RECENT CASES.

RAILROADS.

Railroads—Intersection.—Carolina Cent. R. Co. v. *Wilmington St. Ry. Co.*, 26 S. E. Rep. 913 (N. C.) A railroad company, having built a bridge over its tracks, of sufficient strength for travel by foot and horse and ordinary vehicle transportation, is not obliged to render same safe for passage of street railway cars, said passage being an additional servitude and necessitating the contribution by the street railway company to the maintenance thereof.

Street Railroads—Nuisance—Injunction Against—Right of Individuals.—Central Crosstown Ry. Co. v. *Metropolitan St. Ry. Co.*, 44 N. Y. Sup. 752. Although the unauthorized construction and operation of a street railroad in a public street by defendant company is a public nuisance, plaintiff railroad company, which already had a line in operation in the same street, may enjoin the operation of defendant railroad, where it is shown that it will come into competition with plaintiff line, thus causing it special and irreparable damage, the amount thereof not being capable of ascertainment (see Sec. 102 of the Railroad Law). The case is not essentially different from *Forty-Second Street R. R. Co.* v. *Thirty-Fourth St. R. R. Co.*, 52 N. Y. Super. Ct. 252, where the action was brought previous to the construction of defendant's road.

Street Railroads—Paralleling Railroad—Ultra Vires.—New England R. R. Co. v. *Central Railway and Electric Company, et al.*, 36 Atl. Rep. 1061 (Conn.) A railroad company which does not have an exclusive franchise is not injured in any of its legal or equitable rights by the construction of a street railway parallel to its lines even though such street-railway is to be constructed by *ultra vires* acts.

Additional Servitude—Occupation of Streets by Railroads.—Chicago & N. W. Ry. Co. v. *Milwaukee, R. & K. Electric Ry. Co.*, 70 N. W. Rep. 678 (Wis.). Upon an application for an injunction against a street railway it was held that a commercial railway upon public streets and highways which engaged to carry besides passengers, merchandise, personal baggage, mail and express matter,

would tend to obstruct and interfere with the ordinary uses of a street and highway and impose an additional servitude upon the lands of abutting owners.

TELEGRAPH.

Telegraph Companies—Failure to Deliver—Notice of Special Circumstances—Measure of Damages.—Western Union Tel. Co. v. *Carver*, 39 S. W. Rep. 1021 (Texas). Where a telegram directs the person addressed to purchase cattle at a specific price per head and to "get all you can," it is sufficient to put the telegraph company on notice as to the incidental facts of the transaction and to render it liable to the sender for loss resulting from non-delivery; and where there was a subsequent permanent advance in the price of the cattle, the measure of damages is the difference between the price named in the message and the price at which they could have been bought at the time when it was learned of the non-delivery of the telegram.

Telegrams—Insufficient Address.—Western Union Tel. Co. v. *Birchfield*, 39 S. W. Rep. 1002 (Texas). It is no excuse for negligence in delivering a telegram that it had no specific address, but was directed "care some hotel," since, in the absence of any address, it would have been the duty of the telegraph company to ascertain if the party was at any hotel in that city.

RIGHTS OF CREDITORS.

Power to Dispose of Property by Will—Effect of Execution—Rights of Creditors of Testator.—Freeman's Adm'r et al. v. *Butters et al.*, 26 S. E. Rep. 845 (Va.). Where the personal property of a widow is not sufficient to satisfy her debts, and she has willed to volunteers, during her widowhood, property left to her by her husband with absolute power of disposal by will, her creditors may levy on said property in satisfaction of their claims.

Partnership—Rights as to Third Persons—Payment of Individual Debts.—In re Lafferty's Estate, appeal of Linde, 37 Atl. Rep. 113 (Penn.). Where an executor wrongfully uses funds of an estate and repays them with money belonging to a firm of which he is a member, the estate is not liable to the firm when it was unaware that it was partnership money.

PROCEDURE.

Appeal—Abatement.—Nickerson v. *Nickerson*, 48 Pac. Rep. 423 (Ore.). The death of a husband, who has appealed from a de-

cree for divorce whereby his wife became entitled to one-third of his property, does not abate the appeal. It survives to his heirs, and they may prosecute the cause in order to determine whether the divorce was rightfully granted and to settle conflicting property rights between them and the appellee.

Cities—Improvements in Streets—Discrimination.—Larned v. *City of Syracuse et al.*, 44 N. Y. Sup. 857. Where a petition for the pavement of a street prayed that the materials be purchased from a certain firm and the city council passed a resolution granting the petition the entire proceedings are void as preventing free competition.

Action by County to Recover Land Limitation—Adverse Possession.—Johnston v. *Llano County*, 39 S. W. Rep. 995 (Texas). Although the statute of limitation does not run against a county, as a subdivision of the State, as to any "road, street, side-walk, or grounds," yet the right of the county to recover lands not acquired or used for public purposes may be barred.

MISCELLANEOUS.

