RECENT CASES

BANKS & BANKING—CHECKS—ACCEPTANCE—REVOCATIONS.—BALDINGER & KUPFERMAN MFG. CO. v. MANUFACTURERS'-CITIZEN TRUST CO., 156 N. Y. S. 445.—Where the drawer of a check stopped payment thereon, and subsequently the bank through mistake certified check to the payee, who deposited it in his bank, and the certifying bank refused payment on presentment, *held,* the payee could not enforce payment by the bank, since the drawer was still liable on the check, due to his stopping payment thereon, and the payee could therefore show no change of circumstances nor *injury to himself.*

Sect. 162 of the Negotiable Instrument Law provides: The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance. This crystallized the existing common law. The leading English case in which it is enunciated is *Price v. Neal,* 3 Burrow 1354, decided by Lord Mansfield in 1762,—New York holding that this applies only to a bona fide holder for value. *Title Guarantee & Trust Co. v. Haven,* 196 N. Y. 487; *Halifax v. Lyle,* 3 Exch. 446; *Minot v. Gibson,* 3 Tenn. 481. The leading New York case analogous to the principal case is *Oddie v. The National City Bank,* 45 N. Y. 735. It was held that the bank became liable for the amount of the check, although on the same day, and before the close of banking hours, but after it had paid other checks of the drawer's presented later it returned the check to depositor as not good, and although the account of the drawer was overdrawn at the time of the deposit. The legal effect of that transaction was held to be precisely the same as though the money had been first paid to the plaintiff, then deposited. *Commercial Bank v. Hughes,* 17 Wend. 97; *Carroll v. Cone,* 40 Barb. 222; *Marsh v. Oneida Central Bank,* 34 Barb. 298. It was said in *Oddie v. National City Bank* that the element of estoppel existed in that the bank kept the check from two o'clock to three o'clock, thus depriving the payee of his opportunity of demanding his money of the drawer. This is a doubtful basis of estoppel. The doctrine of this case, *Price v. Neal,* has often been termed atrocious. The principal case is more in harmony with justice in refusing to let the payee recover from the bank unless he could show actual injury. There is a possible narrow ground of distribution between *Oddie v. National City Bank* and the principal case in that in the former the drawer was insolvent and in the latter he was not.

G. S.

BREACH OF MARRIAGE PROMISE—CONSIDERATION—MUTUALITY—RIGHTS OF PARTIES.—BOWIE v. TROWBRIDGE (IN RE OLD'S ESTATE), 156 N. W. (IOWA) 977.—Where a man engaged to marry becomes afflicted with disease whereby the performance of marriage duties would aggravate his disease and hasten his death, *held,* that either party to the contract may repudiate without being subjected to liability therefor, since the consideration

for an agreement to marry is the giving and receiving by marriage all that is implied in the relationship, entailing mutual obligations, for the failure of which by the act of God either party may refuse to perform. Salinger, J., and Evans, C. J., *dissenting.*

The older view of liability of either party for breach of promise despite the fact of physical disability, finds expression in the famous English case of *Hall v. Wright,* El. Bl. & El. 746, where the defendant was held liable notwithstanding that after the promise, without his default, he was afflicted with "bleeding at the lungs" whereby he was rendered incapable of marrying without peril to his life. For an American case, see *Smith v. Compton,* 67 N. J. L. 548. Since the case of *Hall v. Wright,* there has been a decided change in sentiment in England and America. In *Allen v. Baker,* 86 N. C. 91, the court, repudiating *Hall v. Wright,* say that it proceeds on a theory as to the objects contemplated by the marriage relation which is contrary to the general conception. *Sanders v. Coleman,* 97 Va. 690, laid down the rule as to implied condition of continued health. See also *Gardner v. Arnett,* 21 Ky. L. Rep. 1; *Shackleford v. Hamilton,* 93 Ky. 80; *Grover v. Zook,* 44 Wash. 489. It is well settled that in contracts involving personal services, incapacity of body or mind without default on the part of the performer is an excuse for non-performance. *Robinson v. Davison,* L. R. 6 Ex. 269. With much greater reason does this apply to contracts to marry which are by their very nature peculiarly personal. Common understanding as well as public policy demands that the continuance of health should be an implied condition of the contract. Conditions implied in law are no innovations upon the law of contract as the dissenting judges seem to feel in this case. Sound public policy is the basis for such implied conditions and there is no need of legislative action to effectuate this. The decision in the principal case is no doubt in consonance with the trend of modern cases in this country.

