RECENT CASES.

CORPORATIONS.

Street Railroads—Refusal to Give Transfer—Action for Penalty.—*Meyers* v. *Brooklyn Heights R. R. Co.*, 41 N. Y. Sup. 798. The law will not enforce a penalty for refusal to give a transfer to "any passenger desiring to make one continuous trip" between two points on a street railway system, where it appears the passenger was riding solely for the purpose of demanding the transfer and recovering the penalty on refusal. He is not, within the term of the statute, a passenger seeking to make one continuous trip on the connecting lines of the system.

Street Railroads—Contributory Negligence—Failure to Look Back.—*Rooks* v. *Houston, W. S. & P. F. R. Co.*, 41 N. Y. Sup. 824. If a person, while riding a bicycle along and upon a cable car track, is struck by an overtaking car he is guilty of no contributory negligence from the mere fact of his failure to look back for such car. The law imposes no such duty upon a person.

Street Railway Companies—Improvements of Streets—Contracts.—*Borough of Shamokin* v. *Shamokin St. Ry. Co.*, 35 Atl. Rep. 862 (Pa. St.). A street railway company was required by the terms of its grant to lay its tracks on the grade of the streets thus used, and to share with the municipality the expense of "repairing or macadamizing" any of these streets. The company received notice that the municipality had decided to pave a street with asphalt; also that its tracks therein were not placed on the proper grade. The company paid no attention and the municipality, by itself, changed the grade of the tracks and paved the entire street. Held, that the company is liable to the municipality for the cost of altering the tracks and also for the preliminary work of paving the street, but not for the actual laying of the asphalt.

Carriers of Passengers—Steamboats—Liability as Innkeeper.—*Adams* v. *New Jersey Steamboat Co.*, 45 N. E. 369 (N. J.). Money for traveling expenses was stolen from a cabin passenger on a steamboat without negligence either on his part or that of the carrier. "The relations that exist between a steamboat and

its stateroom passengers differ in no essential respect from those that exist between an inn-keeper and his guests." For cases holding steamboat company not liable as inn-keeper see *Steamboat "Crystal Palace"* v. *Vanderpool*, 16 B. Mon. 302; *Clark* v. *Burns*, 118 Mass. 275.

Railroad Companies—Receivers—Supply Claims—Diversion—Equity—Reasonable Time.—Southern Ry. Co. v. *Carnegie Steel Co., Limited*, 76 Fed. Rep. 492 (Va.). When renewable notes of a railroad company were taken in payment for current supplies, and after renewal, but before maturity, the company went into the hands of a receiver, it was held that such notes for current supplies, contracted within a reasonable time before the receivership, and, by the principles governing the administration of the assets of a railroad by receivers, payable from the surplus earnings, have a priority over claims for improvements, interest, or dividends, and equity will give supply creditors, as against mortgage creditors, the right to recover money thus spent. The case of *Bound* v. *Railway Co.*, 8 U. S. App. 472; 7 C. C. A. 322, and 58 Fed. Rep. 473, was distinguished in that the appellant, by taking notes for eight months was held to have assented to the use of the earnings for the payment of interest. Similar decision in *Southern Ry.* v. *American Brake Co. et al.*, 76 Fed. Rep. 502, and in *Southern Ry. Co.* v. *Tillett*, 76 Fed. Rep. 507, in a claim for necessary repairs.

Municipal Corporations—Public Improvements—Enactment of Ordinances—Evidence of Fraud.—Morse et al. v. *City of Wesport et al.*, 37 S. W. Rep. 932 (Mo.). The fact that a city council orders a large number of streets to be macadamized and curbed at the expense of the abutting property owners in anticipation of a new legislative enactment forbidding cities to pass such ordinances, except upon petition of a majority of the resident real estate owners, held by a majority of the court not, in itself, proof of fraud.

INSURANCE.

Marine Insurance—Substitution—Construction of Contract.—New Haven Steamboat Co. v. *Providence Washington Ins. Co.*, 41 N. Y. Supp. 1042. An insurance policy was issued on plaintiff's steamer *C. H. Northam*, the policy providing that the insurance should cover any other steamer that should take her place, notice of such substitution to be given. Soon after the steamer

Continental was substituted for the *Northam*, and notice thereof duly given. Several weeks later the *Northam* resumed running, the *Continental* being laid off, and was injured in a collision. Plaintiff claimed indemnity for the loss, but the insurance company repudiated liability, and action was brought on the policy to recover insurance. Held, on a close decision, two of the five judges dissenting, that, in the absence of specific notice of the resubstitution of the original steamer the policy still attached to the *Continental*, and did not reattach to the *Northam* from the mere fact of her having resumed her place.

Chattels of a Wife—Delivery to Husband and Investment—Insurance Rights of Creditors.—Eggleston v. *Slusher et al.*, 69 N. W. Rep. 310. A wife received moneys from relatives and delivered the same to her husband, who invested them in property in his own name. A portion was destroyed by fire and the insurance policy on it was assigned by the husband to the wife, ostensibly to repay her for a loan of the money; at this time the husband was insolvent. It was not proved that the delivery by the wife to the husband was considered as a loan nor that there was any agreement for its repayment. In a suit against the husband by creditors, held, that the money passed to the husband according to the law when he received it; that the subsequent assignment of the policy lacked consideration, and that the equities of the creditors would prevail over those of the wife.

