RECENT CASES.

ASSIGNMENT FOR CREDITORS—ASSIGNEE'S PURCHASE—MITCHELL V. TYLER, 41 S. W. 422 (Ky.).—One who made an assignment for the benefit of creditors had previously agreed to sell property on which there was a mortgage. The property being sold on foreclosure, the assignee bought it, and against the objection of some of the creditors took title in his own name and then transferred it to the person to whom his assignee had agreed to sell. *Held,* that the sale was valid and that the creditors were entitled to the price the assignee got. Du Relle and White, J. J., dissented on the ground that the creditors were entitled to have the title held for their benefit.

BANKRUPTCY—PRACTICE—IN RE KELLY (EX PARTE BERNHEIM ET AL.); 91 Fed. 504.—There should not be united in one petition a prayer that a debtor be adjudged an involuntary bankrupt and a prayer for a warrant directing the Marshal to sieze and hold his property pending the adjudication. The proceedings are distinct and the better practice is that they should be brought by separate petitions.

BANKRUPTCY—TAXES ON EXEMPT PROPERTY—IN RE TILDEN, 91 Fed. 500.—Bankruptcy act, 1898, § 64, provides that the trustees shall "pay all taxes legally due and owing by the bankrupt." *Held,* that this requires the payment of taxes on bankrupt's homestead, though it have been set apart as exempt.

BOYCOTT—CONSPIRACY—ASSOCIATIONS—BOUTWELL ET AL. V. MARR ET AL., 42 Atl. Rep. 607 (Vt.).—A granite manufacturers' association, composed of 95 per cent. of all the granite manufacturers in a certain place, was organized for the purpose of boycotting plaintiffs. To accomplish this end a by-law was passed which imposed a fine of $50 on any member of the association who carried on business with one not a member, which by-law acted directly against plaintiffs. In consequence the plaintiffs' business was destroyed. *Held,* that the members of the association are liable to plaintiffs for the actual damages caused to their business, even though they did not try to influence persons outside the association. The court says that though each member could lawfully withdraw his patronage from plaintiffs, and even unite to do this, nevertheless a combination for this purpose, employing threats or intimidation, is such an unlawful one as to make defendants liable.

COLLISION WITH BICYCLE—EVIDENCE—QUINN V. PIETRO, 59 N. Y. Supp. 419.—In an action for wrongful death, caused by defendant driving over a boy riding a bicycle, defendant's declaration on being arrested therefor, in which he swore at the bicycle, and said that they were no good, were admissible to show his hostility to bicycles, and as increasing the probability that he was indifferent to the rider's rights.

COMMON LAW—INTERSTATE COMMERCE—TELEGRAPH COMPANIES—CONTRACTS—CONSIDERATION—W. U. TEL. CO. V. CALL CO., 78 N. W. (Neb.) 518.—An action was brought for damages alleged to have accrued to plaintiff

because of unjust discrimination against it by defendant, a public service (telephone) corporation, and in favor of another patron of defendant, in the rates charged for a contemporaneous service. *Held,* upon a review of the cases, that in the absence of National legislation as to the interstate charges, the principles of the common law or general jurisprudence of the State of the action will apply, and that in this State such action will lie.

CONSIDERATION—CONTRACT—CONSTRUCTION—KINSMAN v. FISK, 56 N. Y. Supp. 33.—Plaintiff agreed to sell a certain number of shares in consideration of his being appointed vice-president or consulting engineer of the company for two years at a guaranteed salary of $5,000 per year. *Held,* that the salary was part of the consideration for the stock and that the defendants were liable for it, though within the two years a receiver was, on their application, appointed.

CONSTITUTIONAL LAW—EQUAL PRIVILEGES—KENTZ v. CITY OF MOBILE, 24 So. 952 BROWN v. CITY OF MOBILE, 25 So. 223 (Ala.).—The charter of Mobile provides that "every third year * * * a recorder shall be elected * * * said recorder shall be learned in the law and a practicing attorney at the time of his election." *Held,* that the latter clause is unconstitutional as violating § 2 of Article 1, Alabama Constitution, which provides "that all persons resident in this State * * * are hereby declared citizens of the State of Alabama, possessing equal civil and political rights."

CONSTITUTIONAL LAW—JURY—COSTS—GRIBBLE v. WILSON, 49 S. W. 736 (Tenn.).—Shannon's Tennessee, Code, § 5841, provides that the additional cost of a special jury shall be taxed to the losing party. *Held,* unconstitutional as violating that provision of the Tennessee Constitution which provides that the right of trial by jury shall remain inviolate. It destroys the impartiality of the jury by offering an inducement to find in favor of a party who could not pay costs and against one who could.

