RECENT CASES.

APPEAL—SERVING "CASE"—CITY OF GARDEN CITY v. MERCHANTS' AND FARMERS' NATIONAL BANK OF DANSVILLE, N. Y., 60 Fed. (Kan.) 823.—The records of the lower court show that after the judgment had been rendered the court extended the time of the defendant for making and serving a case to the 22d day of March, 1897. On the 22d further extension was made. Defendant claims that the case made was not served within the time fixed by order of the lower court. *Held*, that a time for serving such "case" expired March 21, at midnight, and a case served under an order made March 22 would not be served in time.

In King v. *Stevens & Agnew*, 5 East 244, Lord Ellenborough said "that the words 'to and until' may be either inclusive or exclusive, according to the manifest intention of the persons using them." The cases of *Montgomery* v. *Reed*, 69. Me. 514; *Thomas* v. *Hatch*, 3 Sumn. 178, 179, and *De Haven* v. *De Haven*, 49 Ind. 296, hold that the word "to" is exclusive, while *Gottlieb* v. *The Fred. W. Wolf Co.*, 75 Md. 126, a case in many respects parallel to the present case, holds that the word "to" is inclusive. In the cases of *Bellhouse* v. *Miller*, 4 Hurl. & Nor. 120; *Isaac* v. *Royal Ins. Co. L. R.*, 5 Exch. 296, and *Thomas* v. *Douglas*, 2 Johns Cases 225, hold that the word "until," which is synonomous with "to," is inclusive.

ARREST—JUSTIFICATION—FALSE IMPRISONMENT—SNEAD v. BONNOIL, 63 N. Y. Sup. 553.—Officers, suspecting felony, made an arrest without a warrant and found a concealed weapon in possession of the party, for which misdemeanor he was subsequently fined. Failing to get proof of felony, they charged the plaintiff with carrying concealed weapon after he had been in jail 24 hours beyond the time when he was entitled to discharge upon bail, had they made such charge at once. *Held*, false imprisonment. Van Brunt, P. J., and Ingraham, J., dissenting.

As to justification for arrest in that a concealed weapon was found, the majority opinion follows *Murphy* v. *Kron*, 8 N. Y. St. R. 230. "You cannot arrest a man merely because, if all were known, he would be arrestable." Even admitting justification, they held that, owing to the said 24 hours' overtime, the case was within the rule laid down in the *Six Carpenters' Case*. 8 Coke 146, thus deeming the officers trespassers ab initio. The dissenting judges held that the detention was not wholly illegal and that an arrest made by an officer without a warrant for a misdemeanor committed in his presence is not a false imprisonment. 12 *Am and Eng. Ency.* 726, 740; *Meserve* v. *Folsom*, 20 Atl. 926. They contended also that it was against public policy thus to hamper the police in the exercise of their discretion.

ATTORNEY AND CLIENT—LIEN—WEATHERFORD v. HILL ET AL., 56 S. W. Rep. 448.—Claim for attorney's lien on land assigned as dower. *Held*, where attorney obtains partition of land he acquires no lien for his fees on the part set aside for his client. Bunn, C. J., dissenting.

This ruling is in strict conformity with the decisions contained in *Hershey* v. *Deo. Val.*, 47 Ark. 86; *Gilson* v. *Buckner*, 44 S. W. 1034. Nevertheless, in *Brown* v. *Biddle*, 3 Tenn. Ch. 618; *Wilson* v. *Wright*, 72 Ga. 848, the lien was recognized. It was also extended in England by 23 and 24 Vict., ch. 127 and 128.

BILLS AND NOTES—IRREGULAR INDORSEMENT—CARRINGTON v. ODOM, 27 Sou. Rep. 510 (Ala.).—Where defendant endorsed a promissory note before

delivery. *Held*, he is subjected to only the obligations of an endorsee, unless it is shown by oral evidence (which is held admissible) that he executed it as maker.

The authorities are hopelessly at variance on the question of anomalous indorsements; some courts holding such an endorser a joint promisor or surety. *McGuire* v. *Bosworth*, 1 La Ann 248. Pennsylvania regarding liens as a guarantor. *Schollenberger* v. *Nelif*, 28 Pa. St. 189. The Connecticut court holds in *Perkins* v. *Catlin*, 11 Conn. 213, that the nature of the indorsement is to be proved by oral evidence, while in *Wright* v. *Morse*, 9 Gray 337, the presumption that he intended to be an original promisor seems to be conclusive. The difficulty of carrying out the intention of the parties and at the same time preserving the certainty and exactness of commercial instruments, possibly accounts for the conflict among the courts.

