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CARRIERS—INJURY TO PASSENGERS—NEGLIGENCE OF PASSENGER—QUESTION FOR JURY.—CLERE V. MORGAN'S L. & T. R. Co., 31 So. 886 (La.).—Plaintiff's arm, projecting beyond the window sill of a moving steam railway car, was injured by being struck by the swinging door of a freight car standing on a switch of the defendant company. *Held,* that plaintiff was not as a matter of law negligent, but that the question of negligence was for the jury, to be determined from the evidence, all the circumstances of the case being taken into consideration.

It is the prevailing rule that it is negligence *per se* for a passenger to protrude his arm beyond the outer edge of a window on a moving steam railway car. *Todd* v. *Old Colony R. Co.,* 7 Allen 207; *Georgia Pac. R. Co.,* v. *Underwood,* 90 Ala. 49; *Indianapolis R. Co.* v. *Rutherford,* 29 Ind. 82; *Dun* v. *Seaboard R. Co.,* 78 Va. 645. An attempt has been made to distinguish between steam and street railway cars as regards negligence of this nature. *Summers* v. *Crescent City R. Co.,* 34 La. Ann. 139; *Miller* v. *St. Louis R. Co.,* 5 Mo. App. 471; but such distinction has been severely criticised. 2 *Wood's Railway Law,* pp. 1107, 1108; *Georgia Pac. R. Co.* v. *Underwood,* 90 Ala. 51. Seemingly the only decision which opposes the prevailing view and supports the present case is *Spencer* v. *M. & P. C. R. R. Co.,* 17 Wis. 487. *Chicago R. Co.* v. *Pondrom,* 51 Ill. 333, and *Quinn* v. *So. C. R. Co.,* 29 S. C. 381, often said to support the Wisconsin case, have been distinguished, and so are not authority on the issue here involved.

CARRIERS—TAKING PASSENGER BEYOND DESTINATION—DAMAGES.—SMITH ET UX., V. WILMINGTON & W. R. Co., 41 S. E. 481 (N. C.).—Plaintiff purchased tickets and boarded a train to go to a certain crossing, where there was no station. The conductor was unable to signal the engine in time and the train was finally stopped at a considerable distance beyond plaintiff's destination. At the time she left the train it was raining and the plaintiff was exposed to the storm. She was afterwards taken ill, but her physician testified that she would nave been ill anyway. Evidence of mental suffering was excluded. *Held,* that a judgment of non-suit was properly ordered. Douglas and Clark, J J., *dissenting.*

The majority opinion in this case appears to controvert the settled rule that carrying a passenger beyond his destination is actionable negligence. *Thompson, Carriers,* p. 568; *Code (N. C.),* Sec. 1963; *Raben* v. *R. R.,* 75 Iowa 579; *Bucher* v. *R. R.,* 98 N. Y. 128. Carriers are bound to stop, at the representation of their agent. *Hull* v. *R. R.,* 66 Tex. 619. Increased risk of injury resulting from condition of health must be borne by the passenger. *Pullman Co.* v. *Barker,* 4 Col. 344. The English rule also holds that illness resulting from exposure is not a proximate result of the carrier's negligence. *Hobbs* v. *R. R.,* L. R. 10 Q. B. 111. In these cases the action is considered as founded on contract and not upon tort, but the latter view has been taken by several courts where the former authority is severely criticized. *R. R.* v. *Eaton,* 94 Ind. 474; *Brown* v. *R. R.,* 54 Wis. 342.

COLLATERAL INHERITANCE TAX—SITUS OF PERSONAL PROPERTY.—IN RE LEWIS' ESTATE. 52 Atl. 205 (Pa.).—The intangible personal property of a non-resident decedent had been, for many years, under the absolute control of a resident agent. *Held,* that the property was liable to the collateral inheritance tax of the agent's domicile.

Pennsylvania decisions have supported the doctrine that the situs of intangible personal property follows the owner's domicile. *McKeen* v. *Northampton,* 49 Pa. 519; *In Re Short's Estate,* 16 Pa. 63. But securities separated from the owner and under the control of a trustee have been regarded, for purposes of annual taxation, as within the agent's state. *People* v. *Smith,* 88 N. Y. 576; *Pullman Co.* v. *Pa.,* 11 Sup. Ct. 876. Not, however, if the securities are merely deposited with the trustee for safe keeping. *Orcutt's Appeal,* 97 Pa. 179.

