RECENT CASES.

ABSORPTION OF UNDERGROUND WATERS BY WATERWORKS—CITY'S LIABILITY.—FORBELL V. CITY OF NEW YORK, 56 N. Y. Supp.—*Held*, a city is liable for lowering the level of subterranean waters under plaintiff's land.

CONSTRUCTION OF STATUTE—DANIELS ET AL. V. COLLEGE, 50 S. W. 205 (Tex.).—A college as a corporation is a "person aggrieved" within the meaning of a Statute prohibiting the sale of liquors to a student of any institution of learning, and further providing that a liquor dealer's bond may be sued on by any person aggrieved by the violation of its provisions, and it is no defense that defendant has compromised with the father of the student.

DAMAGES—INJURY TO BRAKEMAN—AUTOMATIC COUPLER—FAILURE TO USE—NEGLIGENCE—THOXLER V. SOUTHERN RAILWAY CO., 32 S. E. 550 (S. C.).—*Held*, that failure of railroad to use automatic car-couplers on its freight cars was negligence *per se*, and there was liability to injured employees, whether they showed negligence or not. Also, that extension of time, in which Act of Congress required the use of automatic couplers, does not alter the defendant's common law liability.

EVIDENCE—HEINTZ ET AL. V. THAYER ET AL., 50 S. W. 175 (Tex.).—The testimony of a daughter that her father had sent a certain deed, claimed to be executed by him, to be registered, is evidence thereof, even though she could not have known this of her own knowledge, as she was not living at the time. It is fairly inferable that she was speaking of a fact of common knowledge in the family.

EXECUTORS—FRAUDULENT MISAPPLICATION OF FUNDS—CULBERTH V. SMITH, 32 Sup. Ct. R. 714.—An executor is not guilty of fraudulent misapplication of the funds of his testator's estate by his failing to pay over the amount of a note executed by himself in favor of testator in his lifetime.

GIFT INTER VIVOS—HOLMES V. MCDONALD, ET AL.—78 N.W. Rep. 647 (Mich.).—A father conveyed certain lands to his sons, taking back a mortgage conditioned for the payment of interest thereon to him during his lifetime, "and, after his death, the sum of $500 to the sister J." The deed was duly recorded. Thereafter the father discharged the mortgage of record, reciting that it had been duly paid and satisfied, and a new mortgage was given making no provisions for J. *Held*, that the recording of the mortgage constituted a gift to J. inter vivos, and the discharge of the mortgage thereafter would not release the liability thereunder to J.

MORTGAGES PRIORITY—NOTICE—MCALLISTER V. PURCELL, 32 S. E. 715.—A second mortgage takes precedence over an unregistered mortgage, even though the second mortgagee had actual notice of the existence of the first mortgage when his mortgage was executed.

MUNICIPAL CORPORATIONS—POWER TO OFFER REWARDS—PEOPLE ET REL. MAYNARD, ATTORNEY-GENERAL, V. VILLAGE OF HOLLEY, 78 N. W. 665 (Mich.).—An incorporated village, authorized to provide for the preservation of public property, and to make other regulations for the safety and general welfare of its inhabitants, has power to offer a reward for the conviction of the incendiaries who had set fire to buildings within its limits.

MUNICIPALITIES—REGULATING WEIGHT OF BREAD—INVASION OF PRIVATE RIGHTS—CITY OF BUFFALO v. COLLINS BAKING CO., 57 N. Y., § 347.—*Held*, that an ordinance regulating the weight of bakers' bread is void as being an unreasonable invasion of the rights to engage in a lawful business.

NEGLIGENCE—DUNN v. WILMINGTON & W. R. CO., 32 S. E. 711.—In actions for personal injuries, where verdict is directed for defendant, a question whether there was sufficient evidence to go to the jury as to the negligence of the defendant, will be construed in the light most favorable to the plaintiff.

NEGLIGENCE—INSUFFIENCY OF RAILROAD CROSSING—ATCHISON, T. & S. F. R. CO. v. HENRY, 56 Pac. 486 (Ky.).—Railroad negligently responsible for not maintaining crossings large enough for harvesting machinery of unusual size to cross over. Crossings were suitable for ordinary wagons and complied with law. Smith, J., dissenting, on ground that railroad company should not be presumed to know of the use of this unusual machinery.

PROPERTY IN DOGS—LALLEY v. MANCHESTER & A. R. CO.—ZEIGLER v. LAME, 32 S. E. 526 (S. C.).—*Held*, that an owner has such qualified property in a dog as to entitle him to recover damages for a wrongful injury thereto.

PROXIMATE CAUSE—GARRELL v. GREENSBORO WATER SUPPLY CO., 32 S. E. 720.—A water company contracted with a city to furnish said city "with pure and wholesome water for the use of its citizens, and of force at all times sufficient to protect the inhabitants of the city against loss by fire." *Held*, that damage resulting from a destruction of property by fire by failure to furnish the water is the proximate consequence of the breach.