CONSTITUTIONAL LAW—BANKRUPTCY—ALIMONY—BARCLAY V. BARCLAY, 56 N. E. 636.—Plaintiff in error brings record to the Supreme Court claiming that proceedings, resulting in a decree of alimony, should have been stayed in Circuit Court until adjudication on a bankruptcy petition, and also claiming that Section 12 of Article II of the Constitution: "No person shall be imprisoned for debt, etc.," has been violated. *Held*, that there was no error committed by the Circuit Court.

The question as to whether alimony is a "debt" within the meaning of a statute providing for relief from such debts by a discharge in bankruptcy, seems to be undecided. A decree for alimony and costs is a provable debt under Bankrupt Act of 1898. *In re Van Orden*, 96 Fed. 86. Alimony is not a debt. *Noyes* v. *Hubbard*, 15 L. R. A. 394. Nor is it a "debt" within the constitutional inhibition of imprisonment for debt, and the defendant may be held to answer for contempt in default of payment. *Pain* v. *Pain*, 80 N. Car. 322; *Chase* v. *Ingalls*, 97 Mass. 524. Failure to pay alimony as directed by order of court is no ground for imprisonment. *Wightman* v. *Wightman*, 45 Ill. 167; *Steller* v. *Steller*, 25 Mich. 159.

CONSTITUTIONAL LAW—DENTISTRY—EXAMINATIONS—KNOWLES V. STATE, 45 Atlan. 877 (Md.).—By a legislative act all persons wishing to practice dentistry in Maryland were required to pass an examination given by a State board of examiners. By a clause in the act the board was allowed to waive the examination at its discretion. *Held*, that such an act was constitutional.

As to the constitutional right of a State to require examinations of this kind there can be no doubt. *Dent* v. *W. Va.*, 129 N. S. 114; *Singer* v. *State*, 72 Ind. 464. The point of controversy in the case was whether the right to waive the examination by the board was not conferring upon it unreasonable and arbitrary power, thus making it come under the decision as laid down in *Yiek Wo* v. *Hopkins*, 118 U. S. 356. The court reached its decision on the idea that the spirit and principle upon which the act was passed precluded any limit of purely personal and arbitrary power. *Williams* v. *State Board*, 93 Penn. 619; *State* v. *Creditor*, 44 Kan. 568.

CORPORATIONS—PROMOTERS—ATTORNEY AND CLIENT—FREEMAN IMP. CO. V. OSBORN, 60 Pac. Rep. 730 (Colo.).—Where an attorney rendered services to the promoter of a corporation, drawing articles of association, by-laws, etc. *Held*, the charge is an indebtedness of the corporation when it comes into existence. *Bell's Gas Co.* v. *Christie*, 79 Pa. St. 54; *Law* v. *Connecticut, etc., Ry. Co.*, 45 N. H. 370. Contra, *Gent* v. *Manufacturer's Ins. Co.*, 107 Ill. 652.

CORPORATE STOCK—DAMAGES—EVIDENCE—MARKET QUOTATIONS—SALES—WILDES ET AL. V. ROBINSON, 63 N. Y. Sup. 811 (App. Div.).—In an action to recover damages for failure to deliver stock according to contract, evidence as to market quotations on said stock at a certain time was admitted to show its value. *Held*, inadmissible unless based on actual sales. New trial ordered. O Brien and Ingrahm, J. J., dissenting.

The court held that a mere bid in a distant market, without proof of attending circumstances, is not competent evidence as to value of the property in question. *Whitney* v. *Thacher*, 117 Mass. 527; *Hanna* v. *Sanford*, 20 W. Dig. 288. The proper measure of damages was the difference between the price agreed to be paid and the market value of the stock at the contracted date of delivery. Interest is sometimes added. *Gibbons* v. *U. S.*, 8 Wall 269; 5 *Am. & Eng. Ency.* 630. The dissenting judges held that in absence of other evidence a reference to a distant market is justified. *Gregory* v. *McDowal*, 8 Wend. 435; *Durst* v. *Burton*, 47 N. Y. 167. They also contended that a bid is a fair basis of estimation, as it is generally below actual value.

DIVORCE—CRUELTY—HAIGHT V. HAIGHT, 82 N. W. 443 (Iowa).—*Held*, frequent and false charges of adultery made against a wife by her husband constitute cruelty for which a divorce may be granted.

The earlier courts were loath to consider this sufficient ground. False charges of adultery and obscene epithets do not constitute cruelty sufficient for the granting of a divorce. *Shaw* v. *Shaw*, 17 Ct. 189; *Harding* v. *Harding*, 22 Md. 337. There has been a tendency to change, and now a false and malicious charge of adultery is generally held sufficient cruelty. *Am. Eng. Ency. of Law* (2d ed.), 9-797, and cases cited there.