COMPOSITION WITH CREDITORS—SECRET PREFERENCE—PREFERRED CREDITOR'S RIGHTS.—IN RE CHAPLIN, 8 Am. B. R. 121 (Mass.).—Where a composition had been agreed upon by all the creditors of an insolvent debtor, but one creditor had received a secret preference; *held,* that the composition might be avoided by the innocent creditors, and that the preferred creditor might retain the amount of the composition, only surrendering the preference.

The courts are almost unanimous in declaring that the secret preference avoids the composition as to the innocent creditors. The point over which there has been some controversy is as to the rights of the preferred creditor. There is a line of decisions in England based upon *Howden* v. *Haigh,* 11 Adol. & E. 1033, to the effect that the preferred creditor must lose not only his preference but also the amount of the composition. *Mallalieu* v. *Hodgson,* 16 Adol. & E. 689; *Knight* v. *Hunt,* 5 Bing. 432. These authorities have been cited and approved by some courts in this country. *Doughty* v. *Savage,* 28 Conn. 146; *Frost* v. *Gage,* 3 Allen 560; *Dry Goods Co.* v. *Harlin,* 71 N. W. 16 (Minn.). However, perhaps the better view is to the contrary, viz., that the preferred creditor may retain the composition. This does not deprive preferred creditor of all his rights, but merely punishes him in comparison with the innocent creditors, who may regard the composition as void. The cases bearing on this particular point are few. *White* v. *Kuntz,* 107 N. Y. 518; *Bank* v. *Blake,* 142 N. Y. 404.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—BILLS OF LADING.—MISSOURI K. & T. RY. CO. V. SIMONSON, 68 Pac. 653 (Kan.).—Provision of Chapter 100, Laws of 1893, making the specification of weights in bills of lading issued by railroad companies for hay, etc., shipped over their lines, conclusive evidence of the correctness of such weight, *held* unconstitutional, as denying to companies due process of law, and to courts the power of determining the weight and sufficiency of evidence. Doster, C. J., Smith and Ellis, J J., *dissenting.*

In the majority opinion a distinction is drawn between the power of legislative authority to prescribe a rule of evidence, (a) that a receipt shall be conclusive and not open to contradiction by parol: and (b) its power to so prescribe as to contracts. They admit such power as to the contract part of a bill of lading: they deny it as to the receipt, contending that an estoppel applied to such a writing would shut out evidence as to mistake and fraud, making "that conclusive which might not express a contract because of inherent mistake or fraud." The dissenting opinion urges that no tenable

objection can be raised to such an estoppel where the circumstances of application are the result of one's own deliberation, and that the giving of an irrevocable effect to such an instrument is not unconstitutional. *Ins. Co.* v. *Daggs,* 172 U. S. 557. See *Cooley, Consti. Lim.* (5th Ed.) 453.

CONSTITUTIONAL LAW—HOURS OF LABOR—VALIDITY.—PEOPLE V. LOCHNER, 76 N. Y. Supp. 396.—*Held,* a law providing that no employee shall be required or permitted to work in a bakery more than 60 hours a week, or more than 10 hours in one day, unless for the purpose of making a shorter work day on the last day of the week, is a valid police regulation not in conflict with U. S. Const., art. 14, sec. 1, providing that no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the U. S.

It has been held that the legislature might prohibit railroads from permitting or requiring workmen who have worked twenty-four hours to go on duty again until they have had eight hours rest. *People* v. *Phyfe,* 136 N. Y. 554. A Utah statute which limited the hours of labor in mines was held constitutional in *Holden* v. *Hardy,* 169 U. S. 366, Brewer and Peckham, J J., *dissenting.* In the latter case the only purpose of the statute was to protect the employee, while in the principal case the health of the general public is an additional object.

CONSTITUTIONAL LAW—LIBERTY OF CONTRACT.—STATE V. KREUTZBERG, 90 N. W. 1098 (Wis.).—Rev. St. 1898, secs. 4466 b., Amended Laws 1899, c. 332 of Wis., provided that no person shall discharge an employee because of his membership in a labor organization. *Held,* void as an unconstitutional restraint on individual freedom.

