RECENT CASES.

Action against Elevated Railroad—Damages Reserved.—Shepard v. *Metropolitan El. Ry. Co.*, 31 N. Y. Supp. 537. The Western Union Telegraph Company made a conveyance of land, reserving the right of action against an elevated railroad company for damages to the property conveyed. The grantee brought suit for such damages, and the grantor sought to be made a party to the action. *Held*, that such reservation imposed no trust duty upon the grantee, as no portion of the principal estate to which the easement could appertain was retained by the grantor, and the right of action accompanies the easement.

Champertous Contract—Damages for Breach of Same—Public Policy.—Lyon v. *Hussey*, 31 N. Y. Sup. 281 (N. Y.). An agreement made between two parties, by which one of them is to employ counsel to furnish money for carrying on the suit and to procure evidence to establish the other's claim, in consideration of which he is to receive a certain portion of the amount recovered, is champertous, and cannot be enforced. Where one agrees to obtain evidence for another and is promised a part of the sum recovered for his labors, the contract is void as against public policy.

Contemporaneous Executions—Distribution—Rights of Judgment Creditors.—Moores et al. v. *Peycke et al.*, 62 N. W. Rep. 1072. Where two or more judgments in favor of different plaintiffs against the same debtor are sued out during the same term of court, the money arising from writs of execution issued thereon during or within ten days after the close of the term, if insufficient to satisfy all, must be apportioned *pro rata* among the several creditors.

Defective Sidewalk—Liability of City.—Jackson v. *City of Greenville*, 16 So. Rep. 382 (Miss.). The point in question in this case is whether a person of full age using the sidewalk for the sole purpose of playing with a dog is making such a reasonable use of it as to entitle him to recover damages against the city if he is injured by a defect therein. Was the municipality under any duty to the appellant to keep in repair the sidewalk so that he might safely use it for the purpose of his play with the dog? It

was held that the injured party, in order to recover, must fix liability upon the city, and to fix liability the appellant must show failure on the city's part to discharge a duty to him. But the duty to repair and keep in reasonably safe condition streets and sidewalks is due only to those using them for the purposes for which they were made, and playing with a dog is not held to be such a reasonable use.

Election of Remedies—Attachment—Subsequent Replevin.—Johnson-Bruikman Commission Co. v. *Mo. Pac. Ry. Co.*, 28 S. W. Rep. 870 (Mo.). The plaintiff began an attachment suit to recover a quantity of wheat, and abandoned it before judgment, substituting an action of replevin; the defendant successfully interposed a demurrer. The Supreme Court reversed the judgment, saying that the mere fact that a party mistakes his remedy, and pursues the wrong one, ought not to prevent him from afterward obtaining redress in the proper manner. He was not estopped in this case, as there were no intervening rights of third parties, and the defendant was not injured.

Estoppel—Fraudulent Conveyance—Option.—Kahn v. *Peter*, 16 So. Rep. 524. Where K advised W to make a fraudulent sale—himself becoming one of the benefactors from such sale—he has no longer the option of setting aside or claiming under it, but is committed to it, and estopped from questioning its validity.

Execution—Property Subject to Levy—Articles Stored with Debtor.—Burwell v. *Herron et al.*, 16 So. Rep. 356 (Miss.). This action was brought for the recovery of a soda water fountain, which, among other property, was seized by appellees in an attachment against a judgment debtor. Appellant claimed and satisfactorily proved that the property belonged to him, and that it had only been rented to judgment debtor, but that long before the execution had been served the rental contract had expired and that by special agreement the fountain was kept unused in the storehouse until the owner should want it. *Held*, that it was not property so used or acquired in his business the creditors could seize on a writ of execution.

Exemption from Taxation—Object of the Statutes.—Shreveport Gas, Electric Light and Power Co. v. *Assessor of Caddo Parish.*, 16 So. Rep. 650. A statute passed with the object of encouraging agriculture, made exempt from taxation, among other things, the capital and machinery used in the manufacture of fertilizers and

chemicals. *Held*, that illuminating gas for street lighting did not come within the meaning and intendment of the statute, though scientifically it might be a chemical. Also held that the right to exemption from taxation must be clearly and indisputably shown.

