their agency becomes notice to the corporation, for all purposes. *Bridgeport Bank v. New York, etc., R. R. Co.,* 30 Conn., 231. Generally speaking notice will not be imputed to the principal unless the knowledge of the facts reaches the agent while acting for the principal. *Armstrong v. Abbott,* 11 Colo., 220. So information communicated to an officer of a corporation on the street touching a matter affecting the rights of a corporation is not as a matter of law notice to the corporation. *Texas Banking Co. v. Hutchins,* 53 Texas, 61. Cases are found which hold that although knowledge of a fact comes to an agent while not acting for the principal, yet if he subsequently acted for his principal, in a matter in which it was his duty to communicate the fact, then this knowledge will be imputed to his principal. *Tagg v. Tenn. Natl. Bank,* 9 Heisk. (Tenn.), 479. The material fact, therefore, which binds the principal is the knowledge which the agent possesses at the time he acts, and the principal is bound in such cases, whether the knowledge is communicated or not. *Harrington v. U. S.,* 11 Wall, 356. This doctrine is followed in England. *Dressor v. Norwood,* 17 C. B. N. S. One of the courts in this country has gone further, and held that, where the fact of the agency is established, knowledge acquired a short time prior to his appointment necessarily gives rise to the inference that it remained fixed in his memory when he entered the employment, and therefore must be deemed knowledge of his principal. *Chouteau v. Allen,* 70 Mo., 290; *Hayward v. Natl. Ins. Co.,* 52 Mo., 181.

CORPORATIONS—OFFICERS—POWERS OF SECRETARY.—CITY OF CHICAGO V. STEIN, 96 N. E., 886 (ILL.).—*Held,* that the secretary of a corporation as a rule does not have the power *ex officio* to bind the corporation by letters and documents officially signed by him.

The secretary of an incorporated company is an officer of the company. *Ehrenzeller v. Union Canal Co.,* I Rawle (Pa.), 181. The power of an officer of a corporation to bind his principal is governed by the law of agency. *Moore v. Manufacturing Co.,* 113 Mo., 453. Thus a secretary may have express powers granted to him, or he may have implied powers to bind the corporation. *Read v. Buffum,* 79 Cal., 77; *Peck v. Insurance Co.,* 22 Conn., 575. Moreover a corporation may ratify the acts of a secretary which are without the scope of his authority. *New England Marine Insurance Co. v. DeWolf,* 8 Pick. (Mass.), 56; *Burch v. West,* 134 Il., 258; *Elwell v. Railroad Co.,* 67 Barb. (N. Y.) 83. However a corporation is not estopped to deny the authority of the secretary in respect to all acts which it has not expressly or impliedly clothed him to perform in its behalf. *Winsted Hosiery Co. v. New Britain Knitting Co.,* 69 Conn., 565. The true test to be applied to the secretary's ability to bind the corporation is to inquire whether or not he is engaged in the general duties of his

office. *Hastings v. Brooklyn Life Insurance Co.,* 138 N. Y., 473; *Williams v. Chester R. R. Co.,* 5 Eng. L. & Eq., 497.

CORPORATIONS—RECEIVERS—GROUNDS OF APPOINTMENT—MISCONDUCT OF CORPORATE OFFICERS—ADEQUACY OF OTHER REMEDY.—SMITH V. BIRMINGHAM DISINFECTANT CO., 56 S. W., 721 (ALA.).—*Held,* misappropriation of corporate assets by the officers is not ground for the appointment of a receiver, if the officers are solvent.

