

RECENT CASES.

BENEFICIAL ASSOCIATION—MEMBERS—REQUIREMENTS—WAIVER OF FORFEITURE.—*MOERSCHBAECHER v. ROYAL LEAGUE*, 59 N. E. 17 (Ill.).—The by-laws of a benefit association provided that any member who engaged in the saloon business should forfeit his beneficial rights. Although the association received his dues knowing decedent's business, the court *held* that the beneficiary could not recover.

The decision of the appellate court, which is here affirmed, in declaring that there was no waiver of the right of forfeiture, seems contrary to the best authority. Forfeitures are not favored in law, and conditions limiting or avoiding liability are strictly construed against the insurer and liberally in favor of the assured. *Ins. Co. v. Young*, 86 Ala. 421; *Ins. Co. v. Raddin*, 120 U. S. 123. In principle at least, also, this decision is contrary to *Ins. Co. v. Hick*, 125 Ill. 361. See *Supreme Court of Honor v. Sullivan*, 59 N. E. 37 (Ind.).

COLLISION ON HIGHWAY—SERVANTS—SCOPE OF AUTHORITY.—*PERLSTEIN v. AM. EXP. Co.*, 59 N. E. Rep. 194 (Mass.).—A servant driving his master's team deviated from his prescribed course and negligently collided with a vehicle. *Held*, the master was not liable for the damage.

Though in general the master is liable for an injury caused by a tool placed in his servant's hands, as shown in *Southwick v. Estes*, 7 Cush. 385, yet this rule here succumbs to the fact that the servant was acting beyond the scope of his authority. *Bowler v. O'Connell*, 162 Mass. 319; *Davis v. Houghtelin*, 33 Neb. 582.

CONTRACTS—RECISSION—RESTORATION OF CONSIDERATION.—*YAPLE v. NEW YORK O. & W. Co.*, 68 N. Y. Supp. 292.—In an action for injuries to the person and property of the plaintiff, defendants having pleaded a release, the trial judge ruled that plaintiff could not properly reply that such release was procured by deceit, and assert that he did not know that he was signing a release for personal injuries and that the release was only signed for injuries to the property, without offering to restore the consideration. *Held*, this ruling was incorrect.

It is a general rule that a party who seeks to rescind a contract into which he has been induced to enter by fraud must restore to the other party whatever he has received by virtue of the contract. *Cobb v. Hatfield*, 46 N. Y. 533. But this rule applies to those cases only where that which was received and must be returned was the consideration or settlement which the receiver intended to make, and understood he was making, and which he seeks to avoid by reason of fraudulent practices of the other party which led him to agree to its terms. *Bliss v. Railroad Co.*, 160 Mass. 447; *Mullen v. Old Colony Railroad Co.*, 127 Mass. 86.

CONSTITUTIONAL LAW—CO-ORDINATE BRANCHES OF GOVERNMENT—POWER OF PROBATE COURT TO DIRECT MODE IN WHICH TELEPHONE COMPANIES MAY USE STREETS.—CITY OF ZANESVILLE V. ZANESVILLE TELEPHONE AND TELEGRAPH Co., 59 N. E. Rep. 109 (Ohio).—Sec. 3461, Rev. St., requires probate courts to direct the mode in which a telephone or telegraph company may use the streets of a city, when the municipal authorities and the company are unable to agree. *Held*, unconstitutional.

This case illustrates the persistency with which the law keeps distinct and independent the executive, legislative and judicial branches of the government. *Appeal of Norwalk St. Ry. Co.*, 38 Atl. Rep. 708; *Hayburn's Case*, 2 Dall. 409. It is often difficult to distinguish legislative from judicial powers. A judicial act is a determination of what the existing law is, in relation to something already done, while a legislative act is a pre-determination of what the law shall be, for the regulation of future cases. *Cooley, Const. Lim.*, p. 108. In the light of the above distinction, the legislative character of the power given by the above statute becomes manifest.