B. P. S.

CARRIAGE OF PASSENGERS—CREATION OF THE RELATION—STANDARD OF DUTY TOWARD INTENDED PASSENGERS.—MISHLER V. CHICAGO, ETC., RY. CO., 111 N. E. (IND.) 460.—The plaintiff boarded defendant's street car while it was running at the rate of 3 or 4 miles an hour. Due to the defective condition of the track, the jolting of the car caused him to be thrown off and injured. *Held,* the duty of the defendant, as to the risks incident to a defective track, is to be treated as identical with its duty toward a passenger generally; and this duty is owed alike to all persons in its cars intending to become passengers thereon, regardless of the time and place where they boarded the car. Ibach, J., and Shea, J., *dissenting* (in 111 N. E. (Ind.) 944).

The majority opinion contends that the carrier owes the highest degree of practicable care, included in which was the duty of keeping its tracks in repair, to all persons in its cars intending to become passengers; and the mere fact that the contract for passage was not yet consummated by collection of fare or an acceptance by the carrier will not relieve the

latter from liability for injury resulting solely from the neglect of such duty. The minority asserts that if the injured party were not a passenger, the carrier would owe him no duty to care for his safety in the highest degree practicable. 6 Cyc. 536. If the plaintiff were a trespasser, defendant would not be liable for negligence, in the absence of malevolence. If he were a licensee, defendant would be liable only if it knew of the defects. If he were an invitee, the company would be absolutely liable for any injury due to their negligence. The case goes very far in holding him an invitee. While it is true that the company invites the public impliedly, still such invitation is open only at stopping places. *Bricker v. Phila. R. Co.*, 132 Pa. St. 1; *Farley v. Cincinnati R. Co.*, 108 Fed. 14. See also, *Eppendof v. Brooklyn R. Co.*, 69 N. Y. 195. If plaintiff were not a passenger (as both opinions agree), nor a licensee, nor, it is submitted, an invitee, under what duty does the defendant lie toward him? The decision in reality amounts to holding plaintiff a passenger. It is submitted that such a decision goes to great lengths in practically holding one a passenger who boards a car at a place, and in a manner, unauthorized by the railway company.

A. N. H.

CONTRACTS—ANTICIPATORY BREACH—DENIAL OF LIABILITY ON INSURANCE POLICY.—BORGER V. CONN. FIRE INS. CO., 156 PAC. (CAL.) 70.—The policy issued by defendant allowed 90 days for payment in case of dispute as to the extent of liability. Upon immediate denial by defendant of all liability, plaintiff brought suit without waiting for the stipulated period to elapse. *Held,* the suit was premature since such denial did not make the sum due before the 90 days.

California is among the states that recognize the doctrine of anticipatory breach of contract. *Remy v. Olds,* 88 Cal. 537; *Garberino v. Roberts,* 109 Cal. 125, 128. Hence the reason adduced for the decision in the principal case cannot be sustained, inasmuch as it applies equally to all examples of anticipatory breach. Even in jurisdictions, however, which admit the doctrine, a distinction has been sought to be drawn between bilateral and unilateral contracts—especially those involving the payment of a sum of money at a determinate future date, such as notes—on the ground that in the latter the practical reason for allowing the plaintiff to act on the advance repudiation, namely to determine his own conduct, does not exist. Cf. Fuller, C. J., in *Roehm v. Horst,* 178 U. S. 1, 18. On this ground the principal case might well rest were it not for the fact that it proves too much. There is a clear distinction between the effect of the doctrine of anticipatory breach as (1) affording the injured party a defence to further performance of his own obligation, in case of a bilateral contract, and (2) giving him an immediate right of action for defendant's breach, in either unilateral or bilateral contract. Pollock on Contracts (Ed. Williston), 361. The above distinction should logically operate to confine the injured party to his defensive remedy in any case, and in both classes of contracts prevent him from bringing suit until the defendant's obligation was due. But such is not the law. In fact, other states, recognizing anticipatory breach, have not followed California but have

granted an immediate right of action in situations like the principal case. *Reese v. Fidelity & Deposit Co. of Md.*, 156 N. Y. Sup. 408; *New Amsterdam Casualty Co. v. New Palestine Bank*, 107 N. E. (Ind. App.) 554; *Hansell-Elcock Co. v. Frankfort Marine Accident & Plate Glass Ins. Co.*, 177 Ill. App. 500.