Receivers are appointed to protect and preserve the property under consideration. *High on Receivers,* Sec. 1, 3, 5, 6; *Barker v. Admr. of Backen,* 32 Ill., 79. Receivers are not appointed as a punishment for a past dereliction, but are appointed when present conditions and the prospect for the future are such as to warrant the taking of the property out of the hands of the owners. *Klan v. Colt,* I Hast. Let., 365; *Beecher v. Bininger,* I Blatchf., 170; *Bank v. Gage,* 79 Ill., 207. Courts proceed with extreme caution in appointing receivers to take property of a corporation out of the control of its officers, when there is any other remedy. *Oackley v. Paterson,* I Greens Ch., 173; *Hyde Park Gas Co. v. Kerber,* 5 Brad., 132. Circumstances to justify such appointment must be extraordinary, and something more must be shown than past misconduct, or mere apprehension. *Waterbury v. M. U. Ex. Co.,* 50 Brad. (N. Y.), 157. In accord with the principal case, the courts hold that where none of the directors are shown to be insolvent there is no reason for thinking that the amount due the corporation will not be accounted for. *Original Vienna Bakery, etc. v. Heissler,* 50 Ill. App., 406. The proper remedy is either an action at law for damages, or a bill in equity for an accounting. *Mobile, etc. Bank v. Collins,* 7 Ala., 95; *Citizens Loan Assoc. v. Lyon,* 29 N. J. Eq., 110.

CRIMINAL LAW—MURDER—DEFENSE OF DURESS.—STATE V. MORETTI, 120 PAC., 102 (WASH.).—*Held,* that participation in a robbery by the accused under duress was not a defense in the prosecution for murder where the person robbed was killed by an associate of the accused.

The law is settled that all co-participators are liable in a prosecution for murder where the deceased was killed during the commission of a felony. *Simpson v. State,* 59 Ala., 1. Duress threatening danger to property or slight personal injury is no defense to a crime. *Clark's Criminal Law,* p. 92. Compulsion threatening immediate danger of death or violent personal injury wil excuse minor crimes. *Kenny, Out. of Crim. Law,* 67. And some authorities hold that it is a defense to murder if the duress is of such an irresistible nature that immediate death is imminent. *State v. Nargashian,* 26 R. I., 299; *United States v. Vigol,* 2 U. S., (2 Dall), 340. But it is generally established that no duress excuses murder. *Blackstone,* 4th Com., 30. However in a few jurisdictions it is intimated that duress may reduce the grade of a crime. *Brewer v. State,* 72 Ark., 145; *Rizzolo v. Commonwealth,* 126 Penn., 54. Coercion exercised by a husband does not excuse his wife from murder, *Bibb v. Stadte,* 94 Ala., 31, but under an Arkansas statute the *contra* has been held. *Edwards v. State,* 27 Ark.,

459. However children under fourteen years of age may offer duress as a defense for heinous crimes. *People v. Miller,* 66 Cal., 468.

EXECUTORS AND ADMINISTRATORS—LEGATEES—RECOVERY OF FORFEITED LEGACIES.—KELLEY V. WINSLOW, 131 N. Y. SUPP., 65.—*Held,* that as money improperly paid by an executrix may be recovered back, the payment of a legacy bequeathed by plaintiff's testator to defendant upon condition that it should be forfeited if defendant in any way contested the will, did not defeat the condition, but after the breach by the defendant bringing action to have the will declared void, after receiving the legacy, the parties were in the same position they would have been had not the legacy been paid, and plaintiff might recover it.

The delivery of possession by an executor or administrator closes the administration so far as he is concerned. *Larue v. White & McKoin,* 38 Ky., 45; *Barton v. Burbank,* 114 La., 224; *Palmer v. Whitney,* 166 Mass., 306. Therefore an executor may be held personally liable to a creditor. *Beaird v. Wolf,* 23 Ill. App., 486; *James v. West, Adm'r.,* 67 Ohio St., 30; *Gallego's Ex'ors v. Att. Gen.,* 3 Leigh (Va.), 450. Or to a legatee recovering on breach of condition. *Ferguson v. Epes,* 77 Va., 499. But an executor has been allowed recovery of overpayment to a creditor, when it afterward develops that the estate is insolvent. *Alexander v. Fisher & Wife,* 18 Ala., 374; *Mansfield v. Lynch,* 59 Conn., 320; *Tarplee v. Capp,* 25 Ind. App., 56. And recovery has been alowed on overpayment in other circumstances, as honest mistakes in distribution. *Culbreath v. Culbreath,* 7 Ga., 69; *Lyle v. Siler,* 103 N. C., 261. *Hodges v. Waddington,* 2 Vent., 360, allowed recovery by the other legatees, but not by the executor. However, some courts do not allow the executor to recover. *Brooking v. Farmers' Bank,* 83 Ky., 431; *Hoffman v. Armstrong,* 90 Md., 123; *Johnson v. Weir,* 70 N. Y. Supp., 1020; *Findlay v. Trigg,* 83 Va., 539. These decisions, except in the case of inequitable conduct on the part of the executor, seem to rest on the theory, criticized by textwriters, that a mistake of law is not ground for recovery. *Woodward on Mistake of Law,* 5 Columbia L. Rev., 366; *Keener on Quasi-Contracts,* 90-91. Money paid to the wrong person has been held irrecoverable as a mistake of law. *Phillips v. McConica,* 59 Ohio St., 1. But it would seem that the principal case is justified in allowing recovery on the ground that breach of a condition is not a mistake of law. *Heard v. Drake,* 4 Gray, 514; *Hathaway v. County of Delaware,* 185 N. Y., 368.