DIVORCE—DEATH OF PARTY—BEGBIE V. BEGBIE, 60 Pac. Rep. (Cal.) 667.—Where defendant in a divorce proceeding died after the rendering of a decree of divorce in the trial court and before a hearing in the appellate court (an appeal having been granted). *Held*, the action abated, and the relation of husband and wife with the property rights incident thereto was severed, and no review could be had. *Kirchner* v. *Dietrich*, 110 Cal. 502; *Barney* v. *Barney*, 14 Ia. 189. But see *Donner* v. *Howard*, 44 Wis. 82, which intimates that upon death of either party pending an appeal from a judgment granting a divorce, the appeal *would be reviewed* for purpose of protecting persons whose property interests were affected by the judgment.

ELECTRICITY—ACTION FOR CAUSING DEATH—FAILURE TO INSULATE WIRES—THOMAS, ADMINISTRATOR, V. MARYSVILLE GAS CO., 56 S. W. 153 (Ky.).—The defendant supplied the wires of a street railway company with electricity. The railway company failed to properly insulate its wires, thus causing death of plaintiff's intestate. *Held*, the Gas Company could be held liable for damages. Buchanan and DuRella, J. J., dissenting.

This is one of the first cases in which this exact question has been decided. It would seem on principle that where an article was delivered to the vendee he would be liable for damages resulting from it. *Dixon* v. *Yales*, 2 Nev. & M. 202; *Foster* v. *Roper*, 111 Mass. 10. A person handling dangerous substances, however, does so at his peril. *Whart. Neg.* § 851, and thus the defendant in handling so dangerous a force as electricity, the nature of which is so little understood by the public, should have used more than ordinary care in seeing that the wires which they charged for the Railway Company were properly protected. *McLaughlin* v. *Electric Light Co.*, 100 Ky. 178.

EXCESSIVE SENTENCE—HABEAS CORPUS—DE BARA V. U. S., 99 Fed. Rep. 942.—*Held*, upon habeas corpus proceedings, a sentence for a longer term than allowed by law was void only as to the excess, and discharge was refused. There are two rules, one considering the excessive sentence as an entirety and wholly void; the other holding only the excess void. The former was held in *Ex parte Kelly*, 65 Cal. 154; *Ex parte Page*, 49, Mo. 291; and *Ex parte Bernert*, 7 Pac. C. L. I. 460; the latter obtains in Alabama, Georgia, Kansas, Maine, Massachusetts, New York, West Virginia, Wisconsin, Virginia, and the Federal Courts. Sennott's Case 146 Mass. 489, *In re Graham*, 74 Wis. 450; *People* v. *Baker*, 89 N. Y. 460, and *Ex parte, Max.*, 44 Cal. 579.

FERRIES—ESTABLISHMENT BY A COMBINATION OF PERSONS FOR THEIR OWN BENEFIT—TANNER V. WARREN, 56 S. W. 167 Ky. 1.—A number of persons combined and bought a boat for the convenience of themselves and their families in crossing a stream within the prohibited distance of an exclusive ferry privilege. *Held*, that there was a violation of the privilege, and an injunction would lie. Du Rella, J., dissenting.

It is difficult to see just where the courts draw the line as to what will constitute an infringement of a ferry privilege. The cases show that it is no infringement for a person to transport his own property in his own boat. *Alexandria, etc., Ferry Co.* v. *Wisch*, 73 Mo. 655; *Trent* v. *Cartersville Bridge Co.*, 11 Leigh (Va.) 521. One case, at least, hold that this right may be even extended to the transporting of employees, guests and friends. *Hunter* v. *Moore*, 44 Ark. 184. In the case stated the combination for the express purpose of avoiding the ferriage was undoubtedly the ground upon which the decision was based.

FIRE INSURANCE—CONTRACT—POLICY—DELIVERY—PROOF OF LOSS—WAIVER—HICKS V. BRITISH AMERICA ASSUR. CO., 56 N. E. 743 (N. Y.).—A plaintiff's assignor had a conversation with defendant's local agent, and made a contract of present insurance for $2,500 upon his property. Two days later said property was destroyed by fire, and before the standard policy was received. When notified of the loss, defendant's agent denied that a verbal contract was made, but the agreement was conclusively proved in court. Plaintiff suing on breach of contract, defendant holds that the verbal contract embraced the conditions of the standard policy of fire insurance, which states that a proof of loss must be shown within sixty days after the fire. Plaintiff admits that he neglected to do this, but claims that the suit being for breach of contract, such proof of loss is immaterial. *Held*, the failure of defendant's agent to issue a standard policy and his denial of the contract was not a waiver of defendant's right to the provisions of the policy requiring a proof of loss. Landon, Werner and Haight, J. J., dissenting.

In the cases of *Angell* v. *Insurance Co.*, 59 N. Y. 171, and *Ellis* v. *Insurance Co.*, 50 (N. Y.) 402, it was held that an agent had authority to make a verbal contract of insurance and that "recovery of the amount to be insured is proper, as damages for the breach of such contract." The court overrules these decisions on the ground that they were made before the Legislature had prescribed a standard policy of fire insurance in the State.

