RECENT CASES.

BANK CHECK—DEPOSIT FOR COLLECTION—CORRESPONDENT BANK—DEPOSITOR'S AGENT—WILSON v. CARLINVILLE NATIONAL BANK, 58 N. E. 250 (Ill).—A customer deposits with his bank a check for collection. The depositary transmits the check for collection to its correspondent bank, using reasonable care in selecting such correspondent bank. *Held*, the correspondent bank becomes the agent of the depositor for such collection, and the depositary is not liable to the depositor for any negligence on the part of the correspondent bank.

The authorities on this point, namely, whether the correspondent bank is agent for the depositary bank or the depositor, are in direct conflict. The sounder rule seems to be that it is agent for the depositary bank. This is the rule in England, United States Courts, Michigan, Minnesota, Montana, New Jersey, New York, and Ohio. But the following States hold that the correspondent bank is agent of the depositor: Connecticut, Illinois, Iowa, Kansas, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, North Carolina, Tennessee, Wisconsin. See 3 *Am. & Eng. Ency. Law*, 810.

CARRIERS—LIABILITY FOR APPROPRIATION OF GOODS—CONTRIBUTION—LEIFERT ET AL v. GALVESTON L. & H. RY. CO., 57 S. W. 899 (Tex.)—Goods were wrongfully delivered by a connecting carrier to a steamship company instead of to the owner, and were carried to another place. The said company, having had notice of the ownership, claimed a lien for freight and sold the goods. *Held*, liable for conversion.

Counsel for defendant insisted that there could be no liability, as the law required the company, as a common carrier, to receive and transport goods tendered by connecting lines; however, the company was held liable on the ground that a carrier has no lien when the property is received from a wrongful holder, or from one not authorized to ship. 5 *Am. & Eng. Ency.* 403. *Saltus* v. *Everett*, 20 Wend. 275. This case is distinguishable from *Price* v. *Railroad Co.*, 21 Pac. 188, and *Patten* v. *Railroad Co.*, 29 Fed. 590, as the carrier had no authority, either as a general or a special agent, to ship the goods beyond the destination named in the bill of lading. As they were joint feasors, the steamship company is not entitled to contribution from the connecting carrier.

CARRIERS OF PASSENGERS—USE OF RAILROAD GROUNDS—CONTRACT—B. & A. R. R. CO. v. BROWN, 58 N. E. 189 (Mass.).—In this case the Massachusetts rule adopted in *Railroad Co.* v. *Tripp*, 147 Mass, 35, 17 N.E. 89, is followed. This rule is that a railroad company may give a hackman the *exclusive* right to solicit passengers upon its premises. *Railroad Co.* v. *Tripp* has been followed in *Godbont* v. *St. Paul Union Depot Co.*, 81 N. W. 835 (Minn.). But, aside from these two cases, the authorities are unanimous to the effect that no *exclusive* privilege can be given. *State* v. *Reed*, 76 Miss. 211; *McConnell* v. *Pedigo & Hayes*, 92 Ky. 465; *Railroad Co.* v. *Langlois*, 9 Mont. 419; *Cravens* v. *Rogers*, 101 Mo. 247; *Hack & Bus Co.* v. *Sootsina*, 84 Mich 194; *Hedding* v. *Gallagher et al*, 69 N. H. 650, 46 Atl. 96, 9 YALE LAW JOURNAL 231. The principle deciding

these cases is that to give effect to such regulation would be to allow the railroad company to control the transportation of passengers and merchandise beyond its own lines, and to establish a monopoly not granted by its charter, which might be solely for its own benefit and not for the benefit of the public.

CARRIERS—SHIPMENT—GARNISHMENT—EFFECT—BALDWIN ET AL V. GREAT NORTHERN RAILWAY CO., 83 N. W. 986 (Minn.).—A carrier received freight for shipment from a place within a State to a place without, placed the same in a car for transportation and issued a bill of lading therefor. A third party then served on it a garnishee summons against the owner of the goods. *Held*, that this did not compel the company to forego the right to transport the same, nor did it excuse or authorize an unreasonable delay in forwarding the property.