EXPLOSIVES—INJURIES TO PROPERTY FROM BLASTING—LIABILITY.—ADLER V. FOX, 132 N. Y. SUPP., 302.—*Held,* that where the plaintiff's water pipe was broken by the falling in of a large section of rock above it, due to defendant's blasting operations in a near-by trench, defendant was not liable in trespass, if the rock merely fell from concussion and not as a direct result of the blast, as by being hurled against the pipe.

It may be said to be the rule that one who in blasting upon his premises casts rocks or other debris upon the land of another is liable for such invasion, regardless of the degree of skill or care used in doing the work.

Hay v. Cohoes Co., 2 N. Y., 159; *Fitz Simons & Connell Co. v. Braun & Fitts*, 94 Ill. App., 533; *Langshorne v. Wilson*, 28 Ky. Law, 1181. A distinction is recognized in some jurisdictions between an injury caused by blasting debris directly upon the property of another, and by injuring it by vibrations in the air or earth, courts holding in the latter case that it is necessary to show negligence in the execution of the work to permit a recovery. *Benner v. Atlantic Dredging Co.*, 134 N. Y., 156. But, when for the purpose of lawfully making use of or improving land it becomes necessary to resort to blasting as the only practicable method of doing so, the owner will not be liable for consequential damages to neighboring property unless he has failed to exercise due care in the performance of the work. *Booth v. Rome, etc. Ry. Co.*, 140 N. Y.,267. In order for a liability to exist for an injury caused by blasting it is not necessary that there should be an actual invasion of the premises injured; it is immaterial whether the injury results from the direct attack of broken rock or from the concussion caused by the blasting. *Morgan v. Bowes*, 17 N. Y. Supp., 22. Where, however, the injury is not caused by the direct force of the explosion at all, liability can hardly be attached to those using the explosive, unless positive negligence can be imputed to their work. *Fitz Simons & Connell Co. v. Braun & Fitts*, 94 Ill. App., 533. A person engaged in the dangerous occupation of blasting is always liable for injuries, however remote, when negligence can be proved on his part. *Louisville, etc., Ry. Co. v. Bonhayo*, 94 Ky., 67.

FRAUDS, STATUTE OF—POSITION OF SIGNATURE—VALIDITY.—LEE V. VAUGHAN SEED STORE, 141 S.W., (ARK.), 496.—*Held*, that defendant's name printed in the body and on the back of a blank order for goods received by its agent did not constitute a signature within *Kirby's Dig.*, Sec. 3656, requiring certain contracts to be evidenced by a signed note or memorandum.

