RECENT CASES.

BAILMENT—WORLD'S FAIR—LIABILITY FOR INJURY TO EXHIBITS—WORLD'S COLUMBIAN EXPOSITION CO. v. REPUBLIC OF FRANCE, 91 Fed. Rep. 65.—This was an action to recover for loss of goods by fire occurring two months after the fair had closed. *Held,* that the fact that the complainant, without recompense, sent a large and valuable exhibit to this country, by reason of which the public was attracted, resulting in large gains to the Exposition Co., did not render the latter insurers.

BANKRUPTCY—BANKRUPT PROSECUTING PENDING ACTION OF TORT.—*Held,* where, prior to the adjudication a bankrupt had begun an action in a state court to recover damages for a malicious prosecution and arrest, a court of bankruptcy has no jurisdiction to control him in the further prosecution of such suit, the right of action therein not resting in his trustee; also, that permission from the court of bankruptcy to prosecute the suit to judgment was not necessary.

BANKRUPTCY—EXEMPTIONS—LIFE INSURANCE POLICY—IN RE LANGE, 91 Fed. 361.—A policy of insurance on the life of a bankrupt, having a cash surrender value payable to the bankrupt himself, or to his estate or personal representatives, passes to and vests in his trustee as assets of the estate in bankruptcy, subject to the right of the bankrupt to redeem the same by paying to the trustee its surrender value, notwithstanding that a statute of the state (Code Iowa, § 1805) provides that the proceeds of such policies shall be exempt from liability for the debts of the assured, and although section 6 of the bankruptcy act declares that "this act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws," for the general language of section 6 is limited and restrained, in this instance, by the specific provision of section 70, cl. 5, that the bankrupt, on paying or securing to the trustee the cash surrender value of such a policy, may "continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings; otherwise the policy shall pass to the trustee as assets."

BANKRUPTCY—REFEREES—DISQUALIFICATION BY INTEREST—BRAY v. COBB, 91 Fed. 102.—Under Bankruptcy Act, 1898, § 39, providing that "referees shall not act in cases in which they are directly or indirectly interested," a referee is not disqualified by interest from acting in a particular case because he owes a debt to the bankrupt. The interest which will disqualify him is an interest either in the proceedings in bankruptcy or in the estate of the bankrupt.

BILLS AND NOTES — INDORSEMENT — PAROL EVIDENCE — GOODRICH v. STANTON, 42 Atl. 74 (Conn.).—A note was made payable to A. S. The payee indorsed it without recourse, signing the indorsement A. S. Underneath he signed A. N. S., which was his full name. *Held,* that parole evidence was admissible to show whether the payee intended the second signature as an unqualified indorsement, or whether the whole was intended as a single qualified indorsement signed both ways.

CONTRACTS—PARTIES—CONSIDERATION—HUSBAND AND WIFE—BUCHANAN V. TILDEN, 52 N. E. Rep. 724 (N. Y.).—Plaintiff's husband agreed with defendant to give his services and raise money to aid in breaking will of late Samuel J. Tilden, and as compensation plaintiff (who was related, but not by blood, to the late Mr. Tilden) was to share with the other Tilden heirs, should the suit be successful. On winning the above suit, and failure of present defendant to pay the consideration for plaintiff's husband's services. she brings suit in her own name to recover the same. *Held* (by a divided court), that the plaintiff could recover on the above state of facts. Although plaintiff was a stranger to the consideration, she could recover because her husband owed her a duty to provide for her future, and also by reason of her equitable and moral claim as niece by adoption to the late Mr. Tilden.

CONTRACTS—RESCISSION—MISTAKE—MOFFETT, HODGKINS & CLARKE CO. V. CITY OF ROCHESTER, 91 Fed. 28.—Complainant, in bidding for a public work, made a clerical error, by which he offered to contract at an unprofitable price. *Held,* Shipman, J., dissenting, that there could be no rescission of the contract.

COMMON CARRIERS—TRUCKMEN—ORDINARY CARE—JACKSON ARCHITECTURAL IRON WORKS V. HURLBUT ET AL., 52 N. E. Rep. 665 (N. Y.).—Defendants, who advertised themselves as general truckmen, making a specialty of moving heavy machinery, and who maintained all appliances and necessities for such business, were *held* to be common carriers. This, even though they had no regular tariff of charge, as from the nature of the business it is necessary to charge different prices in each case, according to amount of labor required in handling large bulks.

CORPORATIONS—LIBEL BY SERVANT OF TELEGRAPH CO.—EXEMPLARY DAMAGES—PETERSON V. WESTERN UNION TELEGRAPH CO., 77 N. W. 985 (Minn.).—Defendant's servant, who had the entire management of defendant's business at one of its offices, sent the plaintiff a libelous message. *Held,* that the telegraph company was liable for exemplary damages.