Judge Werner, in his dissenting opinion, contends that since the agent denied the verbal contract, plaintiff could regard it as rescinded and sue for breach. *Stokes* v. *Mackay*, 41 N. E. 496.

GROWING CROPS—ATTACHING CREDITORS—CASE ON SHARES—CURTNER V. SYNDOW. 60 PAC. REP. (Cal.) 462—Where rent for leased land was to be paid in a proportion of the crops, and the lessor assigned his interest in the growing crops to a third person. *Held*, as to the assignor's attaching creditors, the growing crops were personal property and title passed to assignee.

Much conflict of authority exists respecting the question of growing crops. *Tiedeman Real Prop.* § 201 holds the lessor in a cropping contract has no vested interest in the crop. as such; his title vesting only after apportionment and delivery, to the same effect. *Aiken v. Smith*, 21 Vt. 181; *Pickens v. Webster*, 31 La. Ann. 870, holds the uncut crops under such an agreement subject to the lessee's creditors; also does *Howard Co. v. Kyte*, 28 N. W. Rep. (Ia.) 609, and *Long v. Leavers*, 103 Pa. St. 517. In support of the present case see *Pope v. Hurtle*, 14 Cal. 403.

HABEAS CORPUS—EXTRADITION—TREATY STIPULATIONS—COHN V. JONES, 100. Fed. Rep. 639.—Plaintiff was extradited from Canada upon an information charging arson for the burning of a house, further described as in the occupa-

tion of a shoe company. In the treaty it was stipulated that there should be no liability for any but the offense surrendered for. The alleged house was in fact a store, the burning of which was statutory arson in Iowa, but not arson at all in Canada. *Held*, the action of the Canadian authorities in giving over the prisoner was conclusive and habeas corpus was refused.

INDIANS—CAPACITY TO SUE—EJECTMENT—JOHNSON v. LONG ISLAND R. Co., 56 N. E. 992.(N. Y.).—Plaintiff, a member of the Montauk tribe of Indians, brought action in ejectment on behalf of himself and any members of the tribe who would come in and contribute to the expense. *Held*, that Indian tribes are wards of the State and generally speaking are possessed of only such rights to appear and litigate in courts of justice as are conferred on them by statue, Vann and Landon, J. J., dissent.

Where the jurisdiction depends on the subject matter of the controversy and not upon the status of the parties, the weight of authority seems to favor the right of an Indian to a standing in both the United States courts and the State courts. *Wiley v. Keokuk*, 6 Kan. 94; *Yick Wo v. Hopkins*, 118 U. S. 356; *Dred Scott v. Sandford*, 19 How. (U. S.) 403.

INTERNAL REVENUE—STAMP TAX—BONDS OF SALOON KEEPERS—UNITED STATES v OWENS, District Court, E. D, Missouri, Fed. Rep. 160, Page 170.—The question presented by the demurrer to the information in this case is whether a dramshop keeper's bond, given pursuant to the provisions of the State of Missouri, is subject to the stamp tax of 50 cents imposed by the war revenue act of 1898 (Inter Alia) upon all "Bonds of any description, except such as may be required in legal proceedings not otherwise provided for in this section."

Held, that a bond given by a saloon keeper, as one of the conditions of the granting by the State of a license, is an instrumentality employed by the State to execute and enforce its own laws in the exercise of its police powers, and does not require an internal revenue stamp, under the war revenue act of 1898. The most notable point in this case is the fact that the Court construes the bond as a part of the license. It is a well established rule that the license itself is exempt from the stamp tax. The court maintains that the license does not express the entire contract between the State and saloon keeper; but that the bond and license taken together, constitute the contract or license, therefore, as part of the license, is not liable to be taxed.

JUDGMENT—BAR—LIBEL AND SLANDER—CORPORATIONS—UNION ASSOCIATED PRESS v. HEATH, 63 N. Y. Supp. 96.—The Associated Press had published a libel on the Union Associated Press by sending it to its correspondents. For that publication a recovery was had against the Associated Press by the Union Associated Press. The defendant in this case was a publisher to whom the Associated Press had sent the libel, and he had republished it. *Held*, that the judgment against the Associated Press was no bar to a recovery against him. Van Brunt, P. J., and McLaughlin, J., dissenting.

Though the libel be the same, yet a different publication will give another cause of action. Every publication must be regarded as a new and distinct injury. *Wood* v. *Pangburn*, 75 N. Y. 498. A recovery for the wrong by the first publisher of a libel is not a satisfaction for the second publication. *Wood* v. *Pangburn* (supra). The dissenting justices maintain that the recovery against the Associated Press precludes further recovery from other publishers, as the act of sending the article, and the actual publication of it by the recipient, constitute a simple wrong, for which one recovery would be a complete satisfaction as to all. *Knapp* v. *Roche*, 94 N. Y. 329; *Lord* v. *Tiffany*, 98 N. Y. 412. The prevailing opinion seems supported by the greater weight of authority.

