

## RECENT CASES

ATTORNEY AND CLIENT—DISBARMENT PROCEEDINGS—GROUNDS.—IN RE WILSON, 100 PAC. 835 (KAN.).—*Held*, that where a lawyer accepts employment to act for some one else in a business transaction, such as the sale of land, in the course of which he receives money belonging to his employer, his wrongful detention of it is sufficient ground for his disbarment, although he may not have been called upon to give legal advice or to take part in the litigation.

The wrongful detention by an attorney of money collected from a client is a well recognized cause for disbarment. *Southworth v. Bearnes*, 88 Minn. 31; *People v. Sindlinger*, 28 Col. 258. But when such an act of misconduct is alleged against an attorney acting as an ordinary person, there is a conflict of opinion as to whether the courts can disbar. The weight of authority is that the statutes covering misconduct in professional capacity do not limit the common law powers of the court to disbar whenever an attorney ceases to sustain such a moral character as would suffice to fill the requirements of admission to the bar. *Boston Bar Association v. Greenwood*, 168 Mass. 169. *In re O—*, 73 Wis. 602. But there are not wanting cases to the contrary. *In re Husson*, 26 Hun. (N. Y.) 130; *ex parte Steinman and Hensel*, 95 Pa. St. 220; *People v. Allison*, 68 Ill. 151. While the Illinois courts have held to the latter rule, they have admitted that there might be cases where the misconduct would be of so gross a character as to require disbarment. *The People v. Appleton*, 105 Ill. 477.

CARRIERS—INJURIES TO PASSENGERS—PASSENGER ELEVATORS.—STIESKAL v. MARSHALL FIELD & Co., 87 N. E. 117 (ILL.).—*Held*, that a person operating a passenger elevator used to carry persons from floor to floor in a store building must exercise a high degree of care in transporting them. Cartwright, C. J., and Dunn and Scott, J. J., *dissenting*.

The great weight of authority holds that a proprietor of a passenger elevator is subject to the same liabilities for injuries as a common carrier of passengers is. *Treadwell v. Whittier*, 80 Cal. 574; *Mitchell v. Marker*, 62 Fed. 139; *Fox v. Philadelphia*, 208 Pa. St. 127. However, a few jurisdictions rule that one who maintains a passenger elevator is not a common carrier and that the measure of his duty is the rule of reasonable care. *Griffen v. Manice*, 166 N. Y. 188; *Seaver v. Bradley*, 179 Mass. 329; *Burgess v. Stowe*, 134 Mich. 204. But as to injuries received by an employee while using an elevator, the courts hold that he is not a passenger and that the master is required to use only ordinary care in the operation and maintenance of the elevator. *McDonough v. Lanpher*, 55 Minn. 501; *Sicvers v. Peters Box & Lumber Co.*, 151 Ind. 642.

CARRIERS—MOVEMENT OF CIRCUS TRAIN—SPECIAL CONTRACT.—SAGER v. NORTHERN PACIFIC R. R. Co., 166 FED. 526.—*Held*, that a special con-

tract between a carrier and a circus company to furnish motive power, etc., to move the circus train over the carrier's road at reduced rates, and exempting the carrier from liability was not contrary to public policy.

The weight of authority holds that in such a case the railroad acts as a private and not as a common carrier and has the right to limit its liability by special contract. *C. M. & St. P. R. Co. v. Wallace*, 66 Fed. 506; *Robertson v. Old Colony*, 156 Mass. 525. For such a contract is not against public policy. *Wilson v. At. Coast Line R. Co.* 129 Fed. 774. Exemption of the railroad company from liability for negligence by special contract in the case of an express messenger has likewise been held valid on the same ground. *Long v. Lehigh Val. R. Co.*, 130 Fed. 870; *Peterson v. C. & N. W. R. Co.*, 119 Wis. 197. But a case holding the contrary is reported in N. C., where there was doubt as to whether the railroad was acting as a common or private carrier. *Seaboard Air Line R. Co. v. Main*, 132 N. C. 445. However, it is generally held that a common carrier can not by special contract exempt itself from liability for its own negligence or that of its servants. *School Dist. v. B. H. E. R. R.*, 102 Mass. 552; *Rose v. Des Moines R. Co.*, 39 Ia. 246.

