RECENT CASES.

CORPORATIONS.

Corporations—Dissolution—Judgment of Foreign Court.—Scammon v. *Metropolitan Trust Co.*, 42 N. E. Rep., 515 (N. Y.). A judgment was obtained in Illinois against a New York corporation after its dissolution, in accordance with the Illinois statutes which continue a dissolved corporation for the purpose of settling its affairs. Held, that this judgment was void, and that neither the principle of comity nor the provision of the United States Constitution requiring full faith and credit to be given to the judgments of sister States, required the New York courts to enforce it.

Corporations—Preferring Creditors—Rights of Officers—Creditors' Bill.—Mallery v. *Kirkpatrick*, 33 Atl. Rep., 205 (N. J.). An insolvent corporation cannot under the laws of New Jersey prefer, as a creditor, one of its officers who upon resignation has secured a judgment. A later creditor, framing a bill for the benefit of all the creditors and making the corporation a party, is entitled to a decree that the surplus brought by the property shall be held by such officer in trust for the benefit of all the creditors.

Corporations—Proceedings to Forfeit Charter—Parties—Powers of Receivers.—City Water Co. v. *State*, 32 S. W. Rep., 1033 (Tex.) The State of Texas brought a suit in the nature of a quo warranto, to forfeit the charter of a certain city water company chartered under the laws of the State. The company set up by way of a plea in abatement, that a receiver had been appointed over the corporation by authority of the United States Circuit Court, and contended that no action could be maintained in the State court against the corporation unless the receiver was joined. Held, that the receiver appointed by the United States Circuit Court for the corporation was neither a necessary nor a proper party to an action by the State to forfeit its charter.

Corporations—Subscription.—B. S. Green Co. v. *Blodgett*, 42 N. E. Rep., 176 (Ill.). A subscription made by a mercantile corporation in the event of securing the location of a post-office

near its place of business is collectable, since such location being of direct financial advantage to the company constitutes a sufficient consideration.

Foreign Corporations—Loan secured by Mortgage.—State v. *Bristol Savings Bank*, 18 So. Rep., 533 (Ala.) Act 14, Sec. 4, of the Alabama constitution provides that "no foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein." A foreign corporation placing a loan secured by mortgages on land in that State was held to be doing business within the constitution.

Railroad Companies—Foreign Competing Lines.—State v. *Port Royal & Ga. Ry. Co., et. al.*, 23 S. E. Rep., 383 (So. Car.). This was a case where a railroad incorporated under act of Legislature of the State of Georgia, by purchasing a majority of the capital stock and general mortgage bonds of a railroad in South Carolina acquired control of its management and ran it to further its own interests. It was held that a foreign railroad corporation, on the ground of public policy, cannot acquire the stock and thereby the management of a domestic competing line.

Validity of Judgment in a Foreign State.—Hubbard v. *American Ins. Co.*, 70 Fed. Rep., 808. A Nebraska corporation was sued in a Colorado State court, and judgment was rendered against it. The defendant pleaded to the jurisdiction because of insufficiency of service. Recovery on this judgment was sought through the U. S. Circuit Court in the corporation's home state. The latter court held that the judgment was not void, and that the question as to the jurisdiction of the former court in rendering the judgment could not be raised again.

PLEADING.

Election of Remedies—Trespass or Nuisance.—Follett et al. v. *Brooklyn El. R. Co. et al.*, 36 N. Y. Sup., 200. Abutting property owners brought an action against an elevated railway company to enjoin the operation of the road for rental damages. Held, that inasmuch as the plaintiffs had a right to plead and prove the facts upon which their case depended, they could not be compelled to elect whether they would try the cause as for a continuing trespass or as for a nuisance.

Pleading—Equity Amendment.—Wolverton et al. v. *George H. Taylor et al.*, 42 N. E. Rep., 49 (Ill.). This was a suit which had been pending for eight years, and been twice appealed. The Appellate Court sustained the trial court in its refusal to amend the bill at the plaintiff's request, so as to add a new complainant, holding that while such amendment might properly have been allowed in view of the long continuance of litigation, the refusal was no error.

Pleading—Overruling Demurrer—Effect.—Cummings et al. v. *Daugherty*, 18 So. Rep., 657 (Miss.). In an action to recover usurious interest, the defendant demurred, assigning three causes of demurrer, of which the first was overruled and the second and third sustained with leave to defendant to plead to the modified declaration. It was held that a demurrer must be sustained or overruled in its entirety, and the declaration of the plaintiff thus stood unanswered.

WILLS.

Nuncupative Will—Validity—Reduction to Writing.—Bellamy v. *Peelor*, 23 S. E. Rep., 387 (Ga.). In testing the validity of an alleged nuncupative will, if the evidence shows that the maker had time and opportunity to reduce it to writing but failed to do so, the will is invalid.

Wills—Attestation Clause—Berberet v. *Berberet, et al.*, 33 S. W. Rep., 61 (Missouri). The plaintiff asked that a will be set aside as not properly executed because it contained no attestation clause. The court held that if the will was signed by the testatrix in the presence of two witnesses, who subscribed their names in her presence, it was sufficiently evident in what capacity they had signed.

Wills—Construction—Byrne et al. v. *Weller et al.*, 33 S. W. Rep., 421 (Ark.). Where a testator gave his wife a life estate in all of his property and then after certain bequests gave the remainder of the land to his wife to dispose of as she might choose at her death, it was held that by virtue of the last clause, the wife held a fee in the residue of the land.

