RECENT CASES.

CONSTITUTIONAL LAW.

Eminent Domain—Taking Private Property without Compensation or Due Process.—Dilworth v. *State*, 36 S. W. Rep., 274 (Tex.). A statute making it a misdemeanor to build or maintain a fence three miles long without a gate is unconstitutional, for it impliedly creates a public right of way, through these gateways, across the land, without making provision for recompense to the owner or for condemning the property for this public use.

Equal Protection of Laws—License Tax.—In re Yot Sang, 75 Fed. Rep. 983 (Mont.). The Fourteenth Amendment to the Constitution of the United States provides that, "No State shall deny to any person within its jurisdiction the equal protection of the laws," and a Montana statute imposing a license tax of but $15 per quarter upon steam laundries, while levying a tax of $25 per quarter on every laundry business other than that of a steam laundry wherein more than one person is employed or engaged, is a violation of this provision and consequently void.

CONTRACTS.

Claims against Decedent Estate—By Daughter—Implied Contract.—Arnold et al. v. *Wise's Adm'r et al.*, 37 S. W. Rep. 83 (Ky.). Upon the request of her father, the plaintiff and her son left the boarding place provided by her husband, and lived seven years with her father, until his death. Held, that there being no actual contract the facts in the case do not authorize the Court to infer or presume a contract to pay her for her services.

Contract of Sale—Unauthorized Act of Agent—Recision by Purchaser—Placing Vendor in statu quo—Public Policy—Collateral Agreement.—Rackemann v. *Riverbank Imp. Co.*, 44 N. E. Rep. 990 (Mass.). Where an agent employed to sell transcends his authority by promising a purchaser that adjacent lots will not be sold at less than a certain figure, which promise is subsequently broken, the purchaser may effect through equity a recision of the contract, provided the vendor may be put in his original position. And the fact that the purchaser has had possession and enjoyment for nearly a year is immaterial. Such a promise by the agent is construed to be only for a reasonable time and is not contrary to public policy. It is a collateral promise and may be proved by parol.

Destruction of Subject before Completion—Amount of Recovery.—Hayes v. *Gross*, 40 N. Y. Supp. 1099. Having made a contract for the carpenter work in a building in course of erection, to be paid in installments, and the building being destroyed by fire before the completion of the contract, the contractor is entitled to recover for the work done and the material actually used at contract prices, but not for that on hand.

Landlord and Tenant—Eviction of Tenant by Landlord—What Constitutes.—Silber v. *Larkin et al.*, 68 N. W. Rep. 406 (Wis.). Where a landlord performed acts which interfered with the tenant's possession of the leased premises, and rendered them unfit for occupation and unsuitable for purposes for which they were hired, his action was held to constitute an eviction and the tenant was thereby entitled to damages.

Principal and Agent—Attorney and Client—Power of Attorney to Bind his Client.—Mulligan v. *Cannon*, 41 N. Y. Supp. 279. In all cases the natural presumption is that credit is given to the principal rather than to the agent. Where an attorney has employed an expert witness, in the absence of proof of an express promise to pay by the attorney or of facts tending to limit his authority such a witness may recover reasonable compensation from the client.

CORPORATIONS.

Distribution of Assets Among Stockholders—Mistake—Recovery of Assets by Corporation.—Grant v. *Ross et al.*, 37 S. W. Rep. 263 (Ky.). Where a corporation declares a dividend under a mistaken belief that it is solvent, and that enough would remain to pay its liabilities, and then makes an assignment, the assignee may reclaim from the stockholders such assets as were thus distributed.

Insolvency—Effect of Preferring Creditors.—Allison v. *Bradt Publishing Co.*, 37 S. W. Rep. 10 (Tenn.). The execution by an insolvent corporation of deeds of trust covering practically all its property and effectually winding up its business and giving preferences to one set of creditors over another is such an overt act of insolvency as to authorize a court of chancery to set them aside; otherwise if corporation continued in business, though actually insolvent.

NEGLIGENCE.

Carriers—Contributory Negligence.—Warfield v. *N. Y., L. E. & W. R. R. Co.*, 40 N. Y. Supp. 785. A person who is crossing a track at a station in order to board a train standing on another track is not obliged to observe the rule requiring a traveler on a highway which crosses a railroad to look and listen for approaching trains before crossing. Also a railroad company must exercise due diligence to warn people of the approach of trains such as by stationing an employee on the end of the train, blowing the whistle or ringing the bell.

Negligence—Who May Recover.—Glenn v. *Winters*, 40 N. Y. Supp. 659. The defendant let a defective coach to a social club for a day's excursion. The plaintiff, a guest of the club, had been invited to join the party and was injured by the overturning of the coach. The defendant was as liable to a guest of the club for a breach of duty in not furnishing a reasonably safe vehicle as to a member of the club itself.