LANDOWNER'S PROPERTY IN SUBTERRANEAN OILS AND GAS—OHIO OIL CO. v. STATE OF INDIANA, 20 Sup. Ct. Rep. 576.—A statute was passed by the Legislature of Indiana restricting the waste of oil and gas by the owner of the soil. *Held*, constitutional and not an interference with the rights of private property.

In the present case subterranean streams are held to be of the nature of things ferae naturae, and that property therein is not obtained until a reduction to possession takes place by a confining in vaults, vats or other appropriate receptacle. See Comment.

LANDLORD AND TENANT—ABANDONMENT OF PREMISES—RELETTING—GRAY v. KAUFMAN DAIRY AND ICE CREAM CO., 56 N. E. 903 (N. Y.).—Action to recover two months' rent of plaintiff's premises. Defendant abandoned leased premises of plaintiff, who then wrote to the defendant, refusing to accept his offer to surrender, stating that he would relet premises on his account and hold him responsible for any loss. Defendant did not reply, and an interview was held, and an offer of compromise was made. Said plaintiff wrote defendant that he had an offer for premises at a lower rental, and asked him if he would make good the difference. Not receiving a reply he relet, in his own name, to new tenant. *Held*, that the acts of the plaintiff operated as an acceptance of defendant's offer to surrender, as defendant's failure to reply did not create a presumption that he had agreed to the reletting. Landon, J., dissenting.

Where a tenant abandons premises during his term, without fault on the part of the landlord, the tenant is liable for the rent, but the landlord must relet the premises if possible (12 *Am. & Eng. Enc.* 751). It is hard to see, therefore, why the landlord's reletting of the premises in his own name discharged the defendant (*Locknow* v. *Hargan*, 58 N. Y. 635).

LIBEL AND SLANDER—SUBSEQUENT CONDUCT—ADMISSION OF EVIDENCE—MATHEWS v. DETROIT JOURNAL CO., 82 N. W. 243 (Mich.).—In an action, in charging that plaintiff and another were found together in a compromising position, where the evidence showed this, and earlier acts of intimacy. *Held*, that evidence of subsequent improper actions of the two together was admissible.

The general rule against the admission of proof of subsequent similar acts to prove commission of an act by defendant in criminal cases, is, it is said, somewhat relaxed where the offense consists of illicit intercourse between the sexes. *Am. & Eng. Ency. of Law* (2d ed.) 1–753 and 4. Evidence of subsequent improper familiarity is held admissible. *Thayer* v. *Thayer*, 101 Mass. 111; *Crane* v. *People*, 48 N. E. 54, 169, Ill. 395; *State* v. *Bridgeman*, 49 Vt. 202, 24 Am. Rep. 124; Contra, *State* v. *Donovan*, 61 Iowa 278; *People* v. *Fowler*, 62 N. W. 572, 104 Mich. 449; *Com.* v. *Pierce*, 11 Grey. 447.

LIFE INSURANCE—APPLICATION—FALSE STATEMENTS—POLICY—VALIDITY—STERNAMAN v. METROPOLITAN LIEE INS. CO., 63 N. Y. Supp. 674.—This was an action to recover the amount due on a policy issued in reliance on a statement contained in the application, and warranted true, which was in fact false, and which was written therein, by the medical examiner of the company, who knew of its falsity and who by the terms of the application was made the agent of the insured party. *Held*, the policy was void. Spring, J., dissenting.

That knowledge by the insured that his statements were false renders the policy void, is undisputed. *Clements* v. *Indemnity Co.*, 51 N. Y. Supp. 442; also, that an insurance company may require that the person conducting the examination be considered as the agent of the insured and not of the insurer, is well sustained by authority. *Bernard* v. *Association*, 43 N. Y. Supp. 527. But it has also been held that such stipulations cannot change the facts, and

that where a duly appointed agent of the company acts in its behalf, within the scope of his authority, as otherwise determined, his acts shall be binding on the company. *Whited* v. *Germania, etc., Ins. Co.*, 76 N. Y. 415. This latter rule seems much more equitable.

MASTER AND SERVANT—FELLOW SERVANT'S NEGLIGENCE—GENERAL REPUTATION—KNOWLEDGE OF MASTER—LAMBRECHT v. PFIZER, 63 N. Y. Supp. 591.—A fellow-servant, with a general reputation for incompetency, negligently pushed a truck into a shaft and thereby caused injury to the plaintiff, who was on a platform elevator below. *Held*, master not liable.