Statutes almost identical with this were held void in *State* v. *Julon,* 129 Mo. 163, and *Gillespie* v. *People,* 188 Ill. 176. Limitations of liberty of contract have sometimes been upheld as containing an element of bona fide police regulations to promote the public health, welfare, comfort or safety, as in *Holden* v. *Hardy,* 169 U. S. 366 (limiting hours of labor in mines); *Hancock* v. *Yaden,* 121 Ind. 366 (forbidding payment in orders, as within governmental power to regulate currency); *State* v. *Wilson,* 7 Kan. App. 428 (forbidding the screening of coal before weighing, on grounds of governmental control of weights and measures). But other courts have failed to find the elements of valid police regulations in those provisions, in *Braceville Coal Co.* v. *People,* 147 Ill. 66; *State* v. *Hann,* 61 Kan. 146; and *Ramsey* v. *People,* 142 Ill. 380, respectively, and in general the authorities are in serious conflict.

CONTRACTS FOR FUTURE DELIVERY—VOID IF QUANTITY INDETERMINABLE.—COLD BLAST TRANSP. CO. V. KANSAS CITY BOLT & NUT CO., 114 Fed. 77.—Plaintiff alleged a contract by which the defendant agreed to deliver, during six months, certain materials at stated prices, the quantity to be taken not being specified. *Held,* void for want of mutuality.

This case is similar to *Crane* v. *C. Crane & Co.,* 105 Fed. 869, where an agreement by a wholesale dealer to supply a retailer during a certain time, at stated prices, with so much of a commodity as the purchaser might require for his trade, which left it practically optional with the purchaser to increase or diminish his orders, with the rise or fall of prices, was held void for want of mutuality. These agreements are to be distinguished from accepted offers to deliver such articles as shall be needed, required, or consumed by

an established business during a specified time where there is the implied agreement that the buyer will purchase all the articles needed of the person whose offer he has accepted. *Wells* v. *Alexander*, 130 N. Y. 642; *Lumber Co.* v. *Coal Co.*, 31 L. R. A. 529.

CONTROVERSY BETWEEN STATES—JURISDICTION—DIVERSION OF WATER.—KANSAS v. COLORADO, 22 Sup. Ct. Rep. 552.—*Held*, the Supreme Court of the United States has original jurisdiction of a controversy between States. The question raised in this case was whether Colorado had the right to wholly deprive Kansas of the benefit of the water of the Arkansas river, which rises in Colorado and flows into and through Kansas.

This case brings to mind the many attempts which have been made to organize tribunals having cognizance of disputes between sovereign states, all of which have failed through lack of power to enforce the decrees. The States of the Union are sovereignties, and under the rules of international law might settle disputes by treaty or an appeal to force. had not these attributes of sovereignty been surrendered to the general government. In *Rhode Island* v. *Massachusetts*, 12 Pet. 726. 9 L. Ed. 1261, it was held that a complaining State being bound by the prohibitions of the constitution to neither treat, agree or fight with its adversary, without the consent of Congress, a resort to the judicial power was the only means left for legally adjusting a dispute between States relating to a controverted boundary. Colorado claimed also that Kansas was seeking to maintain this action for the redress of supposed wrongs of certain private citizens of that State, and that it was not empowered to bring an action in this court for such purpose. The court however, followed the case of *Missouri* v. *Illinois*, 180 U. S. 208, 21 Sup. Ct. Rep. 331, where it was ruled that the mere fact that a state had no pecuniary interest in the controversy would not defeat the jurisdiction of this court. It might be envoked by the State as *parens patriae*, trustee, guardian, or representative of all or of a considerable portion of its citizens.

DAMAGES—NERVOUS PROSTRATION RESULTING FROM FRIGHT—TRESPASS AS PROXIMATE CAUSE—RIGHT OF RECOVERY.—WATSON v. DILTS, 89 N. W. 1068 (Iowa).—Defendant wrongfully entered plaintiff's house in night time, thereby frightening plaintiff, a woman, and causing nervous prostration and physical disability. *Held*, to constitute a good cause of action.

The decisions are practically unanimous that fright alone, caused by an act of negligence, is not ground for damages; *Victorian R. Com'r's* v. *Coultas*, L. R. 13 App. Cases 222; *Mitchell* v. *Rochester R. R. Co.*, 151 N. Y. 107; nor, by weight of authority, does consequent physical disability affect the legal status of complainant; *Ewing* v. *Pittsburg R. R. Co.*, 147 Pa. 40, 14 L. R. A. 66 and note; although the justice of this conclusion is denied by text writers. *Watson, Personal Injuries*, secs. 396-402; *Sedgwick, Damages*, 8th ed., secs. 46, 47, 861; *Beaven, Negligence*, sec. 77 *et seq.* Many of the courts base their decision on the rule of convenience. *Spade* v. *Lynn* R. R. Co., 168 Mass. 285. The same position—*ab convenienti*—is taken by the courts in regard to mental anguish in the so-called "telegraph" cases. *W. U. Tel. Co.* v. *Ferguson*, 157 Ind. 64. Other courts emphasize the absence of proximate cause. *Braun* v. *Craven*, 175 Ill. 40. In the principal case, the court, while recognizing the attitude of the law, lays weight upon the wilful trespass as a proximate cause to justify its conclusion. Although