C. B.

CRIMINAL LAW—DISCLOSURE OF OFFENCE BY ILLEGAL SEARCH.—TOWN OF BLACKSBURG V. BEAM, 88 S. E. (S. C.) 441.—Where a police officer forcibly and unlawfully, without process, searched defendant's person and took the key to his trunk, which he opened, finding therein whiskey which was being transported to a non-licensed county, *held*, that defendant could not be convicted of transporting alcoholic liquors, since a citizen may not be arrested and have his person searched by force and without process to secure testimony against him. Fraser, J., *dissenting*.

By the Constitution a person is secured against unreasonable searches and seizures, Amendment IV; and giving evidence against himself, Amendment V. These amendments refer to powers exercised by the government of the United States and not to those of the individual states, 6 R. C. L., Constitutional Law, ¶ 233. The security intended to be guaranteed by the Fourth Amendment is designed to prevent violations of private security in person and property by federal officers acting under legislative or judicial sanction. *Weeks v. U. S.*, 232 U. S. 383; *Adams v. N. Y.*, 192 U. S. 585. The constitutional privilege of the Fifth Amendment applies only to testimonial compulsion, and any form of process treating defendant as a witness. *Boyd v. U. S.*, 116 U. S. 616. Though a search without legal justification is a trespass, and the officer liable,—*McClury v. Brenton*, 123 Ia. 368, *Regan v. Harkey*, 40 Tex. Civ. App. 16,—it is the general rule that evidence of a criminal offence obtained by an illegal search of person or premises is admissible, and not a violation of these constitutional guaranties. 8 R. C. L. Criminal Law, ¶ 193; Wigmore on Evidence, Vol. IV, ¶¶ 2183, 2263-4; *Shields v. State*, 104 Ala. 35; *Commonwealth v. Tucker*, 189 Mass. 457. Nor is it a violation of the Fourteenth Amendment. *Williams v. State*, 100 Ga. 511. Nevertheless, the *obiter* expressions of opinion by the majority in *Boyd v. U. S.*, supra, and refused generally by judicial opinion,—*Hale v. Henkel*, 201 U. S. 43; *State v. Fuller*, 34 Mont. 12,—have led a few courts to adopt its erroneous view and to exclude documents and chattels obtained by illegal seizure. *Hammock v. State*, 1 Ga. App. 126; *State v. Slamon*, 73 Vt. 212; *State v. Sheridan*, 121 Ia. 164. The holding of the principal case is contrary to the weight of authority.

E. J. M.

CRIMINAL LAW—INSTRUCTIONS—EVIDENCE—PREVIOUS GOOD CHARACTER.—COMMONWEALTH V. RONELLO, 96 ATL. (PA.) 826.—*Held*, where there was evidence of defendant's previous good character, it was error to instruct that if the jury were satisfied from the evidence beyond a reasonable doubt that the defendant was guilty, this conclusion could not be overcome by the character evidence.

Good character evidence should be considered with all the other evidence in the case, *Allen v. State,* 8 Ala. App. 228; *People v. Dippold,* 30 App. Div. (N. Y.) 62; but such evidence is not of itself sufficient to raise a reasonable doubt of guilt, *Cobb v. State,* 115 Ala. 18; *Carwile v. State,* 148 Ala. 576; *Hammond v. State,* 74 Miss. 214; and proof of good character is of no weight if the jury are satisfied beyond a reasonable doubt from *all* the evidence that defendant is guilty. *People v. Dippold, supra; State v. McGrath,* 35 Ore. 109; *State v. Mapin,* 196 Mo. 164; *People v. Mitchell,* 129 Cal. 584; *Hayes v. U. S.,* 32 Fed. 662. An Oklahoma court has even held that the defendant has no right to have good character evidence considered at all in deciding the issue of reasonable doubt as to the defendant's guilt. *Coleman v. State,* 118 Pac. (Okl.) 594; and Texas agrees that good character is not affirmative evidence for defendant nor is it to be considered at all in determining his guilt. *McDaniel v. State,* 139 S. W. (Tex.) 1154. On the other hand, it is held in New York that the good reputation of the accused may *in itself* create a reasonable doubt where none would otherwise exist. *People v. Buccufurri,* 143 N. Y. Sup. 62; *People v. Koppman,* 143 N. Y. Sup. 919. Alabama adds that good reputation, when taken with all the evidence in the case, may raise such a doubt as to authorize acquittal when the jury otherwise would have no doubt. *Watts v. State,* 59 So. (Ala.) 270; *McCullough v. State,* 11 Ga. App. 612. The principal case seems to take the New York view that good character alone may create a doubt sufficient for an acquittal where the evidence of the defendant's guilt is otherwise convincing. This doctrine seems to lay rather too much stress on evidence of defendant's previous good reputation.

