RECENT CASES.

INJUNCTIONS.

Injunction.—Belknap et al. v. *Schield*, 16 Supreme Court Rep. 443. An injunction cannot issue to restrain United States officers from using an article made by them in infringement of patent, when such article is in the possession of and used for the benefit of the United States.

Injunction—Action on Bond—Damages—Interest.—Belmont Mining & Milling Co. et al. v. *Costigan et al.*, 42 Pac. Rep. 650 (Col.). When the sale of land under a trust deed is delayed by a temporary injunction, and upon subsequent sale it fails to bring enough to pay the secured debt, an element of damage is the difference between the amount actually received and what would have been probably realized if the injunction had not been granted, but interest upon the amount of the debt during the time of the delay should not be awarded.

Injunction—Damages—Attorney Fees.—Creek v. *McManus et al.*, 43 Pac. Rep. 497 (Mont.) This was a suit for damages on an injunction bond, in which the plaintiff sought to recover, as one item of damages, fees paid to an attorney who resisted the injunction and tried the case on its merits. But the court held that, since the attorney was employed generally, fees could not be recovered as damages.

INSURANCE.

Action on Life Insurance Policy—Evidence—Appeal—Harmless Error—Estoppel.—Mullen v. *Mutual Life Insurance Co.*, 32 S. W. Rep. 911 (Tex.). Where, as required by law, a notice is sent to plaintiff and his wife on whose lives a life policy has been issued, stating the premiums due and that the policy would be forfeited for non-payment, the plaintiff cannot avail himself of his failure to deliver the notice to his wife and claim that the policy was not forfeited because she had not received notice.

Construction of Policy—Conflict of Policy and Application—Revival of Policy—"Renewable Term" Policies.—Goodwin v. *Provident Savings Life Assurance Society of New York*, 66 N. W. Rep. 157. Equivocal terms of a life insurance policy will be construed in support of the claim for indemnity. When the provisions of the policy conflict with the stipulations of the application, those of the latter yield to those of the former. When a New York "renewable term" policy is forfeited through nonpayment of premiums, a reinstatement has not the effect of making a new contract but of canceling the forfeiture.

Insurance—Assignment of Life Policy—Assignee may Enforce.—Steinbach v. *Diepenbrock et al.*, 37 N. Y. Sup. 279. An insurance policy taken by a person upon his own life can be assigned like any chose in action, and upon the death of the assured the assignee is entitled to the full amount payable, even though he has no insurable interest in the life of the assured.

Insurance—Conditions—Waiver.—Gross v. *Agricultural Ins. Co. of Watertown*, 65 N. W. Rep. 1036 (Wis.). The action was brought to recover on a policy containing a provision that if the building insured be on ground not owned by the insured in fee simple, the policy should be void, unless a written waiver to such condition be attached thereto. At the time the policy was issued the defendant's agent knew that the plaintiff had only an estate for years and waived the condition avoiding the policy on this ground, but neglected to attach the waiver to the policy. Held: This waiver was effective.

Insurance—Conditions of Policy—Breach—Estoppel to Claim Forfeiture—Knowledge of Agent—Powers of Agents.—Dick et al. v. *Equitable Fire and Marine Insurance Co. et al.*, 65 N. W. Rep. 742 (Wis.). An insurance company waives the forfeiture resulting from a breach of a condition of the policy when it requires the assured at some expense and trouble to give a carpenter's estimate of the damage.

Insurance—Policy—Provisions as to Health.—Robinson v. *Metropolitan Life Ins. Co.*, 37 N. Y. Sup. 146. A provision in the policy that the insurer assumes no obligation unless the insured is in "sound health" refers to the physical condition, and the fact that the insured is a cripple and an idiot, but in other respects enjoys good physical health, does not avoid the policy.

Insurance—Stock in Illegal Business—Invalidity of Contract Policy.—Sun Mutual Insurance Co. v. *Searles et al.*, 18 Southern Rep. 544 (Miss.). The Searles Co., merchants, had paid their proper privilege tax, but subsequently permitted their stock to exceed their license limit. The court held that their business became *eo instanti* illegal, and that in consequence a contract of insurance thereafter issued upon said stock is invalid.

Life Insurance Policy—Construction—Stipulation against Suicide—Validity.—Mutual Reserve Fund Life Ass'n v. *Payne*, 32 S. W. Rep. 1063 (Tex.). The lawful stipulation by a life insurance company against liability for death of insured by his own hand, whether sane or insane, may be overcome by a clause in the certificate, providing that after being in force five years, the certificate should "be incontestable for any cause except the non-payment of dues."

Life Policy—Who entitled to Proceeds.—Geoffrey v. *Gilbert et al.*, 36 N. Y. Sup. 884. In this case a father took out a life insurance policy payable to his four-year-old daughter or "her legal representatives." Twenty-two years later she married and soon after died. Subsequently her father died; and it was held that her surviving husband could not receive the benefit of the policy *jure mariti*, for his wife's interest had terminated; nor as legal representative, for they take by substitution, and the substituted beneficiaries are the next of kin.