The English and American courts almost universally hold that a mark, initials or printed name is sufficient to constitute a signature if intended as such. *Bickley v. Keenan*, 60 Ala., 293; *Saunderson v. Jackson*, 2 B. & P., 238. The position of the signature is immaterial unless regulated by statute. *Wise v. Ray*, 3 Green (Ia.), 431; *New England Meat Co. v. Standard Worsted Co.*, 165 Mass., 331. However, the signature must authenticate every material part of the instrument. *Benjamin on Sales*, Sec. 259. But a late English decision has held that a signature to a document which contains the terms of a contract satisfies the Statute of Frauds though put *alio intuitu* and not in order to attest or verify the contract. *Griffith's Cycle Co. v. Humber*, 2 Q. B., 418 (1899). And a printed billhead was held to amount to a signature although not intended for that purpose but accepted as such by the party charged. *Schneider v. Norris*, 2 M. & S., 286. Where a statute requires the name to be subscribed it must be placed at the end of the document. *Coon v. Rigden*, 4 Colo., 282; *McGivern v. Fleming*, 66 How. Prac., 300 (N. Y.). But under a statute requiring a subscription, the name written across the face of the instrument, because of lack of room at the bottom, was held to be subscribed. *California Canneries Co. v. Scatena*, 117 Cal., 447.

HUSBAND AND WIFE—ALIENATION OF AFFECTION—LIABILITY OF PARENTS.—FRONK V. FRONK ET AL., 141 S. W. (Mo.), 692.—*Held,* to make the parents of plaintiff's husband liable for alienation of his affection it is not enough as in the case of a stranger to show interference by them, as malice on their part will not be inferred; but it must be shown that their conduct was not such as should be characterized as a natural result of parental solicitude, but amounted to a clear case of want of reasonable justification.

All authorities are agreed that parents will not be liable to the wife for causing the alienation of her husband's affection or *vice versa,* if they act in good faith and without malice. *Huling v. Huling,* 32 Ill. App., 519; *Holtz v. Dick,* 42 Ohio St., 23; *Rice v. Rice,* 104 Mich., 371; *Glass v. Bennett,* 89 Tenn., 478; *Brown v. Brown,* 124 N. C., 19. Of course, the parents' right of interference is not absolute and if they act unjustifiably in bringing about a separation, they will be held liable as if they were strangers. *Davis v. Petty,* 147 Mo., 374; *Lockwood v. Lockwood,* 67 Minn., 476; *Price v. Price,* 91 Ia., 693. But bad or unworthy motives will not be presumed from the act of interference. They must be positively shown or necessarily deduced from the circumstances. *Hutcheson v. Peck,* 5 Johns., 196; *Eagon v. Eagon,* 60 Kans., 697; *Zimmerman v. Whitely,* 134 *Mich.,* 39. The law recognizes a superior right of interference on the part of parents; and will justify interference for causes which would be no justification in favor of another person. *Multer v. Knibbs,* 193 Mass., 556; *Barton v. Barton,* 119 Mo. App., 507. And though the information might subsequently prove to have been unfounded, if he acted from pure motives, he is not liable. *Oakman v. Belden,* 94 Me., 280; *Tucker v. Tucker,* 74 Mo., 93; *Payne v. Williams,* 4 Baxt., 583. The wife may have the action though she continues to live with her husband. *Foot v. Card,* 58 Conn., 1. And it is held that she may maintain it after a divorce from him. *Postlewaite v. Postlewaite,* 1 Ind. App., 473; *Beach v. Brown,* 20 Wash., 266.

HUSBAND AND WIFE—LIABILITY OF HUSBAND—DEBTS CONTRACTED BY WIFE.—MENSCHKE V. RILEY, 140 S. W., 639 (Mo.).—*Held,* that a husband who had by due notice forbidden certain tradesmen to trust his wife was not liable on her contracts with them if he had previously made arrangements for the supplying of her with necessaries.

The general American rule agrees with the case under discussion and holds that a husband has a right to prohibit certain persons from trusting his wife and, if he has already supplied her with necessaries, notice to that effect is effectual against any presumption which cohabitation raises. *Keller v. Phillips,* 39 N. Y., 351; *Defendorf v. Emerson,* 66 Iowa, 698. But if the goods are necessaries and the husband has not supplied them, he is liable, though he expressly forbade the tradesman to trust her. *Woodward v. Barnes,* 43 Vt., 330; *Cromwell v. Benjamin,* 41 Barb. (N. Y.), 558. To bind a husband the plaintiff must show affirmatively that the husband failed to supply the necessaries. *Barr v. Armstrong,* 56 Mo., 577. A husband is liable on such contracts even though he married his wife unwill-