S. B.

HOMICIDE—JUSTIFICATION.—COOP V. STATE, 180 S. W. (TEX.) 254.—Wife of appellant had conducted herself in such way as to show that she had been unfaithful to marriage vows. Appellant saw his wife and decedent standing in the street in close embrace and fired on them, killing both. A Texas statute provides "Homicide is justifiable when committed by husband upon the person of anyone taken in the act of adultery with the wife, provided the killing take place before the parties to the act of adultery have separated." *Held,* appellant entitled to a charge that he did not violate the law in killing his wife.

It seems to be settled in Texas under this statute that the killing of the wife is justifiable wherever the killing of the other party would be. *Williams v. State,* 73 Tex. Cr. R. 480. The theory seems to be that since at common law the killing of the wife under such circumstances was manslaughter instead of murder, the statute may also be construed as putting the killing of the wife on the same plane with the killing of the other party. The Texas courts have given a broad construction to this statute. In *Morrison v. State,* 39 Tex. Cr. R. 519, it was held that the statute contemplated only that the parties still be in the company of each other. In *Price v. State,* 18 Tex. App. 474, it is said that since at common law it was not necessary that the guilty parties be taken in the act in order to grade the homicide as manslaughter rather than as murder, so

under the statute it is not necessary, to render the killing justifiable, that they be taken in the act. If the facts would constitute manslaughter at common law, under the Texas statute the killing would be justifiable. But when the rule of construction of penal statutes is borne in mind, that they are to be strictly construed, *Texas and Pac. Ry. Co. v. Blockes,* 48 Tex. Civ. App. 100, it is hard to sustain the holding that under these facts, the appellant was entitled to a charge that he did not violate the law.

R. C. W.

NEGLIGENCE—LIABILITY OF MANUFACTURER TO THIRD PARTIES—NATURE OF THE GOODS AS TEST.—MACPHERSON V. BUICK MOTOR CO., 111 N. E. (N. Y.) 1050.—Plaintiff, owner of an automobile purchased from a retail dealer, was thrown out and injured by the collapse of a defective wheel. The complete machine had been assembled by and sent out from defendant as manufacturer, though the wheel itself had been bought from another manufacturer. *Held,* that a manufacturer of automobiles is liable to third parties, not in contract relation with him, for injuries due to negligent defects in construction, and that he is responsible for the finished product although parts may have been bought from a reputable manufacturer.

The manufacturer and seller of articles of ordinary use, in themselves harmless, is not liable to those not in contract relations with him for personal injuries due to negligence in construction of the article. *Thornhill v. Carpenter-Morton Co.,* 108 N. E. (Mass.) 474. But the maker of a thing imminently dangerous to life or health owes a positive duty of care, commensurate with the peril, to every person into whose hands it may lawfully come, or by whom it may lawfully be used. *Wood v. Sloan,* 148 P. (N. M.) 507. Within this class there is a tendency to include not only commodities whose very existence is fraught with danger to owner and public—such as explosives, *Mathis v. Granger Brick & Tile Co.,* 149 Pac. (Wash.) 3; electricity, *Kentucky Utilities Co. v. Searcy,* 181 S. W. (Ky.) 662; gas, *Sharlsey v. Portland Gas & Coke Co.,* 144 Pac. (Or.) 1152; volatile petroleum products, *Standard Oil Co. v. Wakefield,* 63 Fed. 400, etc.,—but also those whose normal use would result, with reasonable certainty, in personal harm to the user, if not properly made. Thus, food, *Parks v. G. C. Yost Pie Co.,* 144 Pac. (Kan.) 202; bottled drinks, *Boyd v. Coca Cola Bottling Works,* 177 S. W. (Tenn.) 80; drugs, *Mazetti v. Armour & Co.,* 75 Wash. 622; and soap, *Hasbrouck v. Armour & Co.,* 139 Wis. 357, have been held to be of this nature. In regard to vehicles there has been a distinct and confessed conflict. The English view, that they are not of this essentially and imminently dangerous class, set forth in *Winterbottom v. Wright,* 10 Meeson & Welsby 109, quoted in the principal case, has been followed in this country as regards carriages, *Burkett v. Studebaker Mfg. Co.,* 150 S. W. (Tenn.) 421, and by the federal court in the case of automobiles. *Cadillac Motor Car Co. v. Johnson,* 221 Fed. (U. S. C. C. A.) 801. On the other hand, at least two decisions have recognized the public policy of holding to strict accountability the man who puts out an instrumentality of high speed