DAMAGES—DYNAMITE EXPLOSION—WRONGFUL ACT—SUFFICIENCY OF EVIDENCE—PROXIMATE CAUSE—LAIDLAW V. SAGE, 52 N. E. Rep. 679 (N. Y.).—Plaintiff sued to recover for personal injuries alleged to have been caused by defendant placing plaintiff between himself and a dynamite explosion. Plaintiff's evidence, which was uncorroborated, was that defendant put his hands on plaintiff and moved him eighteen inches in front of him, though no force was used in doing it. Plaintiff's memory became weak after accident. Missiles were found in defendant's body which could not have reached him if plaintiff had been in front of him. Defendant testified that he did not move plaintiff, and his evidence was corroborated by three witnesses. *Held,* that as matter of law the evidence was insufficient to sustain a verdict for the plaintiff. As the explosion was a terrific one, several being killed, and as defendant was in no way responsible therefor, the court further *held,* that evidence of acts of defendant did not sustain burden of showing that such acts caused substantial injury to plaintiff. The defendant's act was not the proximate cause of plaintiff's injury.

ELECTIONS—BALLOTS AND INSPECTION—TOWN CLERK—MANDAMUS—KEEFE V. DONNELL, 42 Atl. (Me.) 345.—At a state election petitioner's name was on the official ballots in the town of K as a representative to the Legislature. According to "the result declared and recorded," he failed of an elec-

tion, but he claimed that if the ballots had been properly sorted and counted, he would appear to be elected. The ballots used in the election were, as required by statute, sealed in a package, and returned to the town clerk of K, who was required by the statute to keep them as a public record for six months, and not to "abstract from any or in any manner tamper with" said package, *Held,* that mandamus will lie to compel the town clerk to open the package for petitioner's inspection; but that neither petitioner, nor any one in his behalf, shall be allowed to sort or count or in any way handle or touch the ballots. The inspection must be in the presence of the town clerk, who can insist on such restrictions consistent with the right of inspection as will secure every ballot intact.

INJUNCTION—TRADE NAME—SOLE RECEIVING MAIL—DR. DAVID KENNEDY CORP. V. KENNEDY, 55 N. Y. Supp. 917.—One Dr. David Kennedy, a manufacturer of proprietary medicines, sold to plaintiff the good will of his business, with the sole right to use the names "Dr. David Kennedy, Rondout, N. Y.," and "Dr. D. Kennedy, Rondout, N. Y.," in connection with such business. Letters so addressed were for some years received by the corporation of which the Doctor was president. Thereafter he ceased to be connected with the firm, but continued to reside in Rondout. *Held,* two judges dissenting, that he would be enjoined from receiving and opening mail addressed as above, even though some of the letters in no way concerned the corporation.

INSOLVENCY—BANKRUPTCY LAW—RECEIVER—STATE EX REL. STROHL V. SUPERIOR COURT OF KING COUNTY ET AL., 56 Pac. (Wash.) 35.—*Held,* that until an insolvent corporation within the state is adjudged a bankrupt under the Federal Bankruptcy Law of July, 1898, by a proper tribunal, the right of the state court to appoint a receiver for the corporation under the state law is not suspended.

JUDGMENTS—FOREIGN JUDGMENTS—VALIDITY—STEWART V. NORTHERN ASSURANCE CO., 32 S. E. 218 (W. Va.).—A married woman made a contract which was void under the laws of the state of her domicile. A debtor of hers was garnisheed by the creditor on the contract in a foreign state, and after notice by publication judgment was taken by default against her. The contract was good by the law of the forum. *Held,* that the judgment was not conclusive in a suit by the married woman against her debtor in the state of her domicile. Brannon, P., dissented, on the ground that as by the laws of the forum the court had jurisdiction, the judgment was final and conclusive under the full faith and credit clause. Dent, J., specially concurred on the ground that the judgment was collusive on the part of the debtor garnisheed.

MECHANICS' LIENS—PRIORITY OVER MORTGAGE—CUSHWA ET AL. V. IMPROVEMENT LOAN AND BUILDING ASSOCIATION ET AL., 32 S. E. 259 (W. Va.).—W. Va. Code, p. 652, § 2, provides the "The liens authorized by this and the next preceding section shall have priority over any lien created by deed or otherwise on such house or other structure, and the lots on which the same are erected, subsequently to the time when such labor shall have been performed or material or machinery furnished." *Held,* that a mechanic's lien for work done between February and September, but begun in February, has priority over a deed of trust executed in March. Dent, J., dissented.