CRIMINAL LAW—EVIDENCE OF INTENT—OTHER OFFENSES.—STATE V. HIGHT, 63 S. E. 1043 (N. C.).—*Held*, that, in the prosecution of accused for embezzlement of a watch from his employers, evidence that accused, during two years of his employment had repeatedly taken other property from his employers, disposed of it and applied the proceeds to his own use, was admissible to show intent.

It is a general rule that, on the trial of the accused on one offense, proof of other distinct crimes is not admissible, *Boyd v. U. S.*, 142 U. S. 450; *Copperman v. People*, 56 N. Y. 593; but where a question of intent is involved, other offenses are admissible for the purpose of establishing that intent. *U. S. v. Snyder*, 14 Fed. 554; *State v. Murphy*, 84 N. C. 742. For this purpose, evidence of other offenses has been generally, though not always, admitted in cases of embezzlement. *People v. Cobler*, 108, Cal. 538; *Com. v. Tuckerman*, 10 Gray (Mass.) 173; *contra. Kribs v. People*, 82 Ill. 425. The collateral offenses must, however, be of such a kindred nature to the crime charged that the same motive might be reasonably imputed to all; *People v. Keepers*, 14 N. Y. Supp. 66; *U. S. v. Mitchell*, Fed. Cas. No. 15,789; and, in point of time, they must be before and reasonably near the crime charged. *People v. Hill*, 34 Pac. 854; *State v. Jeffries*, 117 N. C. 727.

CRIMINAL LAW—INTOXICATING LIQUORS—EVIDENCE—OTHER OFFENSES.—CAMPBELL V. STATE, 116 S. W. 581 (TEX.). In a prosecution for unlawfully selling intoxicants to a certain person named in the information, *held*, it was error to admit evidence of sales to another, made the day after the sale alleged in the information; there being no connection between the two sales.

This holding is supported by the weight of authority. On a trial for selling liquor illegally, it is error to admit evidence of two distinct sales.

*Naul v. City of McComb*, 70 Miss. 699; and on a prosecution for the unlawful sale of liquor, evidence of sales other than charged in the indictment is inadmissible. *Ware v. State*, 71 Miss. 204; *State v. Nield*, 4 Kan. App. 626; *Hodgman v. People*, 4 Denio. (N. Y.) 235. But where the contrary has also been held as where the defendant was indicted for selling intoxicants on a certain Sunday in November, testimony was admitted to prove that he was selling not only during November, but also in all other months. *Lynn v. State (App.)* 22 S. W. 878. And on a trial for maintaining a hotel as a liquor nuisance, after proof of illegal sales in the hotel, evidence of similar sales in barns and buildings appurtenant thereto was held admissible. *State v. Arnold*, 98 Ia. 253. See also *Sellers v. State*, 98 Ala. 72; *State v. Raymond*, 24 Conn. 204.

ELECTRICITY—INJURIES INCIDENT TO PRODUCTION—ACTIONS.—STRACK ET AL. V. MISSOURI & K. TELEPHONE CO. ET AL., 116 S. W. (Mo.) 526. An injury caused by allowing telephone wires to remain on poles of a street railway, where they were blown down across the trolley wires and heavily charged, held, not to be a consequence reasonably to be anticipated.

Such a question depends on whether the companies involved were negligent in construction and maintenance and whether they had a reasonable time to remove the danger. *Heidt v. So. Telephone & Telegraph Co.*, 122 Ga. 474; and if a cyclone which could not reasonably be foreseen causes a wire charged with electricity to fall, and defendant is not negligent in allowing it to remain, he is not liable. *Mitchell v. Charleston L. & P. Co.*, 31 L. R. A. 577. But where telegraph wires thrown down by a storm rested on the trolley wire of an electric railway, and the plaintiff's horses were injured by the current received by the telegraph wire from the trolley wire, the proximate cause was the falling of the telegraph wire. *City of Albany v. Waterliet T. & Ry. Co.*, 27 N. Y. Supp. 848. And it is held that both companies are liable in such cases in *McKay v. So. Bell Telephone & Telegraph Co.*, 111 Ala. 337. Likewise, *Western Union Tel. Co. v. Md. ex rel. Edward Nelson*, 82 Md. 293, lays down the rule that there is a *prima facie* presumption of the negligence of the owners.