CORPORATIONS—ULTRA VIRES—ADVERTISING GOODS.—VIRGIL V. VIRGIL PRACTICE CLAVIER Co., 68 N. Y. Supp. 355.—A corporation organized for the manufacture and sale of instruments designed for practice and instruction in piano playing is not acting *ultra vires* when, in order to overcome the prejudice to a toneless instrument and to bring the invention to public notice, the corporation as a part of its general scheme maintains a piano school, the result of which is an increase in the monthly sales.

This case is in line with other recent decisions which go to broaden the field of implied powers of private corporations. The cases of *Steinway v. Steinway & Sons*, 40 N. Y. Supp. 718, and *Holm v. Brewing Co.*, 47 N. Y. Supp. 518, go farther than the case at bar. The modernized doctrine is well stated in *Koehler v. Reinheimer*, 49 N. Y. Supp. 755, where it is said: "So far as the people are concerned, whether a corporation shall make one contract or another, so long as it advances the purposes for which the corporation was organized, is absolutely unimportant; and so the rule has come to be laid down that, except as restrained by law, trading corporations have the implied power to make all such contracts as will further the objects of their creation, and their dealings in this regard may be likened to those of an individual seeking to accomplish the same ends."

COUNTERFEITING—FORMER CONVICTION—DISTINCT OFFENSE.—BLISS V. UNITED STATES, 105 Fed. 508.—*Held*, counterfeiting of notes at different times of the same series and from the same plate constitute distinct offences and a conviction for one is no bar to a prosecution for the others.

This decision doubtless has good support. *United States v. Rodenbush*, 8 Pet. 288. But the question is not so clearly settled as is indicated by this case. *Commonwealth v. Connors*, 116 Mass. 35, gives no support to the view that separate issues from the same series, running through a past period of time, may be divided into parts and called separate offences. A contrary view was held in *Bronch Sons Co. v. Palmer*, 65 Ga. 210.

DEATH OF MINOR CHILD—RECOVERY BY PARENT—EXTENT OF DAMAGES.—BEARMAN V. MARTHA WASHINGTON MIN. Co., 63 Pac. Rep. 631 (Utah).—In an action by a father for the negligent killing of his minor child, the recovery is not limited to the deprivation of the society, comfort and services of the child during his minority, but damages may be recovered for benefits expected after his majority.

The common law limited such recovery to the period of the child's minority, but this law has been largely changed in many of the States by statutes and decisions. The courts differ widely as to the measure of such damages. It is generally held that to recover damages beyond the period of the child's minority, it must be shown that the parent is liable to be dependent and that the minor had an intent to assist the parent after attaining his majority. *Thompson v. Johnston Bros.*, 86 Wis. 576; *Ry. Co. v. Davis*, 55 Ark. 462; *Ry. Co. v. Compton*, 75 Tex. 667.

DEFENCE OF DWELLING HOUSE—STEAM LAUNCH WITH NO SLEEPING APARTMENTS IS NOT A DWELLING.—*PEOPLE v. BERNARD*, 84 N. W. 1092 (Mich.).—Defendant owned a small steam launch which he used as a public conveyance. It had no sleeping or living apartments, but was moored to the dock and used as a sleeping berth by the owner. *Held*, that it was not a house or castle which might be defended against entry by an officer, to the extent of taking his life.

To render a building a dwelling house, it must be a habitation for man, and usually occupied by some person, lodging in it at night. *Scott v. State*, 62 Miss. 782.

ELECTIONS—BALLOTS—LACK OF CERTIFICATE ON BACK—VALIDITY.—*O'CONNELL v. MATTHEWS ET AL*, 59 N. E. Rep. 195 (Mass.).—Under a statute forbidding the deposit in the ballot-box of official ballots unless certified by the city clerk, the petitioner asks for a mandamus to compel the rejection of such ballots. *Held*, that the provisions of the statute forbidding the deposit of such ballots does not forbid the counting of such ballots after their deposit.