Eminent Domain—Public Use.—Bridal Veil Lumbering Co. v. *Johnson*, 46 Pac. Rep. 790 (Or.). A lumbering company, incorporated also to construct a railroad for the benefit and use of the general public in transportation of passengers and freight, will be entitled to the exercise of the power of eminent domain, to complete their road which has already been extended for a few miles; although the part already in operation extends through a thinly settled and mountainous region, with no villages or other railroad at its terminals.

AGENCY.

Principal and Agent—Ratification of Unauthorized Act—Warehousemen—Lien of Storage—Replevin.—Knight et al. v. *Beckwith Commercial Co.*, 46 Pac. Rep. 1094 (Wy.). Company's agent made an unauthorized agreement to store plaintiff's goods without charge. The company retained possession of the goods for storage fees

without notifying party that it repudiated said agreement. Held, that the company did not have a warehouseman's lien for storage.

Real Estate Agent—Commission.—Moses v. *Helmke*, 41 N. Y. Supp. 557. A real estate broker is entitled to his commission provided he arranged for a sale satisfactory to his principal, although his principal later refused to consummate the sale and sold the property to other parties.

MISCELLANEOUS.

Monopolies—Combination of Patent Owners.—National Harrow Co. v. *Hench*, 76 Fed. Rep. 667, Circuit Court, E. D. Penn. A combination of patent owners, by which each manufacturer assigns to a corporation organized for the purpose the legal title to his patents and receives back an exclusive license to make and sell only the same style of articles as before, all parties being bound to sell at the same prices and on the same terms, is as much a monopoly as any other such combination.

Chinese Labor—What Constitutes.—United States v. *Sun*, 79 Fed. Rep. 450. That a Chinaman, member of a trading firm in which he had an interest, lived with some of the partners at their store and did housework for them, makes him a domestic servant and not a "laborer" for hire, and hence not liable to deportation under registration and deportation acts of 1892 and 1893.

Federal Jurisdiction—State Taxation of National Bank Stock—Injunction.—Third Nat. Bank of Pittsburg v. *Mylin, Auditor-General et al.*, 76 Fed. Rep. 385. Where a tax is sought to be levied against a national bank by State officers claiming under a State statute which is violative of the Fourteenth Amendment and of Sec. 5219 of the Revised Statutes of United States, a Federal court has jurisdiction to issue an injunction against such officers enforcing such tax.

Federal Courts—Following State Decisions.—Ryan v. *Staples*, 76 Fed. Rep. 721, Circuit Court of Appeals (Col.). A single decision by the highest court of a State declaring a judgment void and based on the principles of the common law and not on the construction of any statute, does not establish a rule of property

binding on a Federal court in a case where the rights of a third party claiming property under such judgment became vested before the decision was made.

Res Judicata—Application—Limits.—Fuller v. *Metropolitan Life Ins. Co. of New York*, 35 Atl. Rep. 766 (Conn.) Considerations of public policy do not justify the extension of the rule of *res judicata* to make a fact adjudicated in an action between two persons in their individual capacity, *res judicata* in subsequent actions brought by one, as assignee of a chose in action between the other and a third person, which plaintiff has purchased of such third person after his right therein has become fixed, and since the rendering of judgment in the first action. The parties in both actions must be identical in the same right or capacity, or their privies claiming under them.

Constitutionality—Scandalous Publications—Freedom of the Press.—State v. *Van Wye*, 37 S. W. Rep. 938 (Mo.). A legislative enactment providing that anyone who published or disseminated a newspaper, the contents of which were licentious, scandalous and immoral, should be deemed guilty of a felony, does not conflict with the Constitution of the State which guarantees liberty of speech and of the press.

Rewards—Arrest of Fugitive from Justice—Right of Claimant.—Coffey v. *Commonwealth*, 37 S. W. Rep. 575 (Ky.). A person who in good faith and in accordance with the provisions of the statutes apprehends and delivers over a fugitive from justice is entitled to a reward offered by the Governor notwithstanding the prisoner was apprehended before the reward was offered.

Contributory Negligence—Icy Sidewalks.—Manross v. *Oil City*, 35 Atl. Rep. 959 (Penn.). The fact that the plaintiff knew that a sidewalk had ice upon it and attempted to cross is not contributory negligence sufficient to withdraw the case from the jury.

Bequest—Satisfaction of Debt—Interest.—Adams v. *Adams*, 35 Atl. Rep. 827 (N. J. Eq.). Where the legatees of a will do not, within the statutory period of time, demand payment of their unpaid legacies but wait until after the death of the executrix and life tenant of the estate, held that the heirs, the remainder men, are not liable for interest on the legacies since this dilatoriness of the legatees operates as a waiver by them of their interest.

Frauds on the Revenue.—United States v. *One Hundred and Thirty-two Packages of Spirituous Liquors and Wines et al.*, Circuit Court of Appeals, Eighth Circuit, 76 Fed. Rep. 364. Under the United States revenue statutes all packages containing spirituous liquors must be marked with the proper name or brand known to the trade and the term package includes every receptacle into which liquor is placed.

Trustees—Commissions in Two Capacities.—In re Spaulding's Estate, 41 N. Y. Supp. 1022. Where a will naming certain persons as executors also gives them the residuary estate in trust for the purpose of separating, from the body of the same, funds sufficient to yield an annuity for the testator's widow, such executors are entitled to commissions for services in the capacity of trustees as well as in that of executors.

Expert Witnesses—Opinion Evidence.—People v. *Youngs*, 45 N. E. Rep. 460. No error is committed in allowing an expert to declare upon the sanity of the accused after he had made an examination and before stating all the grounds for his opinions.