complainant's claim admittedly is stronger than where negligence is the moving cause, yet even then the law can hardly be said to be in harmony with this decision. In an early English case, evidence was admitted of fright of plaintiff's wife to show the outrageous and violent character of the trespass, but not as a substantive ground of damage. *Huxley* v. *Berg*, 1 Starkie 98 (1815). See also *Canning* v. *Williamstown*, 1 Cush. 451 (1848); and the doctrine of these early cases has generally been followed. But in support of the principal case, see *Hill* v. *Kimbell*, 76 Tex. 210; *Purcell* v. *Railway Co.*, 48 Minn. 134; *Bell* v. *Railway Co.*, 26 L. R. Ire. 432.

EVIDENCE—INSTRUCTIONS—EXPERT TESTIMONY.—GUSTAFSON v. SEATTLE TRACTION CO., 68 Pac. 271 (Wash.).—*Held*, that an instruction to a jury that they treat and weigh with "caution," that part of the testimony of an expert witness as to his opinion and consider it with reference to the facts upon which his opinion was formed, was erroneous, as discrediting the testimony of the expert.

Great confusion is evident as to proper instructions regarding the value and competency of expert testimony. That the court may draw a distinction, in its charge, between fact and opinion, see *People* v. *Montgomery*, 13 Abb. Pr. 207. That a court may express its own opinion on the facts without being exposed to reversal, is the decision of both the English and U. S. Federal courts. *Lovejoy* v. *U. S.*, 128 U. S. 171; *Rogers' Expert Test.*, 445. The weight of authority seems to be that to charge a jury to weigh evidence with "caution" or even "great caution" is not error. *People.* v. *Perriman*, 40 N. W. 425; *Moye* v. *Herndon*, 30 Miss. 18; *Benedict* v. *Flanigan*, 18 S. W. 506. The principal decision, however, is well supported. *People* v. *Seaman*, 65 N. W. 203.

EXEMPTIONS—REAL ESTATE PURCHASED WITH PENSION MONEY.—MCINTOSH v. AUBREY, 22 Sup. Ct. Rep. 561.—U. S. Rev. Statutes, Sec. 4747 declares that no money due or to become due to any pensioner shall be liable to attachment, levy or seizure, but shall inure wholly to the benefit of such pensioner. Held, that real estate purchased by a pensioner with pension money is not exempt.

In *Crow* v. *Brown*, 81 Iowa 344. 11 L. R. A. 110, this statute was given a very different construction. There it was held that if force and effect are to be given to the clause "inure wholly to the benefit of the pensioner," there is no escape from the conclusion that property purchased with pension money is exempt. *Yates County National Bank v. Carpenter*, 119 N. Y. 550, 7 L. R. A. 557 holds that if receipts from a pension can be directly traced to the purchase of property necessary or convenient for the support and maintenance of the pensioner and his family such property is exempt from execution. That statutes of this kind are to be liberally construed, and that their force and effect are not to be confined to the literal terms of the Act has been held in numerous cases. The Supreme Court, however, construes the words of the statute strictly, holding that the protection provided protects the fund only while in the course of transmission to the pensioner. It is protected only when "due or to become due." When the money has been paid to him, it has "inured wholly to his benefit" and is liable to seizure.

EXPLOSIVES—DUMPING REFUSE ON VACANT LOTS—INJURY TO CHILDREN.—TRAVELL V. BANNERMAN, 75 N. Y. Supp. 866.—Defendant, an ammunition manufacturer, used an unfenced lot as a dumping place for refuse. Plaintiff was approached by two other boys with a mass of gunpowder found there, which exploded while they were extracting pieces of brass therefrom. *Held*, that action for injuries would lie, as it was a question for the jury whether defendant had used proper care. Goodrich, P. J., dissenting.