The question involved is as to whether the provision of the statute is to be considered as mandatory or directory. In general, the provisions of the Australian ballot law are construed as mandatory. This decision, if generally followed, would practically destroy the efficiency of the Australian system.

ELECTRIC CONDUITS IN STREETS—NEW SERVITUDE—COMPENSATION.—*COBURN v. NEW TELEPHONE CO.*, 59 N. E. 324 (Ind.).—*Held*, the construction of a sub-surface trench in sidewalk, three feet from abutter's lot line, for a conduit for telephone wires, is not a new servitude, entitling the abutter to compensation.

Whether such an occupation of the street is a new use inconsistent with the contemplated purpose of dedication, and therefore an additional servitude, or an improved method of devoting the street to its original purpose, is a question that has caused a wide divergence of opinion among text-writers and courts. *Lewis on Eminent Domain*, Sec. 131; 2 *Dillon Mun. Corp.*, Sec. 698a. The Wisconsin court, in a recent decision, in which all the authorities are reviewed, declares the weight of judicial opinion to be in favor of the former view. *Krueger v. Telephone Co.*, 81 N. W. 1041, and cases cited. The latter view, however, is also supported by the courts of many States. *Pierce v. Drew*, 136 Mass. 75; *People v. Eaton*, 59 N. W. 145; *Magee v. Overshiner*, 49 N. E. 951; *Julia Building Assn. v. Bell Tel. Co.*, 13 Mo. App. 477. The decision in the case at bar is consistent with the previous adjudications of the same Court. *Magee v. Overshiner, supra*.

ESTATES IN EXPECTANCY—ASSIGNMENT—VALIDITY.—*FULLER v. PARMENTER*, 47 Atl. 1079 (Vt.).—Where son assigned expectancy in father's estate and it appeared that father had notice and did not object, *held*, his assent was unnecessary.

The opposite rule, that assent of ancestor is necessary, was first laid down by Chief Justice Parsons in *Boynton v. Hubbard*, 7 Mass. 112, and has been followed by other States. *McLure v. Raben*, 133 Ind. 507. But the English rule and the weight of authority in America support this decision, many cases seeming to require neither assent nor notice. *Hale v. Hollen*, 90 Tex. 427; *McDonald v. McDonald*, 75 Am. Dec. 434.

HUSBAND AND WIFE—NECESSARIES—WIFE'S AGENCY.—*HATCH v. LEONARD*, 59 N. E. Rep. 270 (N. Y.).—Where agency was averred as ground of liability of husband for goods furnished to his wife living separate from, and not expressly authorized by him, *held*, plaintiff could prove that such goods were necessities, since the law would imply agency from such proof.

Three judges dissented on the ground that separation precludes an implication of agency by law, citing *Montague v. Benedict*, 3 Barn. & C. 631. But the dissent is amply rebutted by *Baker v. Barney*, 8 Johns. 72, and *Goodman v. Alexander*, 165 N. Y. 289.

INJURY TO SERVANT—CONTRIBUTORY NEGLIGENCE.—*McDANIELL'S ADMX. v. LYNCHBURG COTTON MILL CO.*, 37 S. E. 781 (Va.).—A boy twelve years of age, employed to sweep aisles in a cotton mill, was found dead at the foot of the freight elevator shaft. Deceased was shown to have been active, intelligent, well-grown, experienced in and competent to perform his duties—which did not take him near the shaft—and had been repeatedly warned of the danger of playing near it. *Held*, sufficient to show contributory negligence on the part of deceased, precluding recovery.

There seems to be much difference of opinion as to whether or not a minor employé can be guilty of contributory negligence. The ruling in this case is in line with the decisions in *Nagle v. Allegheny, etc., R.R. Co.*, 88 Pa. St. 37; *Dietrich v. Baltimore, etc., R. Co.*, 58 Md. 347. The opposite view is held in *Haycraft v. Lake Shore, etc., R. Co.*, 64 N. Y. 636, and in *Philadelphia, etc., R. Co. v. Spearen*, 11 Wright (Pa.) 300.

