

RECENT CASES.

Easements—Railroad Switch—Measure of Damages.—L., N. A. & C. R. R. v. Malott et al., 34 N. E. Rep. 709 (Ind.). Appellees conveyed to a stone company a tract of land with a quarry on it, with a right of way for a switch track over other lands belonging to them from the main line of appellants' railroad. Appellants used this track for general purposes, side-tracking freight trains and allowing them to stand on the switch, and not merely for conveying stone from the quarry. Held, that the easement was appendant to the land granted and the railroad company had no right to use the switch for general purposes, and that the measure of damages is the decrease of the rental value of the land by reason of this general use.

Express Companies—Contract of Shipment Fixing Route.—Wells, Fargo & Co.'s Express v. Fuller, 23 S. W. Rep. 412 (Tex.). Where an express company, in its contract of shipment, uses no language fixing the route of shipment, but provides that it shall be liable as forwarders only within its own line of communication, the latter clause merely limits its liability and constitutes no contract to ship over its own lines. The company is left to choose for itself, but must choose a reasonably safe route, and, if other than its own, it is not liable as forwarder on that line.

Mutual Fire Insurance—Assessments made after Withdrawal of Member.—Ionia E. & B. Farmer's Mut. Fire Ins. Co. v. Otto, 56 N. W. Rep. 88 (Mich.). Under the charter of a mutual fire insurance company which gives its members the power to withdraw, on paying their proportion of all assessments to which the company is liable at the time of such withdrawal, it is held that a retiring member must pay his proportion not only of such losses as are already assessed but of all others incurred during the time of his membership, though subsequently assessed.

Railroads—Negligence—Injury to Person on Track.—Texas & P. Ry. Co. v. Robinson, 23 S. W. Rep. 433 (Tex.). In this case the husband of the appellee was run over and killed on the track while in a state of intoxication, and the circumstances tended to

show that, had he had a little more time, he would have succeeded in getting out of the way. The accident occurred near a curve, and the appellant proved that the engineer of the train blew his whistle in rounding the curve and on seeing the man, but he was only 200 feet away when it was evident that he was intoxicated and not likely to get off the track. The engineer did not attempt to stop the train until after the man was struck, and the momentum was so great that the train did not come to a stop until a third of a mile from the accident. The court said that if a person, whether drunk or sober, negligently incurs danger from a passing train, he is precluded from recovering, unless, after the danger is discovered, the engineer fail to do all in his power to lessen it. In this case, if the engineer had endeavored to stop the train when first the danger appeared, the deceased might have had time to save himself, and therefore the railroad company was held responsible.

Seal—Printed Forms—Sufficiency.—Loraw v. Nissley, 27 Atl. Rep. 242 (Penn.). The maker of a note used a printed blank, and signed his name to the left of the printed word "seal." The court declared that "sealing has become constructive rather than actual, and is in a great degree a matter of intention," and held that the use of a blank raises a conclusive presumption that all its parts not struck out or intended to be cancelled before signing, are adopted by the signer, and no other seal was necessary to the validity of the instrument.

Statutes—Presumption as to its Passage.—State ex rel. Reed v. Jones, 34 Pac. Rep. 201 (Wash.). The Attorney General of Washington was charged by a statute with the performance of certain duties. He refused to perform them on the ground that the legislature had not observed constitutional requirements in the passage of the act, a writ of mandamus was issued to compel his performance. Held, that where a bill is regular on its face, is signed by the presiding officers of the two houses of the legislature and approved by the executive, and is on file as directed by the constitution, it is conclusively presumed to have been regularly passed by the legislature.