EVIDENCE—JUDICIAL NOTICE—GEOGRAPHICAL FACTS.—VONKEY V. CITY OF ST. LOUIS, 117 S. W. 733 (Mo.)—Held, that neither the trial court nor the court on appeal can take judicial notice of the existence of streets in municipalities.

Courts differ as to whether or not they may take judicial notice of municipal streets. New York holds that both the trial court and the court on appeal may take such notice of their general direction and where they begin and end. *Skelly v. N. Y. El. R. R.*, 27 N. Y. Supp. 304, affirmed, 148 N. Y. 747; *Gruber v. N. Y. City Ry.*, 103 N. Y. Supp. 216. An earlier decision in the jurisdiction where the case under discussion was tried held, that the court took judicial notice of important streets as of other matters of public notoriety and general information.

*State v. Ruth*, 14 Mo. App. 226. Again it is the rule that only where the streets are defined by legislative enactment will the court recognize their existence without proof. *Diggins v. Hartshorne*, 108 Cal. 154. On the other hand it has been held that the court cannot take judicial notice that an alley between two designated streets is within certain territorial boundaries. *City of Topeka v. Cook*, 72 Kan. 595. Nor will a court take judicial notice of a street outside the state. *Ingersoll v. Davis*, 14 Wyo. 120.

EXECUTORS AND ADMINISTRATORS—COMPENSATION—LEGAL SERVICES—  
IN RE WILSON'S ESTATE, 119 N. W. 522 (NEB.) An administrator, being an attorney-at-law, performed legal services in the administration of said estate. Held, that if such services were necessary for the proper administration of the estate and beneficial thereto, the court in its discretion might allow the administrator reasonable compensation therefor. Reese, C. J. and Dean and Rose, JJ., *dissenting*.

The weight of authority is in favor of the rule that an executor or administrator can receive no compensation for legal services rendered by him to the estate. *Hough v. Harvey*, 71 Ill. 72; *Lile's Succession*, 24 La. Ann. 490; *Loague v. Brennan*, 86 Tenn. 634. Some courts go even further and hold that a firm of which the administrator is a member can receive no compensation for professional services rendered the estate. *Parker v. Day*, 155 N. Y. 383; *Taylor v. Wright*, 93 Ind. 121. This doctrine is followed by the English Courts. *Burge v. Brutton*, 2 Hare 373. On the other hand numerous jurisdictions hold with the principle case, that an administrator is entitled to reasonable attorney's fees. *Alexander v. Bates*, 127 Ala. 328; *in re Mabley's Estate*, 74 Mich. 143; *Sloan v. Duffy*, 117 Wis. 480.

HUSBAND AND WIFE—ATTORNEY'S FEES—HUSBAND'S LIABILITY—HEN-  
DRICK v. SILVER, 115 N. Y. SUPP. 1093. Held, that an attorney may recover from the husband for services rendered the wife in her action for a separation upon proof that the suit was for the support of the wife and that it was brought on reasonable grounds.

The general rule is that the husband is liable for the necessaries due the wife. *Seybold v. Morgan*, 43 Ill. App. 39; *Dolan v. Brooks*, 168 Mass. 350. There is a conflict of opinion as to when legal services are to be considered as necessaries. Some courts hold that legal services rendered the wife in defending herself in divorce proceedings brought by the husband are necessaries. *Porter v. Briggs*, 38 Iowa 166; *Gossett v. Patten*, 23 Kan. 340. But other courts hold that such services are not necessaries. *Cook v. Newell*, 40 Conn. 596; *Dow v. Eyster*, 79 Ill. 254. There is also conflict as to whether husband is liable for legal services furnished to the wife in bringing divorce proceedings against him; some courts holding the husband liable, *Isbell v. Weiss*, 60 Mo. App. 54; *Morrison v. Holt*, 42 N. H. 478, whereas other courts do not hold him liable, *Hahn v. Rogers*, 69 N. Y. Supp. 926. Neither is the husband liable for attorney's fees for bringing a criminal prosecution to compel him to support the

wife *McQuhae v. Rey*, 51 N. Y. St. Rep. 166. Nor is the husband liable for the wife's attorney fees when she makes a complaint of assault and battery against him. *Conant v. Burnham*, 133 Mass. 503; *Smith v. Davis*, 45 N. H. 566. But if the wife is accused of crime she may have legal services at the husband's expense. *Artz v. Robertson*, 50 Ill. App. 27; *Warner v. Heiden*, 28 Wis. 517.