The court bases its decision on the ground that the presence of brass in the powder rendered it enticing to children and so brought it within the rule referred to in the leading case of *Walsh v. Railroad*, 145 N. Y. 301. But there would seem to be good reason for the contrary view, based on the principle that when a person comes upon the premises of another without invitation he is a bare licensee, and if any injury is sustained by reason of a defect in the premises, the owner is not liable. *Cusick* v. *Adams*, 115 N. Y. 55; *Larmore v. Iron Co.*, 101 N. Y. 391. In the recent case of *Brinkley Car Works & Mfg. Co. v. Cooper*, 67 S. W. 572, the Supreme Court of Arkansas followed *Gillespie v. McGowan*, 100 Pa. 144, and refused to recognize the New York doctrine, saying that to follow it to its logical conclusion would "charge the duty of protecting children upon every member of the community except upon their own parents."

HIGHWAYS—PEDESTRIANS—WALKING AT NIGHT—NEGLIGENCE.—SIEGLER V. MELLINGER ET AL., 52 Atl. 175 (Pa.).—Plaintiff sued town supervisors for damages for an injury from a fall sustained, while walking at night, on the sidepath of a township road. *Held*, that he was presumptively negligent in using the sidepath, the middle of the road being, prima facie, the safest portion for travel at night.

This court seems to have carried the doctrine of presumptive negligence to an extent contrary to well settled law. A traveller has a right to presume that a highway in use, including the margin thereof, is reasonably safe for ordinary travel. *Davenport* v. *Ruckman*, 37 N. Y. 568. He may presume this at night-time, as well as in daylight. *Pettengill* v. *Yonkers*, 116 N. Y. 558. Travellers on country roads, as well as elsewhere, are privileged to use the entire highway as laid out. *Siddons v. Gardner*, 42 Me. 248; *Seward v. Milford*, 21 Wis. 485.

INDEMNITY INSURANCE—ATTORNEY AND CLIENT—NEGLIGENCE IN APPEAL—BURDEN OF PROOF.—GETCHELL & MARTIN LUMBER & MFG. CO. V. EMPLOYERS' LIABILITY ASSUR. CO., LTD., 90 N. W. 616 (Iowa).—An employer who was insured against loss for personal injuries to its employees to the amount of $1,500 in case of injury to any one employee, was sued by an injured employee, who obtained judgment for $4,300. The insurance company had defended the action and agreed to appeal, but on its failure to perfect it in time, judgment was affirmed on motion. In an action by the employer against the insurer for negligence, *held*, that the burden was on the insured to show damage thereby.

The court refuses to follow the rule laid down in *Godefroy* v. *Jay*, 7 Bing. 413 and followed in *Whart., Neg.*, Sec. 752; *Sherm. and Red., Neg.* (5th ed.) Section 566, that where negligence is shown, resulting in a judgment against the client, the attorney has the burden of showing that the client was not damaged thereby. The rule has been criticized in other cases. *Collier* v.

Pulliam, 13 Lea 114; *Harter* v. *Morris,* 18 Ohio St. 492. Those cases which follow *Godefroy* v. *Jay* differ from the present case because in them the injured client was a *plaintiff* whose attorney's negligence lost or diminished the judgment. *Moorman v. Wood,* 117 Ind. 144. Here the client was a defendant, against whom in the lower court judgment had been recovered, and he must overcome the presumption that the judgment would stand on appeal. I *Greenl., Ev.,* Section 19. See also *Cox* v. *Sullivan,* 7 Ga. 144.

LICENSE—REVOCATION—ESTOPPEL—TRESPASS.—HICKS ET AL. V. SWIFT CREEK MILL CO., 31 So. 947 (Ala.).—The defendant company under a personal license constructed and operated a ditch and dam on the land of one Smith. Smith conveyed the land in question to the plaintiff. *Held,* that the license of defendant was thereby revoked and that the plaintiffs might maintain trespass against the licensee for his continuance in possession.

The sole question here at issue is whether defendant acquired an irrevocable license from plaintiff's grantor; if so, it follows as of course that plaintiffs would have no right of action. There is an absolute conflict of authorities as to the effect of the execution of a parol license upon the power of the licensor to revoke. Such executed license is held irrevocable by many states. *Cook* v. *Pridgen,* 45 Ga. 331; *Snowden* v. *Wilas,* 19 Ind. 10; *Vannest* v. *Fleming,* 79 Iowa 638; *Swartz* v. *Swartz,* 4 Pa. St. 353. England and perhaps a majority of our states hold a license revocable under all circumstances. *Adams* v. *Andrews,* 15 Q. B. 284; *Cook* v. *Stearns,* 11 Mass. 533; *Selden* v. *Canal Co.,* 29 N. Y. 639. Some courts, admitting that the statute of frauds prevents the creation of an irrevocable parol license, hold in the case of a definite contract that part performance takes the case out of the statute, and hence equity will recognize and enforce licensee's right in case of attempted revocation. *McManus* v. *Cooke,* 35 Ch. D. 681; *Wiseman* v. *Lucksinger,* 84 N. Y. 31