The court held that the general reputation for incompetency of a servant among his fellow servants was not sufficient to charge the employer with knowledge of the same without proof of specific cases of negligence, in which respect the plaintiff failed to establish his case. *Park* v. *Railroad Co.*, 155 N. Y. 215. It has been held, however, that ignorance of incompetency tends to show negligence on the part of the master and he is liable accordingly. 12 *Am. & Eng Ency.* 912. Cooley, J., seems to favor this idea in *Davis* v. *Detroit R. R. Co.*, 20 Mich. 124.

MASTER AND SERVANT—INJURIES TO SERVANT—INSTRUCTIONS—RIBICH v. LAKE SUPERIOR SMELTING CO., 82 N. W. 279 (Mich.).—An employee was injured by the explosion of a pot of molten copper which he dumped at a place where there was water. *Held*, that an instruction that it was the duty of the master to warn plaintiff that an explosion might result from contact with water, and of the "nature, force, and probable effect" of such explosion, was not erroneous as imposing upon the master the duty of foretelling the precise result of any possible explosion. The master is not discharged by informing servant generally that the service is dangerous. *Am. & Eng. Ency. of Law* (*1st ed.*) 14-897. The master should inform servant of dangers likely to result from explosion from contact of hot metal with water. *McGowan* v. *La Plata Mining and Smelting Co.*, 3 McCrary's Rep. (393). See note to *Farmer* v. *Ant. Iowa R. R. Co.*, 24 N. W. 895.

MARITIME TORTS—DEATH FROM NEGLIGENCE—LAW APPLICABLE—RUNDELL v. LA CAMPAGNIE, 100 Fed. 655.—Plaintiff's intestate met his death at sea in the collision of the La Bourgogne. Negligence was alleged and damages asked for. *Held*, in absence of allegation that death occurred on the ship flying the French flag, the tort must be held to have been committed on the high seas, to which the local French law is unapplicable and the general maritime law, which gives no action for death by negligence, applies.

This we deem to be a good interpretation of a bad law. Congress should fill the gap in the maritime law that Lord Campell's Act did for the common law.

MARRIAGE SETTLEMENTS—SEPARATION—VALIDITY—KING v. MOLLOHAN ET AL., 60 Pac. Rep. 731 (Kan.).—Where husband and wife by mutual agreement separated and made mutual conveyances in consideration thereof. *Held*, such conveyances valid in law.

The disposition of courts to regard the intention of contracting parties and their reluctancy to permit the marriage status to be disturbed by agreement of the parties have led to fine distinctions among the authorities. Sir William Scott in *Mortimer* v *Mortimer*, 2 Hagg. Cous. 318, holding no agreement binding between married persons in consideration of separation; also *Parsou's Coutr.*, p 358, but an agreement to make a settlement for support during such separation is upheld. *Wilson* v. *Wilson*, 3 B. & Ad. 743; *Dutton* v. *Dutton*, 30 Ind. 452. But an executory agreement to this effect before separation has taken place will not be enforced. *Walker* v. *Walker*, 9 Wall 743.

MUNICIPAL CORPORATIONS — NEGLIGENCE — EXCAVATIONS — GAS — DEATH — QUESTIONS FOR JURY—CORBIN v. CITY OF PHILADELPHIA, 45 Atl. Rep. 1070. (Penn.).—Where death of plaintiff's son was caused by gas at the bottom of a trench on defendant's street, while attempting to rescue another who had been overcome by the gas, and there was evidence that the other revived and came up unaided from the bottom of the trench, and that those who went down after the deceased came up uninjured. *Held*, that the question whether the deceased was guilty of contributory negligence was for the jury. *Linnehan* v. *Sampson*, 126 Mass. 506.

The law has so great regard for human life that it will not impute negligence to an effort to preserve it, if the effort is made with a reasonable regard for the rescuer's own safety. *Eckert* v. *Railroad Co.*, 115 N. Y. 22.

Mitchell J., Green C. J., Fell J., dissenting. That there is no well recognized principle of law to sustain the results arrived at, only an admiration for heroism, which has no proper place in the administration of justice.

NEWS AGENCIES—MONOPOLIES—INTER-OCEAN PUBLISHING CO. v. ASSOCIATED PRESS, 56 N. E. 822 (Ill.).—This is a petition for an injunction to prevent the appellee from expelling appellant from membership in the Associated Press Publishing Co, for an alleged violation of one of its by-laws forbidding a member from publishing any news not obtained from, or with the consent of the association. *Held*, a provision in the by-laws of a corporation organized to gather and sell news to newspapers, and in the contract with the publisher of a newspaper, that one receiving news from it shall not receive news from any other corporation, which its directors shall declare antagonistic to it, is void, as creating a monoply.

If this decision is followed by other courts it must surely have considerable effect, since it makes news agencies, and other companies of a like nature, quasi-public corporations, and as such, subject to the laws governing them, one of which is the prohibition of monopolies injurious to the public. See Comment.