transportation upon whose soundness will almost certainly depend many lives. *Olds Motor Works v. Shaffer,* 145 Ky. 616; *Quackenbush v. Ford Motor Co.,* 153 N. Y. S. 131. Certainly as a question of fact it is not difficult to see that there is a vital distinction between the horse-drawn vehicle, with its inevitable limitations of speed and capacity, and the modern motor car whose reliability is daily being subjected to more and more severe tests and, accordingly, whose potential danger is steadily rising. The only conceivable objection is that raised by the minority opinion, namely, that in view of its theoretical analogy to non-dangerous articles, the law of the motor should be amended by statute rather than by judicial interpretation.

C. B.

TELEGRAPHS AND TELEPHONES—NEGLIGENT DELAY IN DELIVERY—DAMAGES FOR MENTAL ANGUISH.—LAWRENCE V. WESTERN UNION TEL. CO., 88 S. E. (N. C.) 226.—Because of negligent delay of defendant in delivering a telegram to the plaintiff, a negro, he was thereby prevented from attending the funeral of a friend, a white man. *Held,* that mental anguish having been shown, the plaintiff could recover compensatory damages. Brown, J., *dissenting.*

At common law there can, as a general rule, be no recovery of compensatory damages for mental suffering unaccompanied by physical injury. *Connelly v. Western Union Tel. Co.,* 100 Va. 51; *W. U. Tel. Co. v. Skar,* 126 Fed. 295; unless such mental suffering results from a willful or malicious wrong of defendant. *W. U. Tel. Co. v. Rogers,* 68 Miss. 748. This general rule also applies to cases where, through the negligent delay of defendant, the plaintiff has been prevented from being present at the bedside before death or from attending the funeral of a close relative. *Davis v. W. U. Tel. Co.,* 46 W. Va. 48; *Rowan v. W. U. Tel. Co.,* 149 Fed. 550. Several states follow the rule that for mental anguish in such cases, the plaintiff can recover special damages only where such were within the reasonable contemplation of the parties. *W. U. Tel. Co. v. Hogue,* 79 Ark. 33; *W. U. Tel. Co.,* 87 Tex. 165. Other cases hold that such damages may be recovered only where the telegraph company had notice from the language of the message or otherwise, that by reason of its default or negligence such damage would likely ensue. *Williams v. W. U. Tel. Co.,* 136 N. C. 82; *Clay v. W. U. Tel. Co.,* 78 S. C. 109. Some states hold to the doctrine that recovery may be had if the relationship between the parties is close, such as husband and wife, parent and child, brother and sister. *W. U. Tel. Co. v. Benson,* 159 Ala. 254; *W. U. Tel. Co. v. De Andrea,* 45 Tex. Civ. App. 395. And in these cases mental anguish is presumed. But if the family relationship is more remote or by marriage only, then mental anguish must be proved, in the jurisdictions allowing recovery for mental suffering alone. It is apparent from the cases in jurisdictions following the minority rule, that the relation between the parties was that of blood or marriage relationship. But in the principal case, that element is entirely disregarded, as one is a negro and the other a white.

L. W. B.

TORTS-EXPLOSIVES-LIABILITY FOR BLASTING—BASIS OF LIABILITY.—WATSON V. MISSISSIPPI RIVER POWER CO., 156 N. W. (IOWA) 188.—*Held,* that an owner of realty may recover, irrespective of any negligence, for damage caused by concussion or vibration from blasts in the bed of a river during the construction of a dam by a private company under an authorization by Congress.