INSURANCE—POLICY—BREACH OF CONDITION.—*WM. SKINNER & SONS CO. v. HOUGHTON*, 48 Atl. 85 (Md.).—An insurance policy provided that it should be void if any change took place in the interest of the subject of insurance. *Held*, that a contract for the sale of insured premises rendered the policy void.

The question here considered is a much disputed one, and is still by no means settled. It seems well established by numerous decisions that a contract for the sale of insured premises does not render void a policy which contains the condition that there should be no change in the title or possession of the subject of insurance. *Washington Ins. Co. v. Kelly*, 32 Md. 421; *Forward v. Ins. Co.*, 142 N. Y. 382; *Hill v. Mutual Protection Co.*, 59 Penn. St. 474. The present case decides that "interest" is a term of wider meaning and includes any equitable right, following *Gibb v. Insurance Co.*, 59 Minn. 267; 13 *Am. & Eng. Ency. of Law* 234. An exactly contrary view is taken in *Erb v. German-Amer. Ins. Co.*, 98 Iowa 606. This contrary view is, also, strongly stated in *Richards on Insurance*, p. 157.

JOINT TORT-FEASORS—WHERE ONE IS A STRANGER TO A RELEASE OF ANOTHER.—*O'SHEA v. N. Y. C. & St. L. R. Co.*, 105 Fed. Rep. 559 (Ill.).—While one joint tort-feasor may avail himself of a release of the other, he is a stranger to the instrument within the meaning of the term as used in the rule that in a suit between a party to a contract and a stranger thereto, neither is concluded by the writing, but either may contradict it by parol evidence.

This decision is an eminently satisfactory solution of a mooted question of law. The cases holding to the contrary (*Brown v. City of Cambridge*, 3 Allen 474; *Goss v. Ellison*, 136 Mass. 503; *Ry. Co. v. Sullivan*, 41 Pac. Rep. 501), seem to improperly assume that one joint tort-feasor is a party to a contract of release of another, when in fact he may have been entirely ignorant of it.

LETTERS—IMMATERIAL CORRESPONDENCE—BEST EVIDENCE.—*KNAPP v. WING*, 47 Atl. 1075 (Vt.).—Where the correspondence contained in letters is immaterial, and it is sought only to show the subject upon which they were written, the letters need not be produced as the best evidence.

This case, while an apparent exception to the general rule that in all cases the best evidence must be produced, might better be considered as falling under the rule that where the writing is not in issue, but merely collateral to it, parol evidence may be given covering the contents of the writing. *Coomrod v. Madden*, 126 Ind. 197.

LIFE INSURANCE—CAUSE OF DEATH—EXECUTION FOR CRIME.—*BURT ET AL. v. UNION CENT. LIFE INS. CO.*, 105 Fed. 419.—*Held*, that an action cannot be maintained to recover on a life insurance policy, where the insured was convicted of a capital crime and executed pursuant to the sentence of a court having jurisdiction, even though it was alleged that such conviction was erroneous.

It was held in *Society v. Bolland*, 4 Bligh (N. R.) 194, 211, and in *Retter v. Ins. Co.*, 169 W. S. 139, that a policy on the life of one executed for a capital crime was void on the ground of public policy. Here the court has extended the doctrine by declaring that even though the insured were innocent or insane as alleged, yet that fact could not be entertained after his execution, because it would tend to wager on the miscarriage of justice.

MARRIAGE—LEGITIMATIZED ISSUE.—*TOWNSEND v. VAN BUSKIRK*, 68 N. Y. Supp. 512.—Cohabitation and an agreement to live as husband and wife, together with a public acknowledgment of such relation, constitutes a valid marriage and legitimatizes their offspring, in accordance with an enactment providing that illegitimate children shall be legitimatized by a subsequent intermarriage of their parents.