LANDLORD AND TENANT—EVICTION—MADDEEN V. BULLOCK, 115 N. Y. SUPP. 723. *Held*, that constructive eviction was a good defense in an action for rent of an apartment vacated by a lessee on account of the stench arising from dead and decaying rats which the lessor unsuccessfully attempted to remove. Mac Lean, J., *dissenting*.

The weight of authority seems to support the rule that to constitute eviction there must be some act done by the landlord with the intention of interfering and which actually does interfere with the tenant's enjoyment of the premises. *Royce v. Guggenheim*, 106 Mass. 201; *Meecker v. Spalsburg*, 66 N. J. L. 60; *Rice v. Dudley*, 65 Ala. 68. In case the premises become untenable and the landlord fails to repair, it will be considered that the tenant was constructively evicted. *Tallman v. Murphy*, 120 N. Y. 345. And if the premises are rented for use as a store and the landlord by placing obstruction in the street interferes with the access of customers to the store this will also be considered as constructive eviction. *Edmison v. Lowry*, 3 S. D. 77. Courts are in conflict as to whether creation and allowing a nuisance to remain is a constructive eviction, some courts holding that such conduct on the part of the landlord does amount to a constructive eviction; *Lay v. Bennett*, 4 Col. App. 252; *Alger v. Kennedy*, 49 Vt. 109; whereas other courts hold that such conduct would not constitute a constructive eviction. *De Witt v. Pierson*, 112 Mass. 8; *Hotel v. Eyre*, 53 N. Y. App. Div. 273. But in any case the acts of the landlord must clearly show intention to evict the tenant; *Thomas v. Demmen*, 112 Ala. 670; *Morris v. Tillson*, 81 Ill. 607; and furthermore the tenant must give up possession of the premises, *Beecher v. Duffield*, 97 Mich. 423; *Hall v. Ervin*, 77 N. Y. Supp. 91.

LIBEL AND SLANDER—WORDS ACTIONABLE—CORPORATIONS.—KIMBLE & MILLS OF PITTSBURGH V. KAIGN, 115 N. Y. SUPP. 809. *Held*, that where a complaint, charging only that defendants stated that plaintiff corporation bribed one of defendant's solicitors to give plaintiff a list of defendant's clients, did not show any direct pecuniary injury to plaintiff so as to be libelous *per se*, Houghton, J., *dissenting*.

Any untrue written words which expose a person to the hatred, contempt or aversion of the community are held to be libelous *per se*. *Atwater v. Morning News Co.*, 67 Conn. 504; *Field v. Magee*, 122 Mich. 556. In applying this rule, however, corporations are distinguished from private persons. Corporations, it is well established, may sue for libel, even without mentioning special damage, when the defamation concerns them in their trade or business or is directed against their credit. *Morrison-Jewell Filtration Co. v. Lingane*, 19 R. I. 316; *Arrow Steamship*

*Co. v. Bennett*, 73 Hun. (N. Y.) 81; but they may not recover for statements which affect only their personal reputation. *Manchester v. Williams*, 1891, 1 Q. B. 94. The reason for this distinction is that, outside of its trade or business, a corporation has no character to be affected by libelous publications. *Trenton Mutual Life & Fire Ins. Co. v. Perrine*, 23 N. J. L. 402.

MASTER AND SERVANT—EXISTENCE OF RELATION—RAILROAD EMPLOYEE TRAVELING ON PASS.—*VROOM v. NEW YORK CENT. & H. R. R. Co.*, 115 N. Y. SUPP. 1063. *Held*, that, where a railroad brakeman on a construction train is employed at some distance from his home, and is given a pass to use in going home on Saturdays and returning to his work on Sundays, it will be presumed that the pass was limited to use by him in going home and back to work, and that it was part of the contract of employment, and that he used it as an employee. *McLennan, P. J.*, and *Williams, J.*, *dissenting*.