ingly. *State v. Russell,* 41 Conn., 433. If a man marry a widow he is not bound on contracts for the support of her children. *Attridge v. Billings,* 57 Ill., 489. If a husband's misconduct compels his wife to leave him he is still liable on her contracts. *Hultz v. Gibbs,* 66 Pa. State, 360; *Pierpont v. Wilson,* 49 Conn., 350. Though the pair be separated by agreement, if there be no allowance for her or if it fail or be insufficient, he is liable. *Pearson v. Darrington,* 32 Al., 227; *Ross v. Ross,* 69 Ill., 569.

JUDICIAL SALES—VACATING—INADEQUATE CONSIDERATION.—MANGOLD V. BACON, 141 S. W. (Mo.), 650.—*Held,* equity will set aside a sheriff's sale on the sole ground that the consideration received was so grossly inadequate as to shock the conscience, even if there are no other equitable considerations authorizing its vacation.

It is well established that as a general rule, a judicial sale will not be set aside on account of mere inadequacy in the price realized. *Parker v. Bluffton Car Wheel Co.,* 108 Ala., 140; *Harman v. Copenhaver,* 89 Va., 836; *Babcock v. Canfield,* 36 Kans., 437; *Dircks v. Logsdon,* 59 Md., 173; *Obrien v. Hilburn,* 22 Tex., 616. But if the inadequacy of the price obtained be so gross as to shock the conscience of the Court, the sale will be set aside. *Blanks v. Farmers L. & T. Co.,* 122 Fed., 849; *Coles v. Coles,* 83 Va., 525; *Daly v. Ely,* 51 N. J. Eq., 104. Then by other courts the sale may be set aside where inadequacy is so great as to raise a presumption of fraud. *Quick v. Collins,* 197 Ill., 391; *Johnson v. Avery,* 60 Minn., 262. Or when in connection with the inadequacy of price there are other circumstances having a tendency to cause such inadequacy or any apparent unfairness or impropriety the sale may be set aside. *Beck v. May,* 163 Ill., 547; *Wood v. Drury,* 56 Kans., 409. And the greater such inadequacy of price, the slighter may be the circumstances of fraud, accident or mistake. *Schroeder v. Young,* 161 W. S., 334; *Bean v. Haffendorfer,* 84 Ky., 685. It is also well settled that inadequacy of price will have a great influence towards inducing a court to set aside a judicial sale where the objection is for setting aside the sale after confirmation. *Jennings v. Dumphy,* 174 Ill., 86; *Branch v. Griffin,* 99 N. C., 173. But a court of chancery cannot set aside a public sale regularly made by an officer not acting under its direction, notwithstanding the price was grossly inadequate. *March v. Ludlum,* 3 Sandf. (N. Y.), 38.

LIBEL AND SLANDER—LIBELOUS WORDS PER SE—"LIBEL".—COHEN V. NEW YORK TIMES CO., 132 N. Y. SUPP., 1.—*Held,* that it is libelous *per se* to publish of a living person that he is dead, because exposing him to ridicule; a libel being a malicious publication tending to expose one to public hatred, contempt or ridicule.

A libel is a malicious publication, expressed either in printing or in writing, or by signs and pictures tending either to blacken the memory of one dead or the reputation of one who is alive, and expose him to public hatred, contempt or ridicule. *Commonwealth v. Clap,* 4 Mass., 163. The enjoyment of a private reputation unassailed is as much a constitutional right as the right to life, liberty and property. *Park v. Detroit Free Press*

