

RECENT CASES.

Bequest to United States—Tax on Legacies.—In re Merriam's estate, 36 N. E. Rep. 505 (N. Y.). The New York statute taxing bequests of a certain character reads "to persons or corporations." In this case a legacy was given to the United States. The court held that for the purposes of receiving bequests and for many other purposes the United States may be considered as a body politic or corporation and as such is subject to this tax; that it is not a tax on the property of the United States, but a tax on succession to property. Although the property vested in the United States at the moment of the testator's death, the tax on the succession thereto was fixed at the same instant.

Carriers—Injury to Passenger—Contributory Negligence.—Elliott v. Newport St. Ry. Co., 28 Atl. Rep. 338 (R. I.). A passenger, allowed by a company to ride on the footboard of a crowded car and struck by a trolley pole, is not guilty of contributory negligence if he did not know of the proximity of the pole; for he may assume that the company had taken precautions to construct its road so as to assure the safety of passengers riding in the manner permitted by the company.

Church Property—Taxation—Exemption.—First Christian Church of Beatrice v. City of Beatrice, 58 N. W. Rep. 166 (Neb.). Appellant owned property which was sold, and the proceeds were invested in real estate. The rents of the latter were being accumulated with the intention of erecting a church on it. Held, that, inasmuch as the property was separate and distinct from that on which a church edifice was situated, it was not within the purview of the constitutional provision exempting property "exclusively for religious purposes" from taxation.

Contracts—Validity—Public Policy.—Lum v. Clark et al., 57 N. W. Rep. 662 (Minn.). The superintendent and general manager of a lumber company agreed, in consideration of a note for \$5000 payable nine months after date, to use his influence to secure the removal of the company's mill and the extension of its logging road to Brainerd, with the stipulation that this was to take place

before the note became due. This action was brought for the cancellation of the note. Held, that the contract was clearly against public policy and void, as it placed the agent in a position where his own interests and his duty to his principal conflicted.

Corporations—Liability of Stockholders—Action to Compel Contribution—Ewing et al. v. Stultz et al., 36 N. E. 170 (Indiana). In an action brought by certain stockholders of a corporation against other stockholders of the corporation to compel them to pay part of sums of money paid out by the plaintiffs to the company's laborers, it was held that where a statute makes the stockholders of manufacturing corporations individually liable for all debts due laborers and employees for services rendered to such corporation, the individual liability of such stockholders is secondary, not primary, and the resources of the corporation must be exhausted before the individual can be sought.

Counties—Paupers' Coffins—Quarantine Law.—McNorton v. Val Verde Co., 25 S. W. Rep. 653 (Tex.). An injunction was granted to appellee in this case to restrain appellant from dividing up a claim and bringing several suits. The claim was for the price of coffins furnished at the request of the doctor charged with the care of those afflicted with the small-pox in an epidemic. Held, that since the State had charge of the quarantine which was established, it was liable for the expense of enforcing and maintaining it, and the judgment of the lower court in favor of appellee was affirmed.

Courtesy—Delay in asserting Claim.—Thomas v. Hughes, 25 S. W. Rep. 591 (Ken.). The plaintiff brought this action to obtain an estate for life in certain lands which he claimed by courtesy. The plaintiff did not establish beyond doubt that a live child was born, although the preponderance of the evidence was that the child was alive when born. The court held that even though the weight of evidence was in his favor, he was not entitled to recover since he had delayed for fourteen years to assert his claim. His conduct was inconsistent with the assertion of right which he attempted to make, and was held to make it almost conclusive that he was aware that no issue was born alive.

Customs Duties—Broken Glass.—United States v. Bache et al., 59 Fed. Rep. 762. Congress, in passing a statute providing for the abandonment to the government of goods damaged in importation, evidently intended that all damaged goods should come under the

operation of that statute. Hence, window glass broken in transit cannot be classed as "broken glass" and paid duty on as such but must be abandoned to the government or the full duty paid as on sound window glass.

Electric Railways—Negligence.—Ellis v. Boston & L. R. Co., 35 N. E. Rep. 1127 (Mass.). It is the duty of the motorman to exercise reasonable care in looking out for horses that may be frightened at the passing of the car, thus endangering the safety of the occupants of vehicles and those using the street, and to do what he can in the management of his car to aid the driver in controlling the horse. A disregard of this duty is negligence for which the company is liable.

Eminent Domain—Private Road—Right to take Private Property.—Welton v. Dickson et al., 57 N. W. Rep. 559 (Neb.). A statute of Nebraska, provided that when the lands of any person were so surrounded and enclosed as to cut off access to a public highway, commissioners should be appointed by the county board upon his petition to mark out a road to the nearest highway and assess damages to be paid to the owner of the land through which the road passed for the injury which he sustained. The plaintiff, through whose land a road was being marked off by commissioners, sought and obtained an injunction to prevent them from proceeding further. The court held that the clause in the State constitution declaring that "the private property of no person shall be taken or damaged for public use without just compensation therefor," was an implied prohibition on the power of the legislature to take the private property of one person and transfer it to another for his private use even when compensation was made, and hence that, as there was no adequate remedy at law, an injunction was properly granted.

General Average—Statutory Exemption—Exceptions in Bill of Lading.—The Roanoke, 59 Fed. Rep. 161. A statute or exceptions in the bill of lading to the effect that the owner of vessel shall not be liable for damage to cargo resulting from fire or wet does not release him from liability to contribute to general average.

Intoxicating Liquors—"Wilson Act."—Ex parte Edgerton, 59 Fed. Rep. 115. The "Wilson Act" of 1890 making intoxicating liquors subject to the laws of the State into which they are transported immediately upon their arrival, whether in the original

package or not does not extend the power of the State so that laws passed by its assembly for the punishment of the importer are constitutional.