In many States, laws have been passed, providing that illegitimate children shall be legitimatized by a subsequent intermarriage of their parents, but a legal and formal marriage has generally been regarded as necessary to bring about such a result. The present case goes somewhat further and extends the doctrine to the legitimatization of children by a common-law marriage.

MASTER AND SERVANT—INJURY TO SERVANT—RAILROADS—SEMAPHORE WIRES.—*FLUTTER v. NEW YORK, C. & ST. L. R. CO.*, 59 N. E. 337 (Ind.).—Plaintiff, a brakeman, running alongside train at night in the discharge of his duties, tripped on semaphore wires stretched across track seven inches from ground, and was injured. He was acquainted with the surroundings and with semaphore switches. *Held*, defendant was liable for negligence in not providing a reasonably safe place for plaintiff's work.

As a general rule, the servant who continues in employment assumes all incidental risks of which he is aware. *Deforest v. Jewett*, 88 N. Y. 264. But there are many cases in which railroad employes who knew of open culverts, defective roadbeds, etc., but whose duties prevented them from avoiding these defects, have recovered damages, as in this case, for not being provided a reasonably safe place wherein to work. *Snow v. Railroad Co.*, 8 Allen 441; *Gardner v. Railroad Co.*, 150 U. S. 349; *Plank v. Railroad Co.*, 60 N. Y. 607; *Franklin v. Railroad Co.*, 37 Minn. 409.

MINES AND MINING—PAROL GRANT—LICENSE—REVOCABILITY.—HOSFORD ET AL. V. METCALF ET AL., 84 N. W. 1054 (Iowa).—*Held*, a parol grant of mining privileges in land, on the strength of which grantees expended much money and labor in work on the premises, gave grantees an interest in the land entitling them to continue, and which was transferable, and was not merely a personal license and revocable.

There are a few cases which take this extreme view, but the right of the licensor to revoke a parol license, even after much money and labor has been expended, is very generally recognized. *Kivett v. McKeithan*, 90 N. C. 106; *Selden v. Delaware Co.*, 29 N. Y. 634. Cases cited by the court can be distinguished from the case at bar. *Beatty v. Gregory*, 17 Iowa 109; *Bush v. Sullivan*, 3 Green 344. The statute of frauds does not permit an interest in lands, except in a few cases—of which this is not one—to pass without a deed, nor is such a license generally considered transferable. *Cooley on Torts*, 357-360.

MINING—WEIGHING COAL BEFORE SCREENING—CONTRACTS BETWEEN MINERS AND OPERATORS—CONSTITUTIONAL LAW.—IN RE PRESTON, 59 N. E. 101 (Ohio).—*Habeas Corpus*. Petitioner was arrested under a statute making it a criminal offense for any mine operator, employing miners at bushel or ton rates, to screen the coal, before it has been weighed and credited to the employé sending the same to the surface. *Held*, such a statute is repugnant to the bill of rights, as an unwarrantable invasion of the right to make contracts. Petitioner discharged.

Statutes, not distinguishable from the one under consideration in any substantial respect, have been held not to be within the police powers. *Millett v. People*, 7 N. E. 631; *Potter's Dwaris on Statutes*, 458, and cases cited. Other courts, however, have reached the opposite conclusion, though not without dissenting opinions. *State v. Peel Splint Coal Co.*, 15 S. E. 1,000; *State v. Wilson*, 58 Pac. 981.

NAVIGABLE WATERS—MEANDERED LINES—EROSION—ALLUVION.—PENKER ET AL. V. CANTER ET AL., 63 Pac. Rep. 617 (Kans.).—The plaintiff owned a tract of land separated from a navigable stream by a tract of land owned by the defendant. By erosion the greater part of the defendant's land was washed away, together with a part of plaintiff's land. Subsequently the stream receded, forming alluvion with the original boundaries of both owners. In an action of ejectment, *held*, that the plaintiff was entitled to an equitable proportion of the alluvion formed within the original boundaries of the defendant's tract.