On grounds of public policy it is held by the weight of authority that carriers cannot be held as garnishees for property where it is in actual transit when the garnishment process is served. 14 *Am. & Eng. Enc.* 810. *Contra*, *Landa* v. *Holck*, 129 Mo. 663, citing with approval *Adams* v. *Scott*, 104 Mass. 164. The courts are pretty well divided as to whether the exemption extends to goods not actually in transit, but the majority seem to hold that it does not. In *Bates* v. *R. R.*, 60 Wis. 296, the Court expressly declined to decide the question. However in the case at bar, approving and following the rule laid down in *Stevenst* v. *Eastern Ry. Co.*, 63 N. W. 256, it was held that property in carrier's hands, though not yet shipped, was not subject to garnishment.

CARRIERS—INJURY TO EMPLOYEE—LIABILITY—CHATTANOOGA RAPID TRANSIT CO. V. VENABLE, 58 S. W. 861.—In violation of the railroad's rules a conductor allowed an employee of the road to ride without demanding a pass or fare from him. *Held*, that such an employee, riding openly, was not a trespasser and railroad was liable for injuries resulting from a collision.

A railroad company has the right to make reasonable rules regulating the running of its road, and such rules cannot be abrogated by its employees. *Railroad Co.* v. *Wilson*, 88 Tenn. 306. 4 *Elliott, R. R.* Sec. 1500. Thus if defendant had prevailed upon the conductor to carry him in violation of a known rule of the company, no recovery would be permitted. *Railroad Co.* v. *Haily*, 94 Tenn. 383. The most that the conductor did in this case was to call the attention of the defendant to the rule referred to above. The presumption is that a person so traveling with knowledge of the conductor, and without interference from him, is a passenger and entitled to all a passenger's privileges. 4 *Elliott R. R.* Sec. 1578. *Jacobim* v. *R. R. Co.*, 20 Minn. 125; *O'Donnell* v. *R. R. Co.*, 59 Pa. St. 239; *Washburn* v. *R. R. Co.*, 3 Head (Tenn.) 638.

CONTRIBUTORY NEGLIGENCE OF PARENT—PERIL OF CHILD—RESCUE BY MOTHER—WEST CHICAGO ST. RY. V. LIDERMAN, 58 N. E. 367. (Ill.)—The mother permitted the child while on the street to let go of her hand, and run onto defendant's tracks. This suit was for damages she sustained in attempting to save it from being run over by a car. The contention of defendant was that permitting a child three years old to play in the street where cars were operated was negligence as a matter of law. *Held*, that as a matter of law it was not negligence *per se*, but was fairly debatable. *Fox* v. *Ry. Co.*, 118 Cal. 55; *Weeks* v. *Ry. Co.*, 56 Cal. 513.

But in *Ry. Co.* v. *Leach*, 91 Ga. 419, it was held that a person's administrator could not recover for his death which resulted from his attempt to save a boy, who by negligence of deceased, was on the trestle of a railroad.

CORRECTING JUDGMENT—SURPLUS—LIEN—STRAUSS ET AL v. BENDHEIM, 66 N. Y. Supp. 247.—A judgment for the specific performance of a land contract directed the sale of the land by a referee in case of disability of defendant, the vendee, to pay the contract price with costs, and awarded defendant any surplus arising after deducting taxable costs and disbursements. *Held*, that the surplus raised by a sale to a stranger could not be divested from defendant to plaintiffs by an amendment of the original judgment, which was correct, or by a supplementary direction of the Court, though the surplus was gained through plaintiff's efforts at an expense equal to the surplus—they having employed counsel in proceedings to enforce the stranger's purchase, such agreement being a simple contract only, creating no lien on the surplus.

Amendment can only be allowed for purposes of making the record conform to the truth, not to reverse or change the judgment. Sec. 56 *Black on Judgments.* The law does not authorize correction of judicial errors, under pretense of correcting clerical errors. Sec. 70 *Freeman on Judgments.* Whatever ethical grounds the plaintiffs may have, by agreement with the defendant that he should contribute to the expense of the proceeding, they do not reach the legal effect of a lien on the surplus, but merely create a simple contract right.

DISMISSAL AND NONSUIT—COSTS—COLLUSIVE SETTLEMENT—ATTORNEY'S RIGHTS—NATIONAL EXHIBITION CO. v. CRANE, 66 N. Y. Supp. 361.—Defendant, who had become irresponsible, made a collusive agreement with plaintiff consenting to a discontinuance of the action, without payment to the attorney of his fees, to which discontinuance the defendant's attorney objected. *Held*, that the Court had power to protect the attorney, as an officer of the court, in his inchoate right to fees by requiring payment thereof as a condition of discontinuance. Van Brunt, P. J., and Ingraham, J., dissenting.