Intoxicated Person—Purchase from—Conversion.—In *Baird v. Howard*, 36 N. E. 732 (Ohio), it was held that a purchase made when the seller was incompetent to contract by reason of intoxication, which incompetency the purchaser was aware of at the time and was taken advantage of by him, is fraudulent, and that the seller has his election to treat the possession of the purchaser as a conversion and recover its value in an action.

Malicious Prosecution—Advice of Counsel as a Defense.—*Jonasen v. Kennedy*, 58 N. W. Rep. 122 (Neb.). Defendant in error was tried on a charge of theft at the instance of appellant, and being acquitted, brought suit for damages for malicious prosecution and recovered. On appeal, the plaintiff, among other assignments of error, relied on the refusal of the judge to charge the jury that malice was rebutted and the suit for malicious prosecution must fail, if they found that the assistant county attorney who brought the complaint (which was sworn to by appellant upon his advice) was acquainted with the material facts of the case, as a sufficient ground for setting aside the judgment of the lower court. Held, that a full, free and fair communication of the facts of the case must be proved to make the advice of counsel an available defense, and that the instruction was rightly refused.

Mandamus—Governor's Exemption—Executive Powers.—*State ex. rel. Robb v. Stone, Governor*, 25 S. W. Rep. 376 (Mo.). Relator, employed by a previous governor of the State as counsel for the State, under power given by the general assembly, performed his duty to the State as counsel, and, after the determination of the cause in which he was engaged, presented his claim together with his contract, against the State to the governor who refused to order it to be paid. Relator then sought an alternative writ of mandamus directed to the governor, commanding him to order the claim to be paid. The defendant, waiving the issuance of the writ, demurred to the petition on the ground that the facts stated were insufficient. The court, disregarding the demurrer, held that, as the constitution divided the powers of government into the executive, legislative and judicial, and declared that no person or collection of persons charged with the exercise of the powers of one of these departments, shall exercise the powers belonging

properly to either of the others, except where it is expressly directed or permitted, it, as a portion of the judicial department of the government, could not interfere to control the exercise of the powers belonging exclusively to the executive department. The fact that the governor submitted to the jurisdiction of the court, and did not claim this exemption does not give the court authority to render a judgment which it is unable to enforce.

Marriage—Locus Contractus.—In re Lum Hin Ying, 59 Fed. Rep. 682. The law of China does not require the presence of the contracting parties to a marriage, and hence a marriage between a woman in China and a man in America, may be valid according to Chinese Law. A marriage that is valid where it is contracted is valid everywhere, but it is doubtful whether such a marriage is contracted in China or the United States. Hence it is held not valid in this country.

Municipal Corporations—Ordinances—Validity.—City of Tarkio v. Cook, 25 S. W. Rep. 202 (Mo.). An ordinance of a municipal corporation was objected to in this case as being in conflict with a provision of the State constitution providing that "No bill shall contain more than one subject, which shall be clearly expressed in its title." Held, that the formal requirements of ordinances of municipal corporations depend on the provisions of their charters and statutes on the subject, and that this provision only applied to acts of the State legislature. It was also held that where a municipal corporation is given authority to maintain its "peace, * * * health and welfare," and to "regulate billiard tables," an ordinance requiring billiard halls to be closed at nine p. m. is reasonable and valid.

Post Office—Decoy Letters.—United States v. Adams, 59 Fed. Rep. 674. The use of decoy letters by a government inspector to obtain proof of the improper use of the mails is not justifiable when such letters carry any suggestion or inducement that they be answered by mail.

Real Estate Agents—Commission—Agreement to divide with Purchaser.—Scott et al. v. Lloyd et al., 35 Pac. Rep. 733 (Col.). The plaintiffs, who were real estate agents, were entrusted by defendants with the sale of land at a fixed price, with the agreement that they were to receive five per cent. They found a purchaser, who agreed to buy the land on condition of receiving a rebatement

of one half of their commissions. Defendants, having ascertained the arrangement which was made, refused to pay the commissions and suit was brought to recover them. The court held that they were entitled to recover, as the agreement to divide their profits was a personal sacrifice which they could make to obtain a purchaser without acting in a double capacity, and as their conduct in no way infringed the rule that the agent must so act that his own interests and the interests of his principal do not conflict.

Tax Sale—Purchase by Wife—Fraudulent Conveyance.—Miller v. Leeper et al., 25 S. W. Rep. 378 (Mo.). The property of defendant's intestate, who was insolvent, was bought at a tax sale by his wife with money procured by a trust deed given by him and his wife on the property so bought. The price paid was only a little more than one tenth of the value of the property. Plaintiff brought this action to set aside the conveyance of the property on the ground that it was fraudulent and to have it sold to satisfy a judgment in his favor against the decedent. The *cestui que trust* left a legacy to the wife forgiving a part of the debt secured by the trust deed. Held, that the money obtained for the purchase being raised on the property of decedent, the conveyance was a fraud on the rights of his creditors, and the decree of the lower court setting it aside was confirmed.

Water Courses—Diversion—Prescriptive Title—Changing Use.—Gallagher v. Montecito Valley Water Co., 35 Pac. Rep. 770 (Cal.). Defendant, under condemnation proceedings, acquired title to land the owners of which had for five years previous diverted the waters of the stream on which plaintiff's land bordered. Held, that a prescriptive title to the water had been acquired, and a change in the use to which it was applied furnished no ground of complaint to the plaintiff, as the quantity used was no greater.