The weight of authority appears to be that an employee of a railroad traveling on a pass to and from work is a passenger, not an employee. *Doyle v. Fitchburg R. R. Co.*, 162 Mass. 66; *McNulty v. Penn. R. R. Co.*, 182 Pa. St. 479. And where such pass is issued as a part of the consideration of the contract of employment, the holder of same in effect pays his fare out of his wages. *O'Donnell v. Penn. R. R.*, 59 Pa. St. 239. A motorman in uniform off duty riding home without any pass, but under a general rule of the company that firemen, policemen and employees of the company might at any time ride free, was held to be a passenger and not a fellow servant of the motorman operating the car on which he was riding when injured. *Dickinson v. West End Street R. R. Co.*, 177 Mass. 365. Conflicting decisions hold that where such passes are issued they are part of the pay for labor performed and no relation of carrier and passenger is created. *Ross v. N. Y. C. & H. R. R.*, 74 N. Y. 617; *Vicks v. New York Cent.*, 95 N. Y. 267.

MASTER AND SERVANT—INJURY TO SERVANT—LIABILITY OF MASTER—MEDICAL ATTENDANCE.—*VOORHEES v. NEW YORK CENT. & H. R. R. Co.*, 114 N. Y. SUPP. 242. *Held*, that an employer is not required to provide, even in cases of emergency, medical attendance for his employee, unless he has agreed so to do. *Kruse and Robson, JJ.*, *dissenting*.

When a servant is injured in the performance of his duty, the master, according to the weight of authority, is not under any legal obligation to furnish medical attendance to the servant. *Davis v. Forbes*, 171 Mass. 548; *Seiver v. Birmingham, S. & T. R. R. Co.*, 92 Ala. 258; *Denver & R. G. R. Co. v. Iles*, 25 Colo. 19. However, by some courts the railroads are placed under a legal obligation to furnish medical services in cases of necessity and emergency. *Ohio & Mis. R. Co. v. Early*, 141 Ind. 173. But in many jurisdictions the railroads are liable for surgical attendance upon implied contracts. *T. W. & W. R. R. Co. v. Rodrigues*, 47 Ill. 188; *Marquette & O. R. Co. v. Taft*, 28 Mich. 289.

Still other cases limit the liability to the express contract of the Superintendent acting in behalf of the company. *U. P. Ry. Co. v. Winterbotham*, 52 Kan. 433.

SEDUCTION—STATUTES—CONSTRUCTION—"UNMARRIED FEMALE."—JENNINGS v. COMMONWEALTH, 63 S. E. 1080 (VA.) *Held*, that a woman who has been married and divorced is not an "unmarried female" within the meaning of Va. Code 1904, Sec. 3677, providing that if any person under promise of marriage, seduce and have illicit connection with any unmarried female of previous chaste character, he shall be guilty of a felony, etc.

There is a conflict of authorities as to the meaning of the word "unmarried." Undoubtedly, its original and usual meaning is "never having been married." But the term is a word of flexible meaning and slight circumstances will be sufficient to give the word its other meaning of not having husband or wife at the time in question. *Peters v. Balke*, 170 Ill. 304. Its meaning is to be construed with reference to the plain intention of the instrument where it is used. *Clark v. Cotts*, 9 H. L. Cas. 601. And in the eyes of the law, virginity constitutes the plain and practical standard by which the law tests females as to their need of protection from the arts of the seducer. *O'Neil v. The State*, 85 Ga. 383. This protection did not exist by common law. *Anderson v. Commonwealth*, 5 Randolph (Va.) 627. And it is a well recognized principle that penal laws are to be construed strictly. *United States v. Willberger*, 5 Wheat. 76.