Proximate Cause—Negligence.—Enochs v. *Pittsburgh, C. C. and St. L. Ry. Co.*, 44 N. E. Rep. 658 (Ind.). That a railway company negligently blocks up a street crossing so that a pedestrian, who is in a hurry, is obliged to pass around the train by an unusual route and in the dark, and in so doing sustains serious injury by falling over a misplaced stone, does not render the railway company liable, on the ground of proximate cause.

MISCELLANEOUS.

Australian Ballot Law—Ballots.—Jennings v. Brown, 46 Pacific Rep. 77 (Cal.). Voters wrote the party designation "Independent Democrat" upon the ballot in addition to the name of party voted for. Held, that this does not mark the ballot so as to constitute a distinguishing mark and hence does not invalidate the ballot.

Carriers—Fare—Legal Tender—Ejectors of Passenger.—Atlanta Consol. St. Ry. Co. v. *Keeny*, 25 S. E. Rep. 629 (Ga.). Conductor refused to receive a genuine half-dollar of the United States, because he in good faith thought it was a counterfeit. Held, that this does not exempt the company from liability for his ejecting the passenger for not paying fare with another coin.

Cities—Liability for Taxes Illegally Exacted—Payment under Threat of Arrest.—Neumann v. *City of La Crosse*, 68 N. W. Rep. 654 (Wis.).

A city ordinance afterwards declared void imposed a license fee upon those engaged in the sale of fresh meats. Such fees were collected by city's police under threat of arrest for refusal of payment. Evidence tended to prove that the marketmen did not know but what each officer had such warrant at the time of making such threat. Held, that the payment was under duress, and could be recovered.

Discharge in Insolvency—Non-resident Partner.—Chase et al. v. *Henry*, 44 N. E. 988 (Mass.) Where one of three partners, plaintiffs in an action against an insolvent debtor, resides out of the State in which the debtor has been discharged in insolvency, the debt, though barred as to the others, is valid in his favor. (Three judges dissenting).

Habeas Corpus—Verity of Court Records—Collateral Attack.—Whitten v. *Spiegel, Sheriff*, 35 Atlantic Rep. 508 (Conn.). The foreman of a Grand Jury by a clerical mistake, indorsed an indictment against the plaintiff as a true bill although in fact it had been found not to be a true bill. Held, that the records of the Criminal Court are in a collateral proceeding conclusive evidence that the cause was fully within the jurisdiction of the court and no writ of habeas corpus will lie.

Invalid Trust Deed—Estoppel—Equitable Lien—Bona Fide Purchaser—Notice.—Barrett v. *Baker*, 37 S. W. Rep. 130 (Mo.).—A deed of trust executed by the maker of a note on land to which he had no title, but which belonged to the payee, is invalid; but the payee by selling the note is estopped from denying its validity, and a purchaser of the note has an equitable lien against both the payee and purchasers of the land from him with notice. Held, that a purchaser of the land after the note was due and under an abstract of title noting said trust deed, but also containing an attested statement of the payee that he was the legal holder of the note and acknowledged payment thereof and satisfaction of the trust deed, was a bona fide purchaser without notice.

Misuse of Mails—Dunning Letter.—In re Barker, 75 Fed. Rep. 980 (Wis.). A respectful dunning letter in an unsealed envelope bearing the printed words, "Mercantile Protective and Collection Bureau," does not come within the meaning of section 3893, Rev. St., as amended by Act of Congress of Sept. 26, 1888 (25 Stat. 496), prohibiting the sending through the mails of envelopes bearing any language of a defamatory or threatening char-

acter, or calculated by its terms or manner of display, and obviously intended to reflect injuriously upon another.

Negotiable Instruments—Alteration.—Light et al. v. *Killinger*, 44 N. E. Rep. 760 (Ind.). The insertion, in pencil in a negotiable note in ink, by an indorsee, of the name of a certain bank after the words, "payable at," is to be taken as a mere memorandum, and is not such a material alteration as would avoid the note.

Neutrality Laws—Military Expedition—Preparation and Transportation of Military Expedition—Evidence.—United States v. *O'Brien et al.*, 75 Fed. Rep. 900. Circuit Court, S. D., N. Y. The defendants were indicted for violating the neutrality laws of the United States by taking part in the preparation and transportation of an alleged hostile military expedition directed against the power of the King of Spain in the Island of Cuba. Of a military expedition there are three distinguishing marks which must concur within the jurisdiction of the United States: Organization, although without military tactics, among men to act together; the presence of arms or weapons which can be used for military purposes, and some command. The owner of a vessel knowing that it is to be used to transport such an expedition, and all persons who knowingly aid in its preparation are guilty of violating the statute. Secrecy and mystery are not conclusive of the illegality of the enterprise.

Nuisance—What is Not—Matters of Taste.—Woodstock Burial Ground Association v. *Hager*, 35 Atlantic Rep. 431 (Vt.). The fact that a lot is "unsightly and needed to be filled in," etc., does not make it a nuisance. The law does not declare that to be a nuisance which is only a matter of taste, or unpleasant to the eye, or even that renders other property less valuable. There must be some substantial or material right invaded.