Wills—Revocation—Presumption.—Boyle v. *Boyle et al.*, 42 N. E. Rep., 140 (Ill.). This was a petition for the revocation of letters of administration on the estate of Joseph Boyle, deceased, brother of both parties to the action, and for the probate of an

alleged will of said decedent. Evidence established the fact that deceased, in presence of plaintiff and in favor of his son, had executed a will, leaving same with an attorney for safe keeping; that later and in company with defendant, deceased had called for the will, which was never seen again. The court declined to admit said will to probate, holding that under the aforenamed circumstances, the presumption prevailed that it was destroyed by the testator or under his direction.

MISCELLANEOUS.

Collision between Sailing Vessels—Holding Course—Duty to Lie By—Drowning of Seamen.—Crowell et al. v. *Grant et al.*, 70 Fed. Rep., 270. Between a vessel sailing free and one sailing close-hauled the former is obliged to make way. If she fails to change her course and damage results she is liable. Failure to lie by on the part of the uninjured vessel is a breach of duty which renders said vessel liable for the death of the seamen, and the executors of said seamen may collect damages for physical and mental suffering experienced while drowning.

Collision of Steamboats in Channel—Rights of Cargo Owners.—Canton Ins. Co. v. *Claimants of the Victory*, 68 Fed. Rep., 395 (Va.). The loss occasioned by the collision of two steamers, occurring in a river channel and in the day time, thus resulting from evident mismanagement, falls upon the vessels and not upon the cargo owners. The latter have rights which are distinct from those of the vessel owners and are entitled to complete indemnity.

Conspiracy Against Fellow Workmen—Civil Action.—Clemitt et al. v. *Watson*, 42 N. E. Rep., 367 (Ind.). An agreement made by workmen to quit work unless their employer discharge a man objectionable to them, is lawful. No personal liability is incurred in civil or criminal action for the carrying out of such an agreement, in the absence of any threats, violence or intimidation.

Contract with State—Assignment—Carter v. *State*, 65 N. W. Rep., 422 (S. D.). Where the commissioner of public printing contracted with a firm to do the public printing for the term of one year, and the firm assigned the contract and the assignee sued the State for damages for the breach thereof; it was held that there being no statutory provision to the contrary, such a contract was assignable.

Criminal Law—Club Room—Gaming House.—Commonwealth v. *Blankinship et al.*, 42 N. E. Rep., 115 (Mass.). Complaint charged defendant with being present in rooms used as a common gaming-house. Defendant answered that there was no cause of action since rooms were those of a private club. Held that club rooms used for gambling, by members and their invited guests, is a common gaming house, "common" in this connection not necessarily meaning open to all the public.

Homicide—Murder and Manslaughter—Resisting Arrest—Instructions.—Brown v. *United States*, 16 Supreme Court Rep., 29. The defendant killed two officers, who mistaking him for another person, were unlawfully attempting his arrest. The trial judge charged the jury that such killing was not murder but manslaughter, "unless done in such a way as to show brutality, barbarity and a wicked and malignant purpose. If done in this way it would be murder." Held, that this instruction was erroneous, since it allowed the jury to bring in a verdict of murder because of the manner of the killing, even though apart from the way in which life was taken the facts made a case of manslaughter.

Libel and Slander—Charging Bribery of Voters—Identification of Plaintiff—Instructions.—Van Ingen v. *Mail and Express Co.*, 35 N. Y. Sup., 838. It was stated in the defendant's newspaper that 'the London head of a large New York firm of cloth jobbers' was the leader of a movement to raise funds abroad to buy votes. Such publication was held libelous *per se* and was none the less libelous because the accusation did not designate the plaintiff by name. Extrinsic evidence was held admissible to show that the article referred to the plaintiff.

Railroad Foreclosure—Receivers—Unsecured Debts.—Wood v. *N. Y. & N. E. Ry. Co. et al.*, 70 Fed. Rep., 741 (Mass.). A claim for a debt contracted for the supply of materials necessary for the operation of a railroad from day to day "as a going concern" was held to be within the classes of preferred claims to be paid by the receivers out of the income of the road. In order to sustain a preferred claim the creditor must show that the materials supplied were necessary to keep the road as "going concern" and were indispensable to the safe carriage of the public.

Street Railroad—Injury to Passengers.—Waiver of Statutory Immunity.—Vail v. *Broadway R. R. Co.*, Brooklyn, 42 N. E. Rep.

4 (N. Y.). The plaintiff while smoking upon front platform of a Broadway car was injured. The company claims immunity from liability upon the ground that there was a notice inside the car prohibiting passengers from standing on platform. Held that the rule "Smoking on closed cars is prohibited, except upon the front platform," modifies such notice and operates, in case of injury to a passenger smoking upon the platform, as a waiver of immunity from liability, conferred by General Railroad Act of 1850.

Tug Boats—Collision—Rodgers v. *Adriatic Fire Ins. Co.*, 69 Federal Reporter, 157. Both tugs are held liable for damages in a collision resulting in sinking of a tow, when both were inattentive in regard to signals and failed to keep a permanent look-out while going in opposite directions in Long Island Sound. The Assurance Co. holding the liability on the sunken tow can recover from both, as each was equally at fault.