MISCELLANEOUS.

Bank Officer—Liability for Deposit—Bill of Particulars—When Ordered.—Townsend v. *Williams*, 23 S. E. Rep. (Jan.) 461. The plaintiff having placed money in a bank of which the defendant was vice-president, heard rumors questioning the solvency of the concern, and attempted to withdraw his deposits. The defendant assured him that the bank was safe, saying "We have got all the money you want. You never need have any fear of this bank as long as I am in it," knowing at the time that his statement was false. The plaintiff, relying on said representations, lost his money on the failure of the bank. Court held that defendant was personally liable.

Chinamen—Right of Naturalization—Effect of Passport—In re Gee Hop, 71 Fed. 274. Gee Hop was naturalized as a citizen of the United States in Camden, New Jersey, and thereafter he

obtained from the State Department at Washington, passports as a citizen of the United States, and armed therewith he departed for China, and returning subsequently was refused permission to land. On *habeas corpus* it was held, that the naturalization of Gee Hop by the court of New Jersey was absolutely null and void, and that passports reciting the fact of his citizenship were not conclusive proof of the facts therein contained.

Constitutional Law—Jury Trial—Unanimity of Verdict.—Pratt v. *Parsons*, 43 Pac. Rep. 620 (Utah). The legislature of a State may pass a law to the effect that in civil actions a verdict may be rendered by a concurrence of nine or more jurors, and such law will not be in conflict with the clause of the constitution which provides that in suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved.

Executor—Purchase from Legatee—State ex rel Jones v. *Jones et al.*, 33 S. W. Rep. 23 (Mo.). An executor may purchase from a legatee his interest in the estate, but the burden of proving absence of fraud rests upon him, because of the trust relation.

Garnishment of City Funds—Execution.—Murphree v. *City of Mobile et al.*, 18 Sou. Rep. 740 (Ala.). A plot of land owned by a city and not shown to have been used for municipal purposes may be sold under execution against the city. Money derived from the sale of such land is subject to garnishment when deposited in a bank which by statute is only a depository for such funds as are collected for taxes, licenses, fines, penalties and forfeitures.

Municipal Corporations—Injury to Firemen—Assumed Risk.—Farley v. *Mayor, etc., of City of New York*, 36 New York Supplement, 1115. The plaintiff, a hose-cart driver in the fire department, was injured by the collision of the hose-cart with a truck which had been left standing in a dark street. It was held that as he was driving at a speed of more than five miles an hour contrary to a city ordinance, and in entering the service he had assumed the extra risk, he could not recover from the city; especially as he had accepted the pension provided by the city for firemen injured in the course of their employment.

Municipal Corporations—Rights in Streets—Grants to Railroad Companies—Freight Houses—Right of Way.—City of St. Paul v. *Chicago, M. & St. P. Ry. Co.*, 65 N. W. Rep. 649 (Minn.) The

City of St. Paul gave the defendant the right to construct a freight house on a public levee, basing the grant on the city charter, which provided that the city council shall have power to grant the right of way over public streets. It was held invalid on the ground that the city authorities may agree with a railroad company to use its streets or levees for tracks but not for freight houses.

Negotiable Paper—Bank Check—Liability of Bank.—Cincinnati H. & D. Ry. Co. v. *Metropolitan National Bank, 42 N. E. Rep.* 700 (Ohio). The giving of a check is not the assignment of so much of the creditor's claim on the bank, and the holder of the check, unless it has been accepted, cannot maintain an action against a bank for refusal to pay it, although the drawer has to his credit on the books of the bank a sum more than sufficient to meet the check.

Slander—What Constitutes—Dishonor of a Check.—Svendsen v. *State Bank of Duluth*, 65 N. W. Rep., 1086 (Minn.) The refusal of a bank to pay the check of a depositor, who is a merchant or trader, when it has sufficient funds of the maker in its hands to pay the same, amounts to a slander and the depositor is entitled to recover general compensatory damages against the bank.

Surety—Discharge of Mortgage—Estoppel.—Parke & Lacy Co. v. *White River Lumber Co. et al.*, 43 Pac. Rep. 202 (Cal.) The discharge of a mortgage given by a surety to secure a contract will not discharge a note given for the same purpose but not connected with the contract.

Torts—Injuring Plaintiff's Business—Liability of Master.—Graham v. *St. Charles St. Ry. Co. et al.*, 18 So. Rep. 707 (La.) A railroad company is not liable for injuries to the business of a storekeeper caused by discriminations of its foreman against employees who trade at his store, for such conduct is in no sense within the scope of his employment.

Wills—Estate of Legatee—Promise to hold for another.—Trustees of Amherst College et al. v. *Ritch et al.*, 36 N. Y. Supp. 576. This is the famous Fayerweather will case. Where a testator devises his residuary estate to his executors absolutely, but with the understanding that they shall distribute the same among certain beneficiaries named in the will, the residuary legatees acquire no personal interest in the residuum, but take it as trustees.