Little discussion on this point can be found in books, as the Courts have seldom exercised this power. While no cases, as far as we know, cast doubt upon this practice, it seems to be supported in the adjudicated cases. *Wormer* v. *Canovan*, 7 Lans. 36. A prerequisite of the exercise of this right by the Courts is that the stipulations of discontinuance must have been collusively entered into by the parties and with intent to deprive the attorney of a right which in ordinary course he might enforce. *Randall* v. *Van Wagenen*, 115 N. Y. 528. The cases show that there are two methods followed by the Courts in protecting the attorney under these circumstances, the one being the payment of costs as a condition of discontinuance, as in the case under discussion; the other is by permission granted the attorney to proceed to judgment and thereby perfect his lien for fees. *Talcott* v. *Bronson*, 4 Paige 501. We think the first method is the better, in that further litigation is dispensed with.

FIRE INSURANCE—LOCATION OF INSURED PROPERTY—LEVENTHAL v. HOME INS. CO., 66 N. Y. Sup. 502.—*Held*, a policy of insurance covering loss by fire on all personal property located in a certain residence did not extend to valuable garments in the back yard on a clothes line. *Baler* v. *Insurance Co.*, 80 Hun. 309.

GUARANTY—NOTICE OF ACCEPTANCE—GERMAN SAVINGS BANK v. DRAKE ROOFING CO., 83 N. W. 960. (Ia.)—To induce a bank to extend credit, an instrument not signed at the bank's request nor in its presence, recited that the signers guaranty the payment of all indebtedness which may accrue from the principal to the bank within a certain time, not exceeding a certain sum. There was no consideration except the future advancements. The instrument

was delivered to the bank and the principal drew more money. *Held*, a mere offer of guaranty requiring notice of acceptance by the bank to bind the guarantors.

Although some of the rules relating to acceptance of guaranty are fairly well settled, there is a great diversity of opinion as to their application to special circumstances. Two good reasons are advanced for requiring such notification: First, that the so-called guaranty is a mere proposition and the contract is not complete until the minds of the parties have met through acceptance; second, that the party making the offer is entitled to know his responsibility. *Edmonston* v. *Drake*, 5 Pet. 624. *Davis* v. *Wells*, 104 U. S. 159. *Contra, Douglas* v. *Howland*, 24 Wend. 35. Chief Justice Marshall has held that notice must be given the guarantor even though his promise be absolute in its terms. *Russel* v. *Clarke's Exrs.*, 7 Cranch 69. See also *Craft* v. *Isham*, 13 Conn. 28. *Contra, Paige* v. *Parker*, 8 Gray 211. *Whitney et al* v. *Groot*, 24 Wend. 82. In the present case the Court endorsed the authoritative rule announced by Justice Grey in *Machine Co.* v. *Richards*, 115 U. S. 524, and required a notification of acceptance.

HAWKERS AND PEDDLERS—RIGHTS OF ALIENS—EQUAL PROTECTION OF LAW—CONSTITUTIONAL LAW—STATE v. MONTGOMERY, 47 Atl. 165 (Me.).—Respondent, a citizen of the United States, was found guilty of peddling certain classes of goods without a license, in violation of a statute of the State of Maine, which provides that the "secretary of state shall grant a license" for peddling "to any citizen of the United States * * * but such license shall be granted to no other person." *Held*, that the statute is opposed to the Fourteenth Amendment to the Federal Constitution.

From the wording of the statute it follows that an alien cannot obtain a license to peddle. But it has been held repeatedly that an alien comes within the meaning of "person" in the Fourteenth Amendment, and therefore cannot be denied the "equal protection of the law." *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Ry.* v. *Ellis*, 165 U. S. 150. (*Cooley on Const. Lim.*, sixth ed., page 213.)

INTOXICATING LIQUORS—MUNICIPAL ORDINANCES—LICENSE FEES—BOARD OF COUNCIL OF HARRODSBURG v. RENFRO, 58 S. W. 795.—By a city ordinance a license fee of $600 was fixed for selling liquor on any street with the exception of Main street. The fee on this street was placed at $900. *Held*, that such an ordinance was invalid to the extent that it discriminated against the liquor business conducted on Main street.