There are very few decisions on this question, but the weight of authority supports this one. *Welles v. Bailey*, 55 Conn. 292; *Jeffries v. Land Co.*, 134 U. S. 178. In a recent New Jersey case, this view was held to be unsound. *Ocean City Assn. v. Schriver*, 46 Atl. Rep. 690. This decision is unique in that it makes equitable division of the alluvion. This seems to be unsupported by any previous decision, though the principle is laid down in the text-books.

NOTES—SIGNATURE BY PRESIDENT—LIABILITY—PAROL PROOF.—SECOND NATIONAL BANK V. MIDLAND STEEL CO., 58 N. E. 833 (Ind.).—A note was signed "R. J. Beatty, President," and above the note, on the paper on which the note was written, appeared the name of the corporation. *Held*, that a note signed by the president of a corporation can be shown by parol to be the contract of the corporation.

There is a conflict of authority upon this point, the following holding as above: *Means v. Swormstedt*, 32 Ind. 87; *Bingham v. Kendall*, 17 Ind. 396; *Railroad Co. v. Davis*, 20 Ind. 6; *Gaff v. Theis*, 33 Ind. 307; *Vater v. Lewis*, 36 Ind. 288. *Contra*, *Fiske v. Eldridge*, 12 Gray 474; *Hays v. Crutcher*, 54 Ind. 260; *Potts v. Henderson*, 2 Ind. 327.

NUISANCES—CROPS—LANDS IN ANOTHER STATE.—DUCKTOWN SULPHUR, & C. CO. v. BARNES, 60 S. W. Rep. 593 (Tenn.).—Where smoke from a smelter in Tennessee injured crops on land in Georgia, *held*, that the action for damages was personal, giving Tennessee jurisdiction.

This decision, supported by *Hobbs v. R. R. Co.*, 9 Heisk 873-880, shows a tendency to abolish the old rule laid down in *Roach v. Damron*, 2 Humph. 425 and *Sumner v. Finegan*, 15 Mass. 284, that not only actions asserting title or interest in land, but also those arising from nuisance done to real estate are local, and must be brought in the State where the injury is committed.

PAROL EVIDENCE—WRITTEN CONTRACT.—POTTER v. EASTON ET AL., 84 N. W. 1011.—Defendant executed three promissory notes to plaintiff, across the face of which was written "Secured by mortgage on 1 bay pacing stallion known as Tibbeas I." As part of the same transaction they executed a chattel mortgage to secure payment of the notes. Plaintiff brought suit on notes and the court admitted parol evidence by the defendants to show that the horse was unsound, thereby causing a breach of warranty which they claimed the defendant had given. Plaintiff appealed, claiming that an admission of such testimony was error. Court *held* no error.

The existence of any separate oral agreement as to any matter as to which a document is silent, and which is not inconsistent with its terms, if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole transaction between them, may be proved. *Durkin v. Cobleigh*, 156 Mass. 108. *Stevens' Digest Ev.*, Art. 90.

PHYSICIANS—STATUTORY PROVISIONS—CONSTITUTIONALITY.—STATE v. BAIR, 84 N. W. 532 (Iowa).—Code, Sec. 2579, requires as an alternative qualification to practice medicine in Iowa after Jan. 1, 1899, five consecutive years' practice in the State, three of which shall have been in one locality. *Held*, not repugnant to State Constitution forbidding a great privilege or immunities to any citizen.

The court relies on the adage, "A rolling stone gathers no moss," to support its contention that permanency of practice in one locality is a proper test of fitness for this profession. A similar statute in New Hampshire was declared unconstitutional in *State v. Pennoyer*, 65 N. H. 113, on ground that it was "an arbitrary discrimination."

RAILROADS—CROSSING ACCIDENT—INJURIES TO CATTLE—FAILURE TO GIVE SIGNALS.—GRAYBILL v. CHICAGO, M. & ST. P. RY. CO., 84 N. W. Rep. 946 (Iowa).—The failure to observe the statutory regulation requiring a locomotive approaching a crossing to ring its bell and sound its whistle is negligence which will warrant a recovery for cattle injured by the failure to do so.