Pub. Co., 72 Mich., 560. The law will presume general damage to result from the publication of defamatory matter, although no actual pecuniary loss has in fact resulted, *Hanson v. Krehbiel,* 68 Kan., 670, the words from which the law presumes injury in such case being deemed actionable *per se. Pratt v. Pioneer Press Co.,* 35 Minn., 251. Accordingly, it may be stated as a general proposition that words written or printed may be libelous and actionable *per se,* that is actionable without any allegations of special damages, if they tend to expose the plaintiff to public hatred, contempt, ridicule or aversion, and to induce an evil opinion of him in the minds of right thinking persons, and to deprive him of their friendly intercourse and society, even though the same words if spoken would not have been actionable. *Farley v. Evening Chronicle Pub. Co.,* 113 Mo. App., 216; *Obaugh v. Finn,* 4 Ark., 110. In order to be libelous *per se* it is not essential that the words should contain an imputation of crime, *Gallagher v. Bryant,* 44 N. Y. App. Div., 527, nor is scandalous matter necessary to make a libel. *Watson v. Trask,* 6 Ohio, 531. Mere general abuse and scurrility, however ill-natured and vexatious, is no more actionable when written than when spoken, if it does not convey degrading charges or imputations. *Rice v. Simmons,* 2 Harr. (Del.), 417. Some courts hold that malice is not a necessary ingredient to a cause of action for libel or slander. *Cady v. Brooklyn Union Pub. Co.,* 51 N. Y. Supp., 198. But in all courts the law implies malice from the publication of words actionable *per se,* and no actual malice is essential to a recovery. *Mitchell v. Milholland,* 106 Ill., 175; *Owen v. Dewey,* 107 Mich., 67.

LIBEL AND SLANDER—PRIVILEGED COMMUNICATIONS—DISCHARGE OF DUTY TO PUBLIC.—BINGHAM V. GAYNOR, 96 N. E., 84 (N. Y.).—*Held,* that a communication concerning a public official, made to his superior or person empowered to redress a wrong, is privileged, though the statements are untrue, where the person making them acts in good faith and has a legal or moral duty as a citizen or otherwise to make such communication.

To comment upon the acts or conduct of a public man is the right of every citizen. *Duffy v. N. Y. Evening Post Co.,* 96 N. Y. Supp., 629. No action for libel or slander lies for a petition or remonstrance imputing want of integrity or other cause of unfitness to a public officer or employee, subject to removal by or under the supervision of the officer or board to whom the communication is addressed, provided such communication be made in good faith and without malice. *Kent v. Bongartz,* 15 R. I., 72; *Frank v. Dessena,* 5 N. J. Law J., 185. But to come within this rule the officer or board addressed must have some interest or duty in the matter. *Hebditch v. McIlwaine,* 2 Q. B., 54 (1894); *Erber v. Dun,* 12 Fed., 526. But the right to criticize does not embrace the right to make false statements of fact, to attack the private character of an officer, or to falsely impute to him *malfeasance* or misconduct in office. *Negley v. Farrow,* 60 Md., 158. In some jurisdictions, however, it is held that even though the statements are not strictly true, the defendant is not liable if there was probable cause for the statements and no proof of express malice. *O'Rourke v. Lewiston Daily Sun Pub. Co.,* 89 Me., 310.

NEGLIGENCE—INJURY TO THEATRE PATRON—RES IPSA LOQUITUR.—GOLDSTEIN V. LEVY, 132 N. Y. SUPP., 373.—*Held,* that the falling of a shade from a chandelier in a theatre whereby a patron was injured, being an unusual accident, negligence on the part of the proprietor is presumed.

The principal case is similar to others where the doctrine of *res ipsa loquitur* has been applied. *Excelsior Co. v. Sweet,* 57 N. J. L., 224; *Boyd v. Portland,* 41 Ore., 336; *Chenall v. Palmer,* 117 Ga., 106. But if there is any other cause to which the injury may be attributed the presumption will not hold. *Zahneiyer v. Penn. Corp.,* 190 Pa. St., 350; *Railroad v. Reilly,* 212 Ill., 506. But where the injury might have been due to the negligence of several distinct persons, the guilty party must be proven. *Wolf v. Am. Tract. Assn.,* 104 N. Y., 30. Ordinarily the burden is on the plaintiff to prove a violation of a duty. *Murphy v. Greely,* 146 Mass., 196. A presumption of negligence on the part of the proprietor arises with the injury but it may be overcome by showing due care on his part. *Welch v. Durand,* 36 Conn., 182; *Buch v. Barnett,* 96 Cal., 202.