The invalidity of such an ordinance is based upon the fact that it is an example of special and local legislation. The powers granted to a municipal corporation are specially enumerated and no powers are to be implied which are not thus enumerated. *Somerville* v. *Dickerman*, 127 Mass. 272. *Francis* v. *Troy*, 74 N. Y. 338. The legislature itself could clearly not be allowed to exercise a power so unequal and discriminating, and thus a double reason why such a power should not be presumed.

LANDLORD AND TENANT—ANDERSON v. STEINREICH, 66 N. Y. Sup. 498.—Where a landlord, the defendant, gave plaintiff a suite of rooms and a certain monthly sum for services rendered by plaintiff, *held*, the relation of landlord and tenant did not exist.

In the present case the fact that the services rendered by plaintiff were performed in the same building in which her services were rendered as janitress, was held by the Court to constitute the entire relationship into one of master and servant. *White* v. *Sprague*, 9 N. Y. St. Rep. 220.

LICENSE—DELIVERY OF GOODS BY AGENT—INTER-STATE COMMERCE—STATE ET AL V. CALDWELL, 373 S. E. 178 (N. C.)—A license tax was required of all persons selling or delivering picture frames or pictures. This applied to agents who received the pictures and frames from their firm in another State. *Held*, not in violation of the United States Constitution, Art. I, Sec. 8.

The principles governing this case are authoritatively stated in *Robbins* v. *Selby County Taxing District*, 120 U. S. 489. The distinction the Court draws between goods delivered by the foreign firm directly to the consumer and indirectly through the agent seems doubtful.

MASTER AND SERVANT—EIGHT-HOUR DAY LAW—OVERTIME—EXTRA COMPENSATION—GRAY V. HALL, 66 N. Y. Sup. 500.—Chapter 385, Laws of 1870 of New York, enacts the customary eight-hour-per-day law, but permits overtime contracts for compensation. Plaintiff was employed under an agreement to receive a certain sum per day and proportionately for parts of a day. *Held*, work of over eight hours per day did not entitle him to additional compensation.

This seems a close question. Plaintiff, by agreement, was to receive a certain sum per day and proportionately for parts of days; and the statute provides a day to be eight hours, and plaintiff worked in excess of this time. But the Court held that the clause "part of a day" applied only to days on which plaintiff worked less than eight hours, and denied him relief. *McCarthy* v. *Mayor*, 96 N. Y. 1.

HUSBAND AND WIFE—ALIENATING HUSBAND'S AFFECTIONS—WIFE'S RIGHT OF ACTION—BETSER V. BETSER, 58 N. E. 249 (Ill.)—Action by wife for alienation of husband's affections. *Held*, the reason the wife was not allowed to maintain this action at common law was, that she could not sue without joining her husband as plaintiff. The reason of the rule is abrogated by the statute which allows a married woman to sue without joining her husband. Therefore she may maintain the action.

The law on this point is in an unsettled state in the United States. In Connecticut, it is held that a married woman may maintain the action independently of any statute. *Foote* v. *Card*, 58 Conn. 4. In other States it is held, as in the present case, that if a statute allows a married woman to sue alone, she may maintain this action. *Mehrhoff* v. *Mehrhoff*, 26 Fed. Rep. 13; *Logan* v. *Logan*, 77 Ind. 558; *Clow* v. *Chapman*, 125 Mo. 101, 46 Am. St. Rep. 468; *Bennett* v. *Bennett*, 116 N. Y. 584; *Gernerd* v. *Gernerd*, 185 Pa. St. 233, 39 Atl. 884; *Westlake* v. *Westlake*, 34 Ohio St. 621. In Massachusetts it is held that no such action can be maintained unless adultery is alleged. *Houghton* v. *Rice*, 174 Mass. 366, 54 N. E. 843; *Drocker* v. *Drocker*, 98 Fed. Rep. 702. Maine and Wisconsin are the only States which do not allow a wife to maintain this action. *Duffies* v. *Duffies*, 76 Wis. 374; *Morgan* v. *Martin*, 92 Me. 190. See also on this subject, 15 *Am. & Eng. Enc. of Laws* (second ed.) 864.

JURISDICTION—CIRCUIT COURT OF APPEALS—CASE INVOLVING A FEDERAL QUESTION—AMERICAN SUGAR REFINING CO. V. CITY OF NEW ORLEANS, 104 Fed. 2.—Action by the City of New Orleans to recover of the American Sugar Refining Company a license fee. Taken to the Circuit Court of Appeals and dismissed because it presented a case requiring the construction and application of the United States Constitution.