MUNICIPAL CORPORATIONS—LIABILITY FOR SERVANTS' TORTS—POWERS—QUILL V. MAYOR, ETC., OF CITY OF NEW YORK, 55 N. Y. Suppl. 889.—Plaintiff, while attempting to board a street car, was struck and injured by a cart belonging to the street cleaning department of the city. The laws of New York impose the duty upon the City of New York of removing the dirt accumulating in the streets, and the ashes and garbage from abutting residences. *Held,* that such duty is quasi private, and not part of city's governmental powers, and that therefore the city is liable for the torts of its servants engaged in the performance of such duty. This decision is contrary to that in *Davidson* v. *City of New York,* 54 N. Y. Supp. 51; *Love* v. *City of Atlanta,* 95 Ga. 129, and *Connelly* v. *Mayor, etc.,* 46 S. W. 566 (Tenn.).

MUNICIPAL CORPORATIONS—POWER TO TAX WITH CORPORATE LIMITS—KAYSVILLE CITY V. ELLISON, 55 Pac. 386 (Utah).—A municipality included within its limits a hamlet of about 400 population, situated two miles from city, as indicated by dwellings, etc. The population of the city itself was 700. The land between was farming land, and the hamlet had never been platted, but had been created by the county commissioners a precinct with justice of the peace and constable. No part of the revenue of the municipality was expended on the hamlet. *Held,* that the municipality could not collect a license fee from persons doing business in the hamlet.

MUNICIPAL CORPORATIONS—TORTS—PUBLIC DUTY—POLICE—NEGLIGENCE—TWIST V. CITY OF ROCHESTER ET AL., 55 N. Y. Suppl. 850.—A patrol wire maintained by a city, broke and fell across a street, killing one thereon. *Held,* that the city was liable for such injury, for the defective erection of such wire. It is immaterial that such wire was used by police department in discharge of public duty. *Woodhull* v. *City of New York,* 150 N. Y. 450, distinguished, as in case at bar, the police department did not itself erect wire, but it was constructed by city, and city allowed public to use wire in carrying out its duty.

PROCESS—SERVICE OF PROCESS—DEFAULT JUDGMENT—G. S. CONGDON HARDWARE CO. V. CONSOLIDATED APEX MIN. CO., 77 N. W. 1022 (S. D.).—Process was served on a director of a corporation, who neglected to notify the managing agents of the corporation. Judgment was taken by default. *Held,* that the court's refusal to open the default after the managing agents learned of the suit, and to allow them to defend, was error. Fuller, J., dissented.

RAILROADS—INJURIES TO EMPLOYE—NEW DEVICES—UNKNOWN DANGERS—PRECAUTIONS—HESKETT V. NEW YORK CENT. & H. R. R. CO., 55 N. Y. Supp. 898.—Defendant railroad company employed skilled bridge constructor to design and take charge of erection of a new device, consisting of a cabin raised twenty-five feet above the railroad track and supported by iron legs imbedded in the ground. The plaintiff was in the cabin, signalling trains, and was injured, because of blowing over of cabin. *Held* (one judge dissenting), that such cabin was a new device and that plaintiff's injuries were received as result of a danger unknown when the device was constructed. Plaintiff allowed to recover. The loss must fall on employer, even though he used every precaution which he knew was requisite, as the device was such a new experiment as to make the employer negligent in allowing plaintiff to use it as safe.

RAILROADS—INJURIES TO TRESPASSERS—EVIDENCE—DECLARATIONS OF PERSON INJURED—BARRETT V. NEW YORK CENT. & H. R. R. CO., 52 N. E. Rep. 659 (N. Y.).—Plaintiff, while trespassing on defendant's freight cars, and stealing a ride at night, was ordered off by the conductor, who then forcibly ejected him, from which he was injured. In an action to recover for such injuries, *held,* that defendant has the right to show a conversation between plaintiff and a third person, concerning the circumstances and causes of accident, including plaintiff's statement in such conversation as to his object in taking the ride. Bartlett, J., dissenting.

RAILROADS—RECEIVERSHIP—PRIORITY OF CLAIMS—THOMAS V. C. N. O. & T. P. RY. CO., 91 Fed. 195.—*Held,* that amounts shown by the books of a railroad company to be due for labor to former employes, which had remained unclaimed for more than six months at the time of the appointment of a receiver, and which had never been reduced to judgment, nor established as liens under any statute, were not entitled to priority of payment, but stood on the same footing as claims of general creditors.

TAXATION OF PUBLIC PROPERTY—EXEMPTION OF PROPERTY BELONGING TO A CITY—OWENSBORO V. COMMONWEALTH, 49 S. W. 320 (Ky.).—Constitution of Kentucky, § 170, provided that "public property used for public purposes" should be exempt from taxation. *Held,* that an engine house and fixtures and park property were used for governmental purposes and therefore exempt. Guffy and White, J. J., dissented on the ground that the said property was "nothing more or less than private property, used for the exclusive benefit of the citizens of Owensboro," and in no sense used for governmental purposes.