CORPORATIONS—ASSESSMENTS—STOCK IN NAME OF AGENT—HOUGHTON v. HUBBELL, 91 Fed. 453.—One buying shares in a national bank had them transferred to his agents. The bank became insolvent and an assessment was ordered on the stock. *Held,* that parol evidence was admissible to show who was the real owner of the stock and that he was liable on the assessment.

CORPORATIONS—STOCK SUBSCRIPTIONS—COLE ET AL. v. ADAMS, 49 S.W. 1052 (Tex.).—Property conveyed in payment of a stock subscription is not to be considered as a payment except to the extent of its money or actual value. This is so, notwithstanding a different and higher valuation was made at the time in good faith by the corporation and subscriber.

CRIMINAL LAW—COURT'S PREJUDICIAL REMARKS—PROVINCE OF JURY—PEOPLE v. HILL, 56 N. Y. Supp. 282.—In cross-examining a witness the counsel for the State asked a question which the witness tried several times to evade, upon which the court directed him to "answer the question and stop quibbling." *Held,* that the remarks of the court was an invasion of the province of the jury as tending to carry the idea to them that the court believed the witness was evading the truth.

CRIMINAL LAW—PRESUMPTIONS—STATE v. SOPER, 49 S. W. 1007 (Mo.).—Where one is charged with the murder of his wife, there is no additional presumption of innocence because of the marital relations between him and his wife. *Leabo's Case,* 84 Mo. 168, criticised.

CUSTOMS DUTIES—VALUATION—AMERICAN SUGAR REFINING CO. v. U. S., 91 Fed. 646.—Section 10, Customs Act, 1890, provides appraisers shall ascertain the actual market value and wholesale price of the merchandise, at the time of exportation to the United States, in the principal markets of the country whence the same has been imported. Certain sugars imported from Brazil lose from 14 to 16 per cent. in weight by drainage during the voyage, but the market price is increased in proportion to the loss of weight. *Held,* that the valuation on the cargo actually received may be increased in this proportion.

DAMAGES—INJURY TO LOCOMOTIVE ENGINEER—CROUSE v. CHICAGO & N. W. RY. CO., 78 N. W. (Wis.) 446.—In an action for personal injuries, *held,* that plaintiff can recover as damages the services rendered him by his wife in nursing him.

DEED—CONSTRUCTION—BUILDING RESTRICTIONS—SONN v. HEILBERG, 56 N. Y. Supp. 341.—A deed contained a covenant "not to erect any building * * * less than three stories in height, and the same to be in every way adapted for use as a family residence." *Held,* that the covenant was not broken by the erection of an apartment house. Bartlett and Woodward, J. J., dissenting.

HUSBAND AND WIFE—CONVEYANCE TO WIFE—RESCISSION—FRAUD—EQUITABLE RELIEF—BASYE v. BASYE, 52 N. E. Rep. 797 (Ind.).—A wife fraudulently procured a voluntary conveyance from her husband by shamming affection for him and promising to be a dutiful wife, but intending to abandon him and procure a divorce as soon as the conveyance was made. *Held,* that the conveyance would be set aside for fraud, since her promises as to future conduct and representation as to her affection were representations of present facts, and not merely unfulfilled promises.

INSOLVENT NATIONAL BANKS—DIVIDENDS TO SECURED CREDITORS—MERRILL v. NATIONAL BANK, 19 Sup. Ct. Rep. 360.—A secured creditor of an insolvent national bank may prove and receive dividends upon the face of his claim as it stood at the time of the declaration of insolvency, without crediting either his collaterals or collections made therefrom after such declaration, subject always to the proviso that dividends must cease when, from them and from collaterals realized, the claim has been paid in full. White, J., vigorously dissents (after an exhaustive review of American and English bankruptcy acts and cases thereon), maintaining that this result is against the purpose of the Act of June 30, 1876 (19 Stat. 63, c. 156), and in particular against § 5236 thereof, requiring the comptroller to make a "ratable dividend" on recognized claims out of assets in the receiver's hands. Harlan, McKenna, and Gray concurring.

LIFE TENANT—DESTRUCTION OF PROPERTY—INSURANCE—SAMPSON ET UX. v. GROGAN, 42 Atl. Rep. 712 (R. I.).—A will devised a house and lot to one for life, the devisee to keep the same in repair. The house was com-

pletely destroyed by fire. The life tenant had an insurance policy on the building covering her interest therein. *Held*, that the life tenant was not obliged to rebuild and that the remainder man could recover no part of the insurance money—nor was the life tenant liable for waste. The decision gives an exhaustive history of liability for waste in like cases.

MARRIED WOMEN'S CONTRACTS—PRESUMPTIONS—WARNER v. HESS, 49 S. W. 489 (Ark.).—Under the Arkansas statutes, which permit a married woman to contract with reference to her services her separate estate and separate business carried on by her, a contract made by her is prima facie invalid. Riddick, J., dissenting.