In reaching this decision the court engages in a psychological discussion as to whether such signals are in fact a warning for animals other than man, and holds that such signals are in fact a protection to the lower animals. The de-

cision is in agreement with American decisions, but the true reason for such liability is that failure to observe a statutory provision constitutes *prima facie* liability. *Orcutt v. Ry. Co.*, 24 Pac. 661.

RAILROADS—PUBLIC HIGHWAY—EASEMENTS.—*KOTZ v. ILLINOIS CENTRAL R. R. Co.*, 59 N. E. Rep. 240 (Ill.).—Plaintiff owned a lot on Sixtieth street, Chicago, adjoining the right of way of the defendant. Defendant, after building a surface road, elevated its tracks through Sixtieth street. *Held*, that a railroad is not a public highway in the sense that the adjoining owner has an easement of light, air, or view.

The case of *Keppel v. Bailey*, 1 Myl. & Kean 547, decided that a railroad, established and existing by virtue of a charter of incorporation, is a public highway. The above decision, however, denies those easements in a highway which usually belong to an adjoining owner. It shows a growing tendency to overlook small individual rights in favor of the public as a whole, or in favor of *quasi*-public organizations.

STATUTE OF FRAUDS—ASSIGNMENT OF CLAIMS—CONTRACTS.—*STILLMAN v. DRESSER*, 48 Atl. Rep. 1 (R. I.).—Where an assignee of claims for services agreed not to enforce the same against the debtor, but to have the amount determined, and to assign the claim to a third party on his promise to pay for the same, *held*, that the contract is an agreement to purchase a debt and not to answer for the debt of another, and is therefore outside of the fourth section of the Statute of Frauds.

This is an extremely close case, and the question involved is whether it is a promise to answer for the debt of another, or a distinct and independent promise of the promisor. The decision in this case follows a line of older precedents which are still followed in some jurisdictions. *Thornton v. Williams*, 71 Ala. 555; *Fears v. Story*, 131 Mass. 47; *Muller v. Riviere*, 59 Tex. 640. But in a large and increasing number of the United States, the promise is held to be collateral if the original liability remains. *Mitchell v. Griffin*, 58 Ind. 559; *Dows v. Swett*, 134 Mass. 140; *Reippe v. Peterson*, 35 N. W. (Mich.); *Ackley v. Parmenter*, 98 N. Y. 425.

STREET RAILROADS—CONSTRUCTION OF ROADS—CONSENT OF ABUTTING PROPERTY OWNERS—CONTRACTS—VALIDITY.—*MONTCLAIR MILITARY ACADEMY v. NORTH JERSEY ST. RY. CO.*, 47 Atl. 890 (N. J.).—Under Acts 1894 (P. L. 1894 p. 374; 3 Gen. St. 3427), authorizing township authorities to grant the use of streets for railroad purposes, with consent of the owners of one-half of the abutting property, complainant avers that defendant, to obtain such consent, agreed to deliver to him certain bonds, and after obtaining the grants and constructing the road, refused to deliver said bonds. *Held*, contract not void as against public policy.

Contract is not void because it affects other parties or public interest. *Simpson v. Howden*, 9 Clark & F. 61, 10 Adol. & E. 793, and *Railway Co. v. Hawkes*, 5 H. L. Cas. 331. For contracts void as against public interest, see *Smith v. Applegate*, 23 N. J. Law 352, and *Brooks v. Cooper*, 50 N. J. Eq. 761.