Navigable Waters—Control by the United States—Incidental Damage—Compensation—Constitutional Law.—Gibson v. *U. S.*, 17 Sup. Ct. Rep. 578. In accordance with United States River and Harbor Acts, a dike was built at a point in the Ohio River off Neville Island, nine miles west of Pittsburg, for the purpose of concentrating the water-flow in the main channel. The change of flow which followed this improvement, prevented the access of boats to the landing place of the plaintiff, a lower riparian owner, except at high stages of water in the Spring and Fall. The obstruction greatly reduced the value of the plaintiff's land and he petitioned the Court of Claims for the recovery of damages. The Supreme Court upholds the Court of Claims (29 Ct. Cl. 18) in finding the claimant not entitled to recover, there not being in this case a taking of private property for public use, without compensation, but the injury being a mere incidental consequence of the lawful exercise of Governmental power.

Negligence—Proximate Cause—Contributory Negligence—Assisting Person in Danger.—Saun v. *H. W. Johns Manf. Co.*, 44 N. Y. Sup. 641. Plaintiff's intestate, a workman in defendant's factory, had been directed to repair the pipes of a certain felt-washing machine; after so doing he and another workman made several unsuccessful attempts to put a belt upon the machine, when a third workman volunteered to assist them by holding the belt so

as to relieve it from the friction of the shaft from which it hung and which was revolving at full speed. In so doing the belt slipped and caught the volunteer workman in a sort of loop which carried him around the shaft. Deceased seeing the workman in this perilous position succeeded in rescuing him from it, but in the attempt was himself caught in the belt and whirled over the shaft, sustaining thereby injuries from which he died. Held, that as plaintiff had not been directed to adjust it, the condition of the belt was not the proximate cause of the injury, and although it is not contributory negligence to attempt to rescue a person in peril, no matter whether it was the result of the person's own negligence (*Eckert* v. *Railroad Co.*, 43 N. Y. 502; *Spooner* v. *Railroad Co.*, 115 N. Y. 22, 21 N. E. 696; *Gibney* v. *State*, 137 N. Y. 1, 33 N. E. 142), yet no action would lie against defendant in this case, as its negligence was not the proximate cause of intestate's death.

Attorney and Client—Liability for Negligence—Overlooking First Lien.—Larrall v. *Groman*, 37 Atl. Rep. 98 (Penn.). An attorney searching the record in regard to certain property, held liable to his client for overlooking prior liens, wherein client loaned money on a mortgage of said property on the strength of his stating there were no prior liens.

Gift to Infant—Engagement Ring—Conditions of Marriage—Breach. —Stramberg v. *Rubenstein*, 44 N. Y. Sup. 405. A man cannot recover during the infancy of his former fiancée an engagement ring given her, on the ground that she had broken the engagement.

Monopolies—Combination in Restraint of Trade—Promissory Note.— Milwaukee Masons and Builders Ass'n v. *Niezerowski*, 70 N. W. Rep. 166 (Wis.). The private by-laws of a masons' and builders' association, which consists of most of the mason contractors in a city, are void as in restraint of trade, when they require the members to pay six per cent on all contracts performed by them, and that all bids for work must be first submitted to the association, and six per cent must be added by the lowest bidder to his price before he submits it to the owner or his architect. A note given by a contractor to such an association, of which he was a member, for the percentage due under the by-laws, on a contract for building, is invalid and will not be enforced.

Criminal Law—False Pretenses.—Jules v. *State*, 36 Atl. Rep. 1027 (Md.). A false representation by one that he has superna-

tural power to cure is as to an existing fact and a promise to exercise this power in the future does not overthrow the consequences attached to the false representation.

Collision—Steamships in Harbor.—The Bowden v. *The Decatur H. Miller*, 78 Fed. Rep. 649. The obligation to use care in avoiding collisions is as incumbent upon a vessel lying in harbor and not under sail or steam as upon a moving vessel, and failure to warn approaching vessels of her helpless condition constitutes negligence. In this case the court also held that the approaching steamer, having failed to obtain answer to her signals, was bound to neglect no precaution to prevent risk of collision, even from the fault of the other vessel.

Divorce—Jurisdiction—Domicile.—Dickinson v. *Dickinson*, 45 N. E. Rep. 1091 (Mass.). A husband abandoned his wife, whom he had shortly before married under compulsion, and moved into another State. As soon as the statutory residence had been acquired there he applied for a divorce in that State, and the divorce was granted. The Massachusetts court holds that the fact of the abandonment and the early application for divorce, together with the circumstances of the marriage, warrant the inference that the husband's residence in the foreign State was not a *bona fide* one and that he went there purely for the purpose of obtaining a divorce. Therefore, that other State had no jurisdiction. *Looker* v. *Gerald*, 157 Mass. 42, 31 N.E. 709, distinguished.

Schools—Police Power—Power of State Board of Health—Compulsory Vaccination of Children—Delegation of Legislative Power.—State ex. rel. Adams v. *Burdge et al.*, 70 N. W. Rep. 347. A statute authorizing a State board of health to make such regulations "as may in its judgment be necessary for the protection of the people," from contagious disease and leaving it to decide as to what diseases are contagious, is an unwarranted delegation of legislative power. In the absence of a statute making vaccination a condition precedent to the right to attend public schools, a rule to that effect by the board of health is unreasonable and cannot be sustained as an exercise of the police power of a State, being made when there is no danger of epidemic.