Fraudulent Conveyance—Referential Bill of Sale—Validity.—Goetter et al. v. *Smith et al.*, 16 So. Rep. 534. If the rights of third parties are not involved, the parties to a contract, before or after consummation, may either rescind or modify it, and their mutual agreement is sufficient consideration so to do; contracts *contra bonos mores* form no exception, and when the rescission is express, fairly and openly made, no disability of contracting can be imputed to the parties because of their former contractual relations, and such a rescission is a valid consideration for a subsequent sale.

Grounds for Divorce—Neglect—Custody of Children.—Irwin v. *Irwin*, 28 S. W. Rep. 664 (Ky.). Where a wife is subjected to mental sufferings brought on by the extreme neglect of a husband bordering on cruelty, and from the effects of these sufferings her physical health is greatly impaired, she is entitled to a divorce from bed and board, and the court will give the custody of the children to that parent who is able to best care for their needs.

Injury to Passenger by Fellow Passengers—Liability of Carrier.—Gulf, C. & S. F. Ry. Co. v. *Shields*, 28 S. W. Rep. 709 (Tex.). This was a case where a passenger was injured by a drunken person getting aboard the train with a jug of alcohol, which was spilled in the car in which he and other passengers were riding, and which spread over a considerable portion of the car floor, and finally became ignited, from which the plaintiff suffered personal injuries. *Held*, that a railroad company in protecting one passenger from the acts of a fellow passenger is only required to use that degree of care which a very prudent person would use under like circumstances.

Lands of Cemetery Corporation—Condemnation for Street Purposes.—Woodmere Cemetery v. *Roulo*, 62 N. W. Rep. 1010 (Mich.). It is a constitutional exercise of the right of eminent domain for city authorities to open a street through a cemetery under special permission from the legislature, although such associations are exempted from condemnation proceedings under the general law, and such permission applies only to the cemetery in question.

License — Exemption of Barber.— State v. *Hirn*, 16 So. Rep. 403 (La.). In this case the State sought to recover from defendant a license tax for conducting the business of a barber, and he set up as defense the constitutional exemption of mechanical pursuits from license taxes. It was held that the occupation of a barber was mechanical, nor did the fact that he employed other barbers in conducting his business take him out of the exemption.

Property Rights—Damages—Liability of Upper to Lower Land Owner. —Pfeiffer v. *Brown et al.*, 30 Atl. Rep. 844 (Pa.). When an upper land owner by drilling a well and pumping therefrom greatly increases the quantity of water discharged, and the water discharged is changed from fresh to salt, thus greatly injuring a lower land owner's property, held, that if this injury could have been prevented by a reasonable amount of care and expenditure on the part of the upper land owner, and he failed to do so, then he is liable, even though such water was discharged according to the lawful use of his land.

Public Officer—Right to Office—Injunction.—State ex. rel. Keller v. *Rost, Judge, et al.*, 16 So. Rep. 663. C was appointed member of a board of supervisors of election, but before he qualified K was appointed in substitution, and qualified at once. C qualified three days later. The board had not met when C causes an injunction to issue enjoining K to restrain from interference with him in the performance of his duties. *Held*, that K holding later credentials became, upon taking oath, legal incumbent of office, and could not be interfered with by injunction at the instance of another claimant; nor could C by such injunction force K to resort to an action at law.

Trusts—Evidence—Deposits in Bank.—Macy v. *Williams et al.*, 31 N. Y. Supp. 620. A testator had the greater part of his property deposited in savings banks in his own name in trust for various other persons, usually without the knowledge of the latter. He treated the accounts as his own, adding to and drawing from them from time to time, and closing most of them before his decease. In addition to a will, he left a memorandum stating that the bank books belonged to the persons in whose names they stood. This was held insufficient evidence of an intention to create a trust in them, the circumstances indicating that his real purpose was not to part with the beneficial interest in the property, but probably to conceal his pecuniary condition.