STREET RAILROADS—TRESPASSERS—LIABILITY FOR INJURY.—PRENDERVILLE v. RY. CO., 115 N. Y. SUPP. 633. *Held*, that a railroad company is not liable for injuries received by a trespassing boy riding on a car who became frightened and fell off when the conductor came towards him with both hands extended. *Hirschberg, P. J., and Woodward, J., dissenting.*

The general rule is that although a railroad company does not owe the same duty to a trespasser as to a passenger it is not exempt from all liabilities. *Ry. Co. v. Beggs*, 85 Ill. 80; *Padgitt v. Ry. Co.*, 159 Mo. 143. The courts are not agreed as to the degree of care that must be exercised towards a trespasser. In some jurisdictions it is held that ordinary care is sufficient. *Wynn v. Ry. Co.*, 91 Ga. 344. Whereas in other jurisdictions it is held that no liability attaches except in cases of wilful injury, *Bricker v. Ry. Co.*, 132 Pa. St. 1; *Ry. Co. v. Thompson*, 107 Ind. 442. But all courts do agree that a railway company may expel a trespasser at any place provided it will not expose him to serious danger or wanton injury. *Wymann v. Ry. Co.*, 34 Minn. 210; *Lillis v. Ry. Co.*, 64 Mo. 464. The ejection must not be accompanied by unnecessary force, *Smith v. Ry. Co.*, 100 Ga. 96; *Ry. Co. v. Gastka*, 128 Ill. 613; nor done in a negligent manner, *Ry. Co. v. Whitman*, 79 Ala. 328; *Ry. Co. v. Pellitier*, 134 Ill. 120.

TORTS—INTERFERENCE WITH BUSINESS—COMPETITION.—TUTTLE v. BUCK, 119 N. W. 946 (MINN.) Where a man of wealth and influence maliciously established a barber shop and used his influence to attract customers from the plaintiff's shop, not to serve any purpose of his own, but solely to injure the plaintiff's business, *held*, that this complaint states a cause of action. Elliott and Jaggard, JJ., *dissenting*.

The weight of authority seems to support the rule that where a person has a legal right to do a thing his motive is immaterial. *Paine v. Chandler*, 134 N. Y. 385; *Jenkins v. Fowler*, 24 Penn. 308; *Brouthers v. Morris*, 49 Vt. 460. But there is some authority to the effect that a man has no right to commit a lawful act maliciously with the sole purpose of injuring another. *Burke v. Smith*, 69 Mich. 380; *Chesley v. King*, 74 Me. 164. It is clearly established, however, that a malicious motive is not a necessary element in a cause of action for the invasion of another's legal right. *Hussey v. Peebles*, 53 Ala. 432; *Bizzell v. Booker*, 16 Ark. 308. It is held to be an actionable wrong to injure another person's business without justifiable cause. *Ry. Co. v. Chambers*, 126 Ga. 404; *Oil Co. v. Doyle*, 118 Ken. 662. But in competition one man may lawfully, in the absence of contract, endeavor to induce his rival's customers to leave him in order to gain trade for himself. *Transportation Co. v. Oil Co.*, 50 W. Va. 611. Any unlawful means to accomplish same, however, will make him liable. *Brown v. Land Mgt. Co.*, 97 Texas 599.

NEGLIGENCE—ACTIONS—BURDEN OF PROOF.—CRAWFORD v. KANSAS CITY STOCKYARDS Co., 114 S. W. (Mo.) 1057.—*Held*, where the plaintiff riding on the side of a car was injured by being struck by the defendant's open stock pen gate in the stockyards, and there was no evidence as to who left the gate open, the inference was that the defendant did so, and the burden of proof was not on the plaintiff to show who opened it.

In special instances this has been held, as, where one engaged in laying a sewer is injured by a falling brick. In the absence of explanation by the contractor doing the brick work, it will be presumed that the injury occurred from want of reasonable care on his part and he is liable for injuries received. *Sheridan v. Foley*, 58 N. J. Law 230. And in a suit based on defendant's negligence, if the plaintiff shows either that he himself is blameless, or the defendant negligent, the burden of negating the other element is on the defendant. *Savannah, etc., R. R. Co., v. Barber*, 71 Ga. 644; *Moore v. Parker*, 91 N. C. 275. But the weight of authority is to the contrary. In an action for injuries, negligence will not be presumed but must be proven by the plaintiff. *State v. Phila., W. & B. R. R.*, 60 Md. 555; *Seybolt v. N. Y., L. E. & W. R. R.*, 95 N. Y. 562; *Willoughby v. Chicago & N. W. R. R.*, 37 Ia. 432; *Norfolk & W. R. R. Co. v. Ferguson*, 79 Va. 241.