By the well-established general rule of law the owner of realty may recover for blasting regardless of negligence where there has been an actual physical invasion of his property. *Hay v. Cohoes,* 2 N. Y. 159; *Munro v. Dredging Co.,* 84 Cal. 515; *Scott v. May,* 3 Md. 431; *McAndrews v. Collers,* 42 N. J. L. 189. However, where the damage is due to the force of a concussion or vibration, the courts are in sharp conflict: some imposing liability without proof of negligence, *Hickey v. McCabe,* 30 R. I. 346; *Fitz Simmons v. Braun,* 199 Ill. 390; *Colton v. Onderdonk,* 69 Cal. 155; *Gossett v. So. Ry. Co.,* 155 Tenn. 376; while others require that negligence be definitely proved. *Booth v. Term. Co.,* 140 N. Y. 276; *Simon v. Henry,* 62 N. J. L. 486; *Page v. Dempsey,* 184 N. Y. 245. The courts following the New York view, due to public policy, consider the use of explosives as necessary for the improvement of land, but draw a distinction between a use which is temporary, and one which is permanent, as the latter would become a nuisance thus excluding it from the operation of the rule applicable to the former. So it is held that a reasonable use of explosives will not make one liable unless an actual trespass is committed, although a neighbor may suffer damage if negligence is absent. *Simon v. Henry,* supra; *Booth v. Term. Co.,* supra. The courts holding to the contrary view of absolute liability under all circumstances draw no distinction between the damage resulting from an invasion by a physical object and concussion or vibration as the blast is considered the proximate cause of the injury in either case. *Fitz Simmons v. Braun,* supra. The better reasoning seems to be with the courts in accord with the principal case in which no distinction is drawn between damage due to an actual invasion and concussion. The doctrine of *Rylands v. Fletcher* has not been widely accepted in America, but its probable application to this class of cases is due doubtless to the intrinsic danger of blasting.

J. McD.

WITNESSES—COMPETENCY—HUSBAND.—RAY V. WESTALL, 183 S. W. (Mo.) 629.—*Held,* the husband of a beneficiary of a will who was not himself a party to the action may give his nonexpert opinion that the testatrix had capacity, it not appearing that his opinion was based on acts of testatrix occurring in the presence of his wife; for if the will was sustained, the legacy would pass to his wife as her separate property and the husband could exercise no control over it.

Under the New York Code (Sec. 829) where a witness will gain or lose by the judgment in the action, he is disqualified from testifying to transactions with a decedent under whom a party to the action claims. *Franklin v. Kidd,* 87 Misc. Rep. (N. Y.) 399. Thus, in a suit to decide the validity of a will, the wife of a devisee who is made a defendant

with her husband because of her contingent dower interest in land devised to him is not competent to testify for the defendant to a conversation with the testator. *Johnson v. Cochrane,* 159 N. Y. 555; *Eckert v. Eckert,* 13 App. Div. (N. Y.) 490. But the husband is competent to testify in a suit by the wife to impress a trust on realty though he would have tenancy by curtesy in the land if wife's claim is sustained. *Leary v. Corvin,* 60 N. Y. Sup. 563; *Spindler v. Gibson,* 75 App. Div. (N. Y.) 444. And the contingent interest of the husband of an executrix as tenant by curtesy does not disqualify him as a witness. *In re Percival's Estate,* 79 Misc. Rep. (N. Y.) 567; *Hungerford v. Snow,* 129 App. Div. 816. At common law, a husband was incompetent to testify in actions where his wife was a party or had a direct pecuniary interest in the result of the action and the Missouri court holds in another case, *Norvell v. Cooper,* 134 S. W. 1095, that the husband remains incompetent to testify in such cases except where a statute has removed his disqualification and hence in this case in a suit against an administrator on a note of the intestate's the husband of the intestate's heir was held incompetent to testify. And in Texas, in a partition suit for land which a married woman claimed by gift from a decedent, her husband was held an incompetent witness on account of interest in spite of a statute giving married women control over the rents from their separate realty. *Tannehill v. Tannehill,* 171 S. W. (Tex.) 1050.

In many cases, however, it is said that the interest sufficient to disqualify a witness in such cases as these must be pecuniary, legal, certain and immediate. *Svensson v. Lindgren,* 124 Minn. 386. By such a test the principal case is clearly correct in considering the husband a competent witness.

S. B.