OIL AND GAS LEASES—CONDITION PRECEDENT—FORFEITURE—HUGGINS v. DALEY, 99 Fed. Rep. 606.—Where a lease was given to bore and work gas and oil wells on leasor's land, the consideration being one dollar and a royalty on the products obtained, with a forfeiture clause stipulating for the payment of $50 in case of failure to bore a well within ninety days, it was held that the failure to comply by completing a well in ninety days made the lease voidable, this being a condition precedent and the whole consideration.

Such leases are construed against the grantee. *Oil Co.* v. *Fretts*, 152 Penn. St. 451, where the whole consideration is the performance, this makes it a condition precedent. *New Orleans* v. *Texas & P. R. R.*, 171 U. S. 334, and such condition was not relieved by the provision to forfeit $50 for failure to comply. Such a lease vests no present title until the condition has been fulfilled, and failure to explore made the lease a *nudum pactum*.

RAILROADS—WRONGFUL EJECTMENT OF PASSENGER—DAMAGES—BADER v. SOU. PAC. CO., 27 South. Rep. 584 (La.)—Where plaintiff had paid the fare to his destination, but was erroneously evicted some distance before reaching his destination, and proceeded to walk there instead of taking the next train, and was injured. *Held*, no recovery.

The doctrine that one injured by the careless or willful act of another, must use ordinary care to keep the damages to the smallest amount is carried, in the present case, to the extent of holding, that if one have money to ride, but walks, and is injured, such care is not exercised. *Beers* v. *Board*, 35 La Ann. 1132; *Spry* v. *Ry. Co.*, 73 Mo. App. 203.

RECEIVERS—BONDS—LIABILITY OF SURETY—GOOD FAITH—LESTER v. LAWYERS' SURETY CO., 63 N. Y. Sup. 804 (App. Div.).—An action, based on a receiver's disobedience of an order of the appellate court requiring him to pay out money, was brought against the surety on the receiver's bond. *Held*, that the defendant may show excuse for the apparent disobedience. Van Brunt, P. J., and McLaughlin, J., dissenting.

When a receiver disobeys an order of court, his surety cannot be held liable unless by express terms to such orders he is brought himself into privity with his principal. *Thompson* v. *McGregor*, 81 N. Y. 592; *Douglass* v. *Howland*, 24 Wend. 25. The surety escaped by showing that previous to the order of the Appellate Court the receiver had paid the money in pursuance of an order of the trial court, which the Appellate Court reversed. *Lovett* v. *Ger. Ref. Church*, 12 Barb. 67; *Simpson* v. *Hornbeck*, 3 Lans. 53. Whether or not said payment was made in good faith is a question for the jury.

SLANDER—PROVINCE OF JURY—FRIEDBURG v. NUDD, 60 Pac. Rep. (Kan.) 476.—*Held*, in an action for slander, that the province of the jury extends not only to determining the language used, but also to construing what it means, and instruction is error to the effect that if the jury find certain words were used, then they must find slander therefrom. The entire question is held one of fact. *Royce* v. *Maloney*, 5 Atl. (Vt.) 395; *Riddell* v. *Thayer*, 127 Mass. 487; *Vanderlip* v. *Roe*, 23 Pa. St. 84. But this doctrine is qualified, Judge Starrett dissenting, in *Ry. Co.* v. *McCurdy*, 8 Atl. (Pa.) 230.

STATUTE OF LIMITATIONS—BURDEN OF PROOF—GUPTON v. HAWKINS, 35 S. E. 229 (N. C.).—Where in an action on a bond the statute of limitations was pleaded as a defense. *Held*, the burden of proof is on the plaintiff to prove that the statute has not run. *Grant* v. *Burgwyn*, 84 N. C. 560; *Brice* v. *Brice*, 2 Ind. 87.

STATUTES OF LIMITATION—WHICH GOVERNS—STATUTORY LIABILITIES—BRUNSWICK TERM. CO. v. NAT. BANK OF BALTIMORE, 99 Fed. Rep. 635.—*Held*, in an action brought in Maryland v. defendant bank as a stockholder in an insolvent Georgia bank on a liability created by statute, the Georgia statute of limitations and not the Maryland one governs. Brawley, J., dissenting. The general rule is that the lex fori controls the remedy, and the statute of limitations pertains to the remedy. The statute of the State, therefore, in which the action is brought applies. But where the liability is purely a statutory one, it apparently forms an exception to the rule. The *Harrisburg*, 119 U. S. 199; *Flash* v. *Conn.*, 109 U. S. 371; *Fennell* v. *Southern Kas. R. R.*, 33 Fed. Rep. 427, seems to indicate this. It is clear that no action can be maintained anywhere on such a liability when the statute has run against it in the State giving it. *Krogg* v. *A. & W. P. R. R.*, 77 Ga. 202; *Eastwood* v. *Kennedy*, 44 Md. 563; *Halsey* v. *McLean*, 12 Allen (Mass.) 439; *P. R. R.* v. *Hine*, 25 Ohio St. 629. So it seems only fair, as this case holds, to compensate for this restriction by allowing the action to be maintained till it is barred in the State creating it.