TAXATION—RIGHT TO ENFORCE.—STATE EX REL. KOELN, COLLECTOR, V. LESSER, 141 S. W., (Mo.), 888.—*Held,* that there can be no lawful collection of a tax until there is a lawful assessment, except in the manner prescribed by law, and of property designated by law for that purpose.

The assessment is an indispensable prerequisite to the validity of a tax against any individual; for without a valid assessment there can be no lawful attempt to collect the tax or to enforce it against any specific property. *Worthington v. Whitman,* 67 Iowa, 190; *Morrill v. Taylor,* 6 Nebr., 236. Mere irregularities in the assessment will not affect its validity, but only such defects as go to the jurisdiction of the assessors, or deprive the taxpayers of some substantial right. *Greenville v. Blair,* 104 Me., 444. It is also notable that a statute passed to cure defects and irregularities in tax proceedings will not cure a want of assessment. *People v. Holladay,* 25 Calif., 300. It has been held that in order to make a valid assessment there must be an exact compliance with the manner prescribed by law, *Hough v. North Adams,* 196 Mass., 290, but where the statutory provisions relating to a levy have for their object merely the information of the assessors, and intend to promote dispatch and system, they are directory only, and a failure to comply with such requirements does not invalidate the levy. *State Auditor v. Jackson County,* 65 Ala., 142; *Atlanta Nat. Bldg. Association v. Stewart,* 109 Ga., 80. If, on the other hand, the statutory provisions relating to the levy have for their object the protection of the taxpayer against spoliation or excessive taxation they are mandatory and must be followed. *State Auditor v. Jackson County,* 65 Ala., 142. Finally, all property within the jurisdiction of a state is subject to its taxing powers, except where specifically exempted, *People v. Ravenswood Hospital,* 238 Ill., 137, *Wolfe County v. Beckett,* 127 Ky., 252, but, no property is liable to assessment under a particular tax law unless named or described in it, *State Tax Commissioners v. Holliday,* 150 Ind., 216, and only that which may properly be termed property is subject to a property tax. *Arapahoe County v. Rocky Mountain News Printing Co.,* 15 Colo. App., 189.

TORTS—CIVIL RIGHTS—RIGHTS OF PRIVACY.—BINNS V. AMERICAN VITAGRAPH CO., 132 N. Y., SUPP., 237.—*Held,* that where one is greatly disturbed in his mind and his feelings are injured by the unlawful use of his name and picture he may recover exemplary damages. McLaughlin, J., *dissenting.*

The common law regards the person as inviolate and recognizes one's right to be let alone. *Cooley on Torts,* p. 29; *Harvard Law Review,* Dec. 15, 1890. The mere fact that the cause of an injury is novel does not leave it without a remedy.*Kiyek v. Goldman,* 150 N. Y., 176. There is authority in support of the principle case, *Marks v. Jaffa,* 6 N. Y. Misc., 290, and the English courts are in accord with the doctrine. *Tuck v. Priester,* 192 B. D., 639 (1887); *Prince Albert v. Strang,* 1 Masn., 825; *Pollard v. Photograph Co.,* 40 Ch. Div., 345 (1888). By the great weight of opinion relatives cannot collect damages for injuries to their feelings through the publishing of pictures of their dead. *Corliss v. Walker,* 57 Fed., 434; *Atkinson v. Doherty,* 121 Mich., 372; *Schuyler v. Curtis,* 147 N. Y., 434.

WILLS—NUNCUPATIVE WILL.—MITCHELL V. STANTON, 139 S. W., 1034 (TEX.).—*Held,* a nuncupative will does not pass title to realty.