It is now the rule that in all cases which are controlled by the construction and application of the Constitution of the United States, a direct appeal lies to the Supreme Court. *Carter* v. *Roberts*, 20 Sup. Ct. 713. In the present case the pleadings showed that the jurisdiction of the Federal Courts did not rest entirely upon constitutional construction. It was based on diverse citizenship. In view of this the decision of the Circuit Court of Appeals declining to take jurisdiction would seem to be unwarranted, and the more so since the original dispute was not one in which the parties demanded a construction of the United States Constitution. *New Orleans* v. *Benjamin*, 153 U. S. 411.

MASTER AND SERVANT—RESPONDEAT SUPERIOR—CRAVEN V. BLOOMINGDALE —66 N. Y. Sup. 525.—Defendant's servant delivered goods to plaintiff which were bought from defendant. Said goods had a C. O. D. mark for an excessive amount. Plaintiff offered the right amount of the charge and refused to give up possession. *Held*, defendant's servant in having plaintiff arrested for theft, acted within the scope of his employment and bound his master in damages, said servant's employment being the driving of a delivery wagon and delivering goods.

The boundary line in nearly all jurisdictions is indistinct as to what constitutes the division between acts committed by a servant which are within and those without the scope of his employment. The present case seems an extreme one. In *Allen* v. *London, etc. Ry. Co.*, L. R., 62 B. 65, however, the same rule is announced, but in *Walton* v. *New York, etc. Co.*, 139 Mass. 556, a different doctrine is stated. See *Lubliner* v. *Tiffany & Co.*, 66 N. Y. Sup. 659.

MASTER AND SERVANT—CARE OF MASTER—SULLIVAN V. POOR ET AL.—66 N. Y. Sup. 409.—Where an elevator was defective, but the proprietor had an inspector's certificate stating it to be safe, and plaintiff's husband was killed by such defect, *held*, no recovery.

MEASURE OF DAMAGES—DECEIT—SIGAFUS V. PORTER, 21 Supreme Ct. 34 —In an action for $1,000,000 damages for false represetations as to the value of a mine, it was held that the measure of damages was the amount the person defrauded was actually out of pocket by reason of the fraud. Not the represented value minus the actual value, but the price paid minus the actual value. Justice Brown and Justice Peckam dissented.

The Court followed the rule of *Derry* v. *Peek*, 14 App. Cases 337. That is, actual loss by the deceit. The other rule, that the difference between the actual value and the representative value is the measure, is the rule laid down in *Morse* v. *Hutchins*, 102 Mass. 439.

MEASURE OF DAMAGES—NUISANCES—VANSICLEN V. CITY OF NEW YORK, 66 N. Y. Sup. 555.—Where defendant maintained a nuisance in the street in front of plaintiff's property, *held*, plaintiff's measure of damages, after abating the nuisance, was the diminished rental value of the property.

The usual rule in such cases is the market value of the property, *Colony Ry. Co.* v. *Evans*, 6 Gray (Mass.) 25, but the present case is strongly supported by *Francis* v. *Schoelkopf*, 53 N. Y. 152. See *Edg. Dam.* (eighth ed.) sec. 1203.

MUNICIPAL CORPORATIONS—GREATER NEW YORK CHARTER—CORPORATION COUNSEL—JUDGMENT—POWER TO CONFESS—BUSH V. O'BRIEN ET AL 58 N. E. 106 (N. Y.)—Suit in equity by a taxpayer, to restrain the collection of a judg-

ment obtained against the city upon confession of judgment by the corporation counsel. *Held*, the corporation cousel had no power to confess judgment against the city, as the power to settle claims resides in the comptroller, and collection of the judgment should be restrained. Three judges dissent upon the ground that corporation counsel did have such power, and further that a judgment cannot be attacked in equity on the ground that it was entered without authority, but the proceeding must be by motion in the action resulting in the judgment.

It seems plain from the charter provisions and general law that the corporation counsel had no power to confess judgment. *San Francisco* v. *LeRoy*, 138 U. S. 656. But the mode of attacking the judgment is without precedent. The Court in the original action had jurisdiction and confession of judgment was a mere *irregularity* for which the judgment cannot be impeached. *Black, Judgments*, 261. In the original action a motion to set aside judgment was made and denied. Where such a motion has been made and refused equity will not interfere by injunction. *Black, Judgments*, 363. No fraud or collusion in obtaining judgment was alleged nor was it denied that the city was justly indebted.