TRADE NAME—REFEREE TO RECEIVE LETTERS.—*DR. DAVID KENNEDY CORP. v. KENNEDY*, 59 N. E. 133 (N. Y.).—A physician formed a corporation and sold to it all the personal property of his business in proprietary medicine, including the sole and absolute right to use his name in connection therewith. For a

time he acted as president, and turned over to the corporation all letters addressed to him except those which were strictly private. Subsequently, he was deposed as president, and a dispute arose as to who had the right to receive and open letters addressed to him. *Held*, that a referee should be appointed to receive, open and read all letters addressed to the physician, to ascertain from their contents their true destination, and to distribute accordingly.

The success of the business was due to the system of advertising, of which these patients' letters were a part. Said system was continued by the corporation with the full knowledge, consent and advice of the defendant. Plaintiff corporation is entitled to all letters which clearly refer to the business of the corporation, although addressed to Dr. David Kennedy. The appointment of a referee to determine whether the letters referred to the business of the corporation, or were private letters belonging to Dr. Kennedy, settled the question in controversy in an unusual, perhaps, but certainly a very equitable manner.

UNITED STATES—ACTIONS AGAINST—JURISDICTION TO ENTERTAIN CROSS LIBEL IN ADMIRALTY.—*BOWKER v. UNITED STATES*, 105 Fed. 398.—A government boat collided with a private schooner. A libel was filed against the owner of the latter, who thereupon filed a cross libel. Citation was issued against the United States Attorney. This was resisted. *Held*, that cross libel could not be maintained.

It is conceded that the United States as a sovereign authority cannot lawfully be sued without its consent. *Schillinger v. U. S.*, 155 U. S. 166. The present decision, however, is directly antagonistic to *The Nuestra Senora de Regila*, 108 U. S. 92, and *The Siren*, 7 Wall. 152, where it was held that a claim for damages can exist against a vessel of the United States, and that this claim can be enforced as soon as the United States by affirmative action becomes subject to the jurisdiction of the court. In *Pt. Royal and A. R. R. v. State of South Carolina*, 60 Fed. 552, it was there decided that when a State voluntarily comes into court her standing before the court is that of an individual, and a cross bill against her will be sustained if it contains matter relevant to the original bill.

UNIVERSITIES—USE OF NAME—INJUNCTION.—*COMMONWEALTH v. BANKS*, 48 Atl. Rep. 277 (Pa.).—Where a business college was denominated "University of Philadelphia," thereby causing itself to be mistaken for the University of Pennsylvania, *held*, an injunction will lie against the use of the name.

This case shows a marked extension of the border line between names held apt and not apt to deceive the public. *Potter v. McPherson*, 21 Hun. 559, gives the decision support; but in the light of *Snowden v. Noah*, 14 Am. Dec. 547, and *Foster v. Webster, etc., Co.*, 13 N. Y. Supp. 338, it seems an encroachment upon the field of cases not apt to deceive.

WILLS—REVIVAL—INTENT.—*IN RE GOULD'S WILL*, 47 Atl. 1082 (Vt.).—Gould in 1880 made his will and gave it to his son to keep. In 1896 he made a second will, revoking the former. Later, he burned the second in son's presence, remarking that he wanted the first will "to go exactly as it says." *Held*, the first will revived.

The authorities differ as to whether the prior will is revived by the mere act of destroying the revoking will. *Scott v. Fink*, 45 Mich. 241, and others, hold that republication is necessary for revival. *Randall v. Beatty*, 31 N. J. Eq. 643, sets forth the contrary opinion. The court here followed the ruling of *Pickens v. Davis*, 134 Mass. 252, that the intent at the time of the destruction of the revoking will governs.

WITNESSES—MISTAKEN TESTIMONY OF DEFENDANT NO CAUSE FOR REVERSAL ON REVIEW.—*CAREY V. STATE*, 60 S. W. 550 (Tex.).—Upon a trial for larceny of cattle, defendant testified under a mistake and misapprehension of the question propounded to him by the county attorney, that he had no authority to execute the bill of sale for said cattle. *Held*, that it was no ground for reversal on review.

While there are no cases directly supporting this decision, it is no doubt considered as against public policy that one be allowed to take advantage of his own alleged mistake.