QUO WARRANTO—TITLE TO OFFICE—CITY STREET COMMISSIONER—STATE EX REL. SOUTHEY v. LASHER, 42 Atl. 636 (Conn.).—The authorized presiding officer of a board refused to entertain a motion to take a ballot for the election of a street commissioner. Such motion was then put by a member and carried. The election held to be invalid, for the presiding officer did not preside while it was being carried. Hammersley, J., dissenting, on the grounds that such irregularity as to presiding officer was immaterial

REPLEVIN OF DEAD BODY—KEYES v. KOUKEL ET AL., 78 N. W. 649 (Mich.).—Under How. Ann St., § 6856, providing for replevin where "personal goods and chattels" have been unlawfully taken or detained. *Held*, that replevin will not lie to recover the body of plaintiff's brother in the hands of an undertaker, to whom it had been delivered by the authorities of a hospital.

TAXATION—LOUISVILLE TOBACCO WAREHOUSE CO. v. COMMONWEALTH, 49 S. W. 1069 (Ky.).—A tobacco warehouse company is not taxable under a Statute imposing a tax on "every corporation, company or association, having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service."

TAXATION—HENDERSON BRIDGE CO. ET AL. v. CITY OF HENDERSON, 19 S. C. 553.—The limits of a city extended to low water mark on opposite side of stream. *Held*, that bridge property situate beyond such low water mark is not so far beyond the reach of municipal protection that it cannot receive any benefits from the municipal government, so that to impose taxes on it for city purposes, would be taking private property for public purposes without compensation.

TELEGRAM—CONTRACT TO REPEAT MESSAGE—VALIDITY—W. U. TEL. CO. v. CHAMBLEE, 25 S. (Ala.) 232.—A contract releasing telegraph company from damages unless message is repeated is invalid because opposed to the recognized principle that all individuals or corporations engaged in a public business cannot be allowed to contract against liability for consequences of its own negligence or wilful wrongdoing.

VENDOR'S LIEN—MCWHORTER v. STEWART, 57 N. Y., Supp. 137.—Parent sold land, and by separate instrument provided that in contingency of her death part of the consideration should be paid to her daughter. Both vendor and vendee died, but prior to vendee's death the land was twice transferred; in each case the subsequent purchasers were cognizant of the provision entered into in favor of the plaintiff. The plaintiff, who had no part in the agreement, never received her part of the consideration. *Held*, that plaintiff might enforce vendor's lien in equity.

WAR REVENUE TAX—DIRECT TAXATION—FUTURE DELIVERIES—SALES AT EXCHANGE—CHICAGO STOCK YARDS—NICOL v. AMES, 19 S. C. 522, Internal Rev. Act. of 1898.—Schedule A, part 2 (30 Stat. 458) imposing a tax on "each sale, agreement of sale or agreement to sell any products or merchandise at any exchange or board of trade or other similar place," and which requires on making of such sale the delivery by the seller to the buyer of a written bill or memorandum, to which a revenue stamp shall be affixed equal to the amount of the tax on the sale, is not a direct tax within the Constitution, Art. 1, sec. 9, sutd. 4, which requires an apportionment, same being in nature of a duty or excise tax for privilege of carrying on such business. Sales for future delivery come within the purview of this act, taxing sales made at exchanges and boards of trade not objectionable for non-uniformity, such places affording special facilities not afforded elsewhere, thus furnishing a legitimate ground for a classification for imposition of a tax. And if tax is one equally imposed on all availing themselves of such facilities, it complies with the provisions of the Constitution in regard to uniformity. The fact that such tax is imposed upon sales of products and merchandise, and not upon bonds, stocks, etc., does not render same invalid. Also that the Chicago Stock Yards, where facilities are provided for sale of stock, was a similar place within the meaning of the Act, and sales made at such place are subject to its provisions.

WILLS — TESTAMENTARY INTENT—ACKNOWLEDGMENT EVIDENCE — IN RE KISECKER'S ESTATE — APPEAL OF HARTER, 42 Alt. 886 (Penn.). — An instrument leaving property after death of the maker to certain beneficiaries was made ten years before death, and kept in maker's Bible. It was never witnessed. Just before death it was read over to the maker. These circumstances were sufficient for holding it to be a will.

WILLS—LATENT AMBIGUITY—EXTRINSIC EVIDENCE—WHITEMAN v. WHITEMAN, 53 N. E. (Ind.) 225.—A will executed October 18, 1890, recited that where, as testator, "on the 18th day of October, 1890, made my last will and testament of that date, do hereby declare the following to be a codicil of the same." *Held*, that parol evidence was admissible to show that there was no such will previously executed on October 18, 1890, but there was a will dated February, 1890, and that the latter will was incorporated in the will in controversy and then destroyed.