TRADE-MARK—CORPORATE NAME—EXCLUSIVE RIGHT—HYGEIA DISTILLED WATER CO. v. HYGEIA ICE CO., 45 Atlan. 957 (Conn.).—The plaintiff had adopted the word "Hygeia" as a trade-mark to designate its product of distilled water and beverages made therefrom. The defendant adopted the same word to designate its products and was sued by the plaintiff for infringement. *Held*, that the defendant could be enjoined.

This case is peculiar, in tha tthe word "Hygeia" permits of two separate and distinct meanings. The word originally was used as the name of a mytho-

logical person. Later on it was adopted as a term synonomous with health. Under this latter signification, as indicative of quality, the decisions of numerous cases would clearly have given the defendant the right to use the term. *Russia Cement Co.* v. *Le Page*, 147 Mass. 211; *Ginter* v. *Kinney Tobacco Co.*, 12 Fed. Rep. 782. The facts brought out by the evidence, however, showed that the plaintiff had adopted it under its original meaning, and thus it could be used as a trade-mark. *Edmonds* v. *Benhow*, Seton (4th ed.) 238; *Barrows* v. *Knight*, 6 R. I. 434.

TRUST DEED—ATTORNEY'S FEES—TURNER V. BAGER, 35 S. E. 592 (N. C.)—A provision in a deed of trust that a fee of 5% should be paid for the services of an attorney in case of foreclosure. *Held*, to be invalid as against public policy.

We have failed to find any direct support for this decision, but the doctrine of a long line of decisions respecting the invalidity of provisions for fees, in the collection of promissory notes and kindred matters seems to have been slightly extended by the present case to embrace the facts involved. *Bullard* v. *Taylor*, 39 Mich. 137; *Bank* v. *Sevier*. 14 Fed. Rep. 662.

VENDOR'S LIEN—WAIVER—CHASTAIN V. HAINES, 27 Sou. Rep. 510 (Ala.).—Where complainant sold land, the purchase money of which was all paid save $89.00, and he refused to execute a conveyance until the balance was paid, which amount, however, was disputed, and the parties formally agreed to abide by the decision of arbitrators chosen. *Held*, that when the arbitrators decided the amount due to be $5.20 and ordered it paid in seven months and an immediate conveyance to be made by the other party, a failure of the vendee to pay the $5.20 when agreed revives the vendor's lien for the $89.00

It seems rather strange that after a proper award by arbitrators that a lien for original purchase money should revive; but the present case holds that the foregoing facts are not sufficient to remove the presumption existing in favor of the retention by the vendor of his equitable lien for unpaid purchase money. *Pam. Eq. Jur.* 1250. *Thompson* v. *Sheppard*, 85 Ala. 611.

VOID BONDS—STATUTE LEGALIZING—RETROACTIVE EFFECT—N. Y. LIFE INS. CO. V. COMISSIONERS, 99 Fed. Rep. 846.—A county issued bonds to build an armory, under a statute subsequently adjudged void. The Legislature then passed a statute legalizing the bonds, and giving the bondholders an action against the county for their value.

Held, such statute was unconstitutional as creating a new right rather than a new remedy, and was repugnant to the clause in the Ohio Constitution against retroactive laws. Where the natural justice of it is clear, it seems the legislature has such power. *Board of Education* v. *State*, 51 Ohio 531. But it was considered that here the juster remedy would be to recover against the property itself.

VOID MUNICIPAL BONDS—RECOVERY IN ASSUMPSET—TRAVELLERS' INS. CO. V. MAYOR ETC., OF JOHNSON CITY, 99 Fed. Rep. 663.—Where a city issued void bonds to subscribe for stock to construct a railroad and depot, which were subsequently built and the stock delivered and retained, a purchaser of such negotiable bonds, payable to bearer, could not recover from the city for money had and received, since the construction of the railroad and depot on the railroad's own property conferred no such direct benefit as would raise an implied promise to pay; and the stock retained was void in its hands.

This is held to be the same in principle as the enhancement of one man's land by improvements made on another's where no promise is raised. *R. R. Co.* v. *Bensley* 664 U. S. App. 115. But where the city receives money or property into its actual possession, there can generally be a recovery. *Read* v. *City of Plattsmouth*, 107 U. S. 568; *Chapman* v. *Douglass County*, 107 U. S. 348; *La.* v. *Wood*, 102 U. S. 294. In *Parkersburg* v. *Brown*, 106 U. S. 487, where void bonds were issued to establish a manufacturing plant, the bondholders to follow the property and proceed in rem.