A nuncupative will is one that is not in writing ,and exists only when the testator declares his will orally before a sufficient number of witnesses, while he is in his last sickness. *Estate of Miller,* 47 Wash., 253; *Wiley's Estate,* 187 Pa., 82. The doctrine of nuncupative will is derived from the civil law and was incorporated into the common law, before the statute of wills. *Prince v. Hazleton,* 20 Johns., 519. It was a common mode of devising property among seamen, sailors, and soldiers in service. These devises and bequests were usually of personalty, or realty of small amounts. *Lewis v. Aylott,* 45 Texas, 190. The words spoken to constitute a nuncupative will must manifest an intent to make a will, and must be spoken *in extremis. Sykes v. Sykes,* 2 Stew., 364; *Morgan v. Steves,* 78 Ill., 287. It is well established that personal property may be bequeathed by a nuncupative will. *Godfrey v. Smith,* 73 Neb., 756. In some states, under statutory provisions realty may be devised by a nuncupative will. *Gillis v. Willer,* 10 Ohio, 463. The weight of authority however is that realty cannot be devised by a nuncupative will. *Palmer v. Palmer,* 2 Dana, 390; *Pierce v. Pierce,* 46 Ind., 86.

WILLS—WILL OF MARRIED WOMAN—CONSENT OF HUSBAND.—ERICKSON V. ROBERTSON, 133 N. W., 164 (MINN.).—*Held,* that written consent by the husband to the devise by the wife of her real property is valid and effectual without consideration, though given in furtherance of a void written agreement between husband and wife, by which each, in terms, released all interest in the other's real property; the wife having performed her part of the agreement.

At common law the will of a married woman devising her real property was void even though made with her husband's consent. *2Bla. Com.,*

497, 498; *Fitch v. Brainerd,* 2 Day (Conn.), 163; *Osgood v. Breed,* 12 Mass., 525; *Marston v. Norton,* 5 N. H., 205. Her will of personal property was only valid if the husband consented. *George v. Bussing,* 54 Ky., 558; *Lee v. Bennett,* 31 Mass., 119; *Emery v. Neighbour,* 7 N. J. L., 142. Such consent might be given by parol or might be implied, consideration being unnecessary. *Reed v. Blaisdell,* 16 N. H., 194; *Webb v. Jones,* 36 N. J. Eq., 163; *Fisher v. Kimball,* 17 Vt., 323. Under the present enabling statutes of most of the states a wife may devise all her property, real and personal, if the husband waive his rights by his consent. *Smith v. Sweet,* 55 Mass., 470; *Beals v. Storm,* 20 N. J. Eq., 372; *Kurtz v. Saylor,* 20 Pa., 205. Generally such consent, unless given after her death, may be revoked up to the time of the probate of the will. *Redfield on Wills,* Par. 4; *Newlin v. Freeman,* 23 N. C., 514; *Van Winkle v. Schoonmaker,* 15 N. J. Eq., 384. *Wagner's Estate,* 2 Ashm. (Pa.), 448, allows revocation of consent given after her death, but this is no longer the rule. *Schouler, Husband and Wife,* Sec. 458, 459; *Maas v. Sheffield,* 1 Rob. Ecc., 364. Now contracts to make a will are generally valid. *Stellmacher v. Bruder,* 89 Minn., 507; *Gupton v. Gupton,* 47 Mo., 37; *Van Duyne v. Vreeland,* 12 N. J. Eq., 142. And mutual agreements to make wills have been held to be so far performed that one party cannot withdraw only when the other party has died after making his will according to agreement. *Allen v. Bromberg,* 147 Ala., 317; *Frazier v. Patterson,* 243 Ill., 80; *Bower v. Daniel,* 198 Mo., 289; *Turnipseed v. Sirrine,* 57 S. C., 559. But in some jurisdictions following the common law rule, contracts between husband and wife concerning realty are absolutely void. *Gebb v. Rose,* 40 Md., 387; *Jenne v. Marble,* 37 Mich., 319; *Laird v. Vila,* 93 Minn., 45. Therefore the decision of the principal case, while undoubtedly correct, would seem to turn, not on any part performance by the wife of a void contract, but on the fact that the husband did not revoke his consent in time. 1 *Jarm. on Wills,* (6 Am. Ed. by Bigelow), 51-54; *Cutter v. Butler,* 25 N. H., 343; *In re Ormond's Estate,* 161 Pa., 543.