MUNICIPAL CORPORATIONS—ANNEXATION OF TERRITORY—GIBSON v. WOOD, 49 S. W. 768 (Ky.).—The charter of the city of Louisville provides that "no person shall be eligible to any office who is not at the time of his election a qualified voter of the city, and who has not resided therein three years preceding his election." *Held*, that one who has resided in one place for three years, which place some two months before the election became a part of the city, was eligible for an office under the Louisville charter, though up to that time his place of residence had not been a part of the city.

MUNICIPAL CORPORATIONS—INDEBTEDNESS—LIMIT—CITY OF CHICAGO v. MCDONALD, 52 N. E. Rep. 982 (Ill.).—Constitution, 1870, Article 9, § 12, prohibited a city from becoming indebted, in any manner or for any purpose, to an amount exceeding five per cent. of the taxable value of its property. *Held*, that in determining this indebtedness the cash in the city treasury and uncollected taxes should not be deducted. Cartwright and Phillips, J. J., dissenting.

ORDINANCES—REASONABLENESS—COVERING FOR FRUIT—FROST v. CITY OF CHICAGO, 52 N. E. Rep. 869 (Ill.).—An ordinance provided: "It shall be and is hereby made unlawful to cover any box, basket, or any other package or parcel of fruit, berries or vegetables of any kind, with any colored netting, or any other material which has a tendency to conceal the true color or quality of any such goods which may be sold, offered for sale or had in possession for the purpose of being sold or offered for sale." *Held*, void as an unreasonable interference with and restriction upon the rights of dealers in certain articles of trade and commerce.

PATENTS—PRELIMINARY INJUNCTION—HORN & BRANNEN CO. v. PELZER, 91 Fed. 665.—Appellee took out a patent in 1882. In 1891 this patent was adversely ruled upon, and in 1894 he surrendered the patent and applied for a re-issue, which was granted in 1895. Meanwhile various patents were issued, among which was one which covered the manufacture of the appellant. The Circuit Court of Appeals in the second circuit held the re-issued patent valid. *Held*, on a consideration of the facts as above and of the patent, that though the general rule is a preliminary injunction against infringement will be granted where the patent in question has been adjudged valid in another circuit, that it would be refused here. Butler, D. J., dissented.

POLICE POWER—SCHOOLS—COMPULSORY VACCINATION OF PUPILS—PEOPLE EX REL. LABAUGH v. BOARD OF EDUCATION, 52 N. E. Rep. 850 (Ill.). —A rule adopted by the State Board of Health compelling the vaccination of

children as a prerequisite to their attending the public schools is unreasonable where smallpox does not exist in the community, and there is no reasonable cause to apprehend its appearance. The power to compel the vaccination of children is derived from the general police power of the State, and can only be justified as a necessary means for preserving health.

RAILROADS—CONTRIBUTORY NEGLIGENCE—SAN ANTONIO & A. P. RY. CO. v. GREEN, 49 S. W. 670 (Tex.).—Plaintiff, while running to a fire, found the street blocked by a railway train, not then in motion. He was climbing over the train, when it started and he was injured. Other people were climbing the train at the same time. *Held,* he was not guilty of contributory negligence.

SERVANTS—WHO ARE FELLOW SERVANTS—C. & A. RY. CO. v. SWAN, 52 N. E. Rep. 916 (Ill.).—*Held,* that a baggageman on the train was not a fellow servant of the engineer on the same train.

SUIT AGAINST A STATE—GROSS v. KENTUCKY BOARD OF MANAGERS OF WORLD'S COLUMBIAN EXPOSITION, 49 S. W. 458 (Ky.).—The State of Kentucky created a Board of Managers to provide for the representation of the State at the World's Fair. These managers were to be appointed by the Governor, and the money they were to use was State money and the proceeds of the renting of part of a building erected with this State money. The board had power to make contracts, but were not personally interested in the business. *Held,* that the board was a quasi-corporation and could be sued. Paynter and Guffy, J. J., dissented on the ground that this was a suit against the State.

TRADE NAME—INJUNCTION—AMERICAN WALTHAM WATCH CO. v. UNITED STATES WATCH CO., 53 N. E. Rep. 141 (Mass.).—*Held,* that where a manufacturer of watches in the city of Waltham had acquired a great reputation, and had used the word "Waltham" originally in a mere geographical sense in connection with his watches, but such word had, by long use, come to have a secondary meaning, as a designation of the watches which the public had been accustomed to associate with the name, another person beginning the manufacture of watches a long time thereafter would be enjoined against using the words "Waltham" or "Waltham, Mass.," upon plates of its watches, without some statement distinguishing them from watches made by plaintiff.