RECENT CASES.

Accident at Railroad Crossing—Failure to Give Signal.—Durkee v. *President, etc., of Delaware and H. Canal Co.*, 34 N. Y. Sup. 978. The repeal of a statute requiring signals to be given by a locomotive approaching a highway crossing does not relieve a railroad company from giving such warnings as would afford reasonable notice to travelers of the approach of a train.

Admiralty Jurisdiction—Torts Committed partly on Land and partly on Water.—Herman v. *Port Blakeley Mill Co.*, 69 Fed. Rep. 646 (California). This was a case of mixed tort committed partly on land and partly on water. The plaintiff was injured by the negligence of a fellow workman, who, without warning, slid a beam through a chute from a landing above to a vessel below upon which plaintiff was working. The defendant denied the jurisdiction of the court in the case, claiming that as the origin of the injury was on land all the consequences resulting from the act should be drawn after it. In cases of tort locality is the test of the jurisdiction in the admiralty. The locality of the injury is the place or locality of the thing injured and not of the agent causing the injury. Therefore the court had jurisdiction in this case.

Attainder of Felony—Parricide—Right to Inherit Father's Estate.—In re Carpenter's Estate, 32 Atl. Rep. 637 (Penn.). A son murdered his father for the purpose of obtaining immediate possession of his share of the estate, the widow becoming an accessory after the fact, and they afterward conveyed their interests in the estate to the attorneys who defended them in a prosecution for murder. It was held that the act of murder did not, in the absence of a will, destroy the son's right to immediate possession of his share.

Bank Deposits — Transfer — Creation of Trust.— Cunningham v. *Davenport* (Public Administrator), 41 N. E. Rep. 412 (N. Y.). A bank depositor opening an account in the name of or in trust for another creates no trust in favor of that party if he retains the bank book which is evidence of right to draw the deposit and does not inform the beneficiary of the account. But in case the depositor dies before the beneficiary leaving the

account open and unexplained it will be conclusive evidence and will establish the validity of the trust.

Bequest to Charitable Uses — Construction — Validity. — *People* v. *Powers*, 41 N. E. Rep. 432 (New York). A bequest of property to be disposed of among "charitable and benevolent institutions or corporations" in a city is void for uncertainty as to the beneficiaries. Charitable institutions such as orphan asylums and the like are one class; benevolent associations such as Ancient Order of United Workmen, with numerous others of like character, form another class, while unincorporated institutions would include sewing societies and like organizations found in nearly every circle of society. Difficult if not impracticable to ascertain beneficiaries, and therefore the gift is incapable of being executed by judicial decree.

Carriers—Liability Not Limited—Interstate Commerce.—Solan v. *Chicago, M. & St. P. Ry. Co.*, 63 N. W. Rep. 692 (Ia.). The plaintiff was injured while in charge of cattle on the train of the defendant. The contract of shipment provided that the liability of the company for such an injury should be limited to $500. The court held that under section 1308 of the Code a corporation could not limit its liability as a common carrier by contract, and that this section of the Code was not a "regulation of interstate commerce," and did not therefore encroach upon the federal jurisdiction as contended by the defendant.

Carriers—Contract with Agent of Shipper—Limitation of Authority.—Smith v. *Robinson Bros. Lumber Co.*, 34 N. Y. Sup. 518. A shipper of lumber acting as agent for an undisclosed principal contracted with a transportation company to carry a cargo of lumber from Ontonagon to Sandusky, at $2.50 per thousand, that price being the amount of freight authorized to be paid by the instructions of the principal. While the cargo was being loaded, the agent finding no sales for lumber at Sandusky, directed the master of the vessel to take the cargo to Tonawanda on consideration of the payment of extra freight. Held, that a carrier contracting with the agent of the owner of goods for their transportation, is not affected by a limitation of the agent's authority to agree on the terms of transportation, but can recover a reasonable compensation therefor.

Contracts—Illegality—Collusive Bidding.—McMullan v. *Hoffman*, 69 Fed. Rep. 509 (Oregon). Two bidders on public works enter

into secret contract to avoid competition and to combine their bids in such way as to secure higher price for work and then to divide profits, while appearing to bid against each other. One of the parties was awarded the construction of the public works and executed the same and received the profits. The other party now sues for partition of such profits according to contract. The Court held such a contract illegal and refused relief.

Contract—Subscription—First M. E. Church in Ft. Madison v. *Donnell*, 64 N. W. Rep. 412 (Iowa). A subscription paper to a church fund, containing an unqualified promise to pay, was read to the congregation. The defendant announced the amount of her subscription, and it was placed on the list by an official of the church with her knowledge and consent. Held, that the defendant's subscription so obtained constituted a contract in writing and that the defendant was bound thereby.