PROXIMATE CAUSE—INJURIES—NEGLIGENCE—EVANSVILLE, ETC. RY. CO. v. WELCH, 58 N. E. 88 (Ind.)—A man was struck by appellant's engine and hurled against appellee, who was injured in consequence. *Held*, on appeal, the plaintiff could not recover, as the defendant's negligence was not the proximate cause of his injury. To same effect see *Wood* v. *Penn. R.R. Co.*, 177 Pa. St. 306.

STATUTE OF FRAUDS—PART PAYMENT OF PRICE—RAYMOND V. COLTON, 104 Fed. 219.—Plaintiff was vice-president, general manager, and director of a joint stock mercantile company. Defendant was a stockholder in the company. Plaintiff by parol agreement would "get out" of the company in consideration of receiving one-fourth of the goods owned by the company. Several days after this arrangement plaintiff handed his resignation to defendant and now brings suit for the goods. *Held*, no such part payment as to take the contract out of the Statute of Fraud.

The decision in this case turns upon the peculiar wording of the New York statute. The general rule is that time of payment is unimportant. *Davis & Moore*, 13 Me. 424. And we understand that it is not authoritatively settled that payment *must* be made before suit is commenced. The New York statute demands that the payment should be made at the same time as the contract. *Jackson* v. *Tupper*, 101 N. Y. 575. A reaffirmance of the contract at the time the part payment is made will satisfy the statute. The facts in this case would seem to bring it under this last proposition.

TAXATION—EXEMPTIONS—YOUNG MEN'S CHRISTIAN ASS'N OF OMAHA V. DOUGLAS COUNTY, 83 N. W. 924 Neb. A Young Men's Christian Association owned a building and used all of it except the first floor, which was rented for business purposes. *Held*, that the first floor not being used exclusively for educational, charitable, or religious work, was not exempt from taxation under the general revenue laws of the State.

There are two views held as to exemptions of this nature. The first holds that the exemption is dependent upon the ownership of the property, regardless of its use. 12 *Am. & Eng. Ency.* 325. *University of South* v. *Skidmore*,

87 Term, 155. In the case under consideration the second, and what seems to be the better view, viz: that such property is exempted only when used by the grantee for appropriate purposes. *Stohl* v. *Association*, 58 Pac. 796, *Association* v. *Pelten*, 36 Ohio 258. The second contention would also be supported by the fact that all such exemptions should be strictly construed as they are in derogation of the equal rights of all.

TRADE NAME—DESCRIPTIVE TERMS—FULLER V. HUFF, 104 Fed. 141.—The long continued use of a trade name, even though it is descriptive of quality, can be protected by injunction and the fact that the packages were dissimilar in appearance and had the place of manufacture plainly printed on them does not take it outside of the rule of unfair competition.

This case goes further than any previous case we have seen in regard to two points. The general rule is that names descriptive of quality can not be protected as trade-marks. *Ginter* v. *Kinney Tobacco Co.*, 12 Fed. 182. This case of *Fuller* v. *Huff* makes a descriptive name which has long been used a valid trade-mark. This is in accordance with the general tendency of the day in the development of the law of trade-mark. The other point that although the use of the name was accompanied by simulation of packages and the places of manufacture printed on them was different, yet it constitutes unfair competition, seems to carry this doctrine further than previous cases. We have understood that such a general similarity in appearance as would mislead the ordinary purchaser was the best. *Lorillard Co.* v. *Pepper*, 86 Fed. 956.

VENDOR AND VENDEE—RECISSION—IMPROVEMENTS—RIGHT TO COMPENSATION—LUTOV V. BADHAM, 37 S. E. 133 (N. C.) *Held*, where a vendee has entered and placed valuable improvements on land under a parol contract to convey, and the vendor repudiates the contract and refuses to convey, the vendee or his personal representative may maintain an action to recover compensation for such improvements, and the right to such compensation exists though the vendor has obtained possession.

It seems well settled that where improvemets have been made under parol contract, compensation will be allowed for them where the party claiming is in possession. *Hedgepeth* v. *Rose*, 95 N. C. 41. The present case allows compensation after the occupant has given up possession, and in this seems to go beyond the general rule of the State. *Am. & Eng. Ency. of Law*, second ed. 16-103. The judgment seems grounded on a very liberal exercise of equitable principles.