Corporations—Use of Electricity by Illuminating Companies—Regulation by Cities.—State ex rel. Laclede Gas Light Co. v. *Murphy*, 31 S. W. Rep. 594. An illuminating company substituted electricity for gas for lighting purposes. It was held that, as the company's charter had been granted before electric lighting was known, and general police power had been afterward granted to the city, the company must exercise its rights subject to city ordinances relating to underground wires in the streets.

Due Process of Law—Membership in Labor Union—Special Legislation.—State v. *Julow*, 31 S. W. Rep. 781 (Mo.). A statute which makes it unlawful for an employer to require his workmen to withdraw from trade or labor unions is unconstitutional. No state may deprive any person of life, liberty or property without due process of law. These rights carry with them all the attributes necessary to their complete and unrestrained enjoyment one of which is the right of an employer to make and terminate a contract when he pleases. This statute is special legislation as well for it refers not to workingmen as a class, but to those merely who belong to an organization, and are a particular portion of the class.

Injunction—Removal of Wall.—Norton v. *Elwert*, 41 Pac. Rep. 926 (Oregon). When the boundary line between adjoining lots for a space fifty feet in length and one and one-half in breadth was in dispute, and one owner had commenced the erection of a building the north wall of which covered the disputed territory,

complaint was filed by the other claimant of the disputed ground; and a mandatory injunction sought to compel the removal of the wall and for damages. The question of boundary having been referred and found in favor of the plaintiff, it was held, that a perpetual injunction would lie to compel the removal of the wall without resort to law to determine title, the title and right of possession being incident merely to the question of boundary.

Liabilities of County Commissioners.—Warden v. *Witt et al.*, 39 Pacific Rep. 1114 (Idaho). The plaintiff brought suit against the defendants as commissioners of a county for injuries alleged to have been sustained by him in crossing a certain county bridge, by reason of defects in the same. It was held that a County Commissioner is not individually liable in damages for injuries sustained because of defective highways, for the reason that it would result in the abrogation of the office (because no sane man would assume the position with such a liability attached).

Liability of Wharfingers—Fire Communicated to vessel by floating oil. —Hustede et al. v. *Atlantic Refining Co.*, 68 Fed. Rep. 669. A vessel on its way to an oil wharf where the water is of necessity covered with oil, caught fire, and suit was brought against the wharfinger to recover damages resulting therefrom. Held, that the wharfinger was not liable for the damage done, as the vessel had to take its own risk in going to the wharf, and the wharfinger was not responsible for the escape of oil from sources over which he had no control, nor liable for fire communicated by the oil from premises not owned by him.

Marriage—Divorce—Conflict of Laws—Foreign Judgment—Jurisdiction.—McCreery v. *Davis*, 22 S. E. Rep. 178 (S. C.). Plaintiff sued to compel acceptance of deeds to land by defendant, who refused upon the ground that the title was defective in that the deeds were not signed by plaintiff's wife. Plaintiff's wife had secured a divorce in Illinois, without personal service on her husband, upon grounds not recognized in New York where the marriage took place, nor in South Carolina where the plaintiff lived. Held, that marriage is a civil contract, not a *res* or status; that the common-law doctrine of divorce obtains in South Carolina; and that the wife still had a dower in the lands, hence her signature was necessary to create a perfect deed.

Powers of Congress—Postoffice—Lotteries.—Enterprise Lot. Assn. v. *Zumstein, P. M.*, 67 Fed. Rep. 1000 (Ohio). The complainant

brought a bill to enjoin the postmaster of Cincinnati from obeying an order of the Postmaster General directing him to refuse to deliver registered letters or pay money orders to the plaintiff. This order was issued under the power imposed in the Postmaster General by Congress, upon satisfactory evidence that the plaintiff corporation was engaged in conducting a lottery. The Court held that it was within the power of Congress to authorize the Postmaster General to make such an order, and that it had no jurisdiction to enjoin the execution of an order made thus by the Postmaster General in the exercise of the discretion which Congress had reposed in him.

Sale of Land to Minor—Rescission at Majority—Lien for Price Paid.—Morris v. *Holland*, 31 S. W. Rep. 690 (Texas). The appellant in this case sought to rescind a conveyance of real estate made to him during his minority by appellee, and to recover the money paid, upon a tender to the vendor of a reconveyance, a lien upon the land was implied and need not be pleaded where the facts show its existence.

Taxation—Charity School.—City of Philadelphia v. *Overseers of Public Schools*, 32 Atl. Rep. 1033 (Penn.). An institution originally endowed as a charity school to educate poor children gratuitously and those of rich parents at reasonable rates, gradually ran down. The overseers then agreed to furnish the buildings, furniture, etc., and to pay the tuition of the poor children from the corporation's funds, and contracted with a teacher to conduct the school, stipulating that he should receive seven-eighths of the gross receipts and out of this hire his assistants. Held, that since the element of charity was eliminated by leasing the school to the head teacher for one-eighth of the gross receipts, the property was not exempt from taxation.