MISCONDUCT OF COUNSEL—IMPROPER ARGUMENT—GROUND FOR REVERSAL. —STEWART V. METROPOLITAN ST. RY. CO., 76 N. Y. Supp. 540.—*Held,* that the misconduct of plaintiff's counsel was not cured by an instruction given at plaintiff's instance, that "in case either counsel, in summing up stated facts that were not proven upon the trial, or in case either counsel gave a recollection of the facts which disagree with the recollection of the jury, the jury may disregard these statements, and take their own recollection of the facts." Goodrich, P. J., dissenting.

This would seem to be unsupported by decisions exactly in point. That a refusal to interpose, where counsel proceed to dilate upon facts not in evidence is legal error is well settled. *Williams v. Railroad Co.,* 126 N. Y. 96; *Mitchum* v. *State of Georgia,* 11 Geo. 616; *Tucker* v. *Henniker,* 41 N. H. 317. But this ground would appear to be absent, where the defendant does not object at the time, and the judge sees fit to postpone a charge to disregard the irrelevant statements.

SALE ON SIDEWALK—THEATER TICKETS—TRANSFERABILITY.—COLLISTER V. HAYMAN ET AL., 75 N. Y. Supp. 1102.—*Held,* that an injunction will not be granted to restrain defendant from refusing to accept theater tickets sold on the sidewalk.

That a ticket to a race course was a mere license and might be terminated at any time without even returning the purchase price was held in the early English case of *Wood v. Leadbitter,* 13 Mees & W. 837. That a thea-

ter ticket is not salable or transferable was the opinion in *Purcell v. Daly*, 19 Abb. N. Cas. 301. But that a railroad ticket, on the other hand, is transferable was held by the court of appeals in *Tryoler's Case*, 157 N. Y. 116. and by the U. S. Supreme Court in *Hudson* v. *Kansas Pac. R. Co.*, 3 McCrary 249.

STATUTE OF FRAUDS—REFORMATION OF LEASE—SPECIFIC PERFORMANCE.—BUTLER v. THRELKELD ET AL., 90 N. W. 584 (Iowa).—By mutual mistake. an oral agreement giving lessee an option to buy was omitted from a lease for five years. *Held*, that notwithstanding the Statute of Frauds, a court of equity may correct the lease and enforce it as reformed.

Although regarding this as an indirect enforcement of an oral agreement for the sale of land and a virtual repeal of the Statute of Frauds, the learned judge feels constrained to follow an early and decisive Iowa case and the prevailing American doctrine. *Ring v. Ashworth*, 3 Iowa 452; *Gillespie* v. *Moon*, 2 Johns. Ch. 585; *Schwass* v. *Hershey*, 125 Ill. 653; *Strickland* v. *Barber*, 76 Mich. 310; *Bispham, Prin. Eq.*, Sec. 382. The English rule, followed by many authorities in the United States, admits parol evidence to defeat specific performance, but will not enforce a parol variation. *Townshend v. Stangroom*, 6 Ves. 328; *Elder v. Elder*, 10 Me. 80; *Pierce v. Colcord*, 113 Mass. 372; 24 *Am. Law. Reg.* 81.

TAXATION—EDUCATIONAL INSTITUTIONS—OPERA HOUSE TAX.—MARKHAM v. SOUTHERN CONSERVATORY OF MUSIC, 41 S. E. 531 (N. C.).—Under a law taxing opera houses, but exempting entertainments for educational objects the sheriff endeavored to collect taxes from the defendant, which gave public musical entertainments, charging an admission fee. *Held*, that the defendant was exempt from taxation.

While the fee charged for admission to concerts given by a school of music was for the purpose of defraying the expenses of the entertainment, no profits being realized, still it is not clear how that fact in itself renders a musical entertainment solely educational. From an educational standpoint, this attempted distinction between the opera and a school concert seems at best very artificial.

TRADE NAME—MISLEADING PUBLIC—RIGHT TO TRADE UNDER OWN NAME.—J AND J. CASH LIMITED v. JOSEPH CASH, 86 Law Times Rep. 211 (Eng.).—The defendant sold out to the plaintiff company and became one of its directors. He retired as director, and set up in the same class of business at the same place as Joseph Cash & Co. *Held*, plaintiff could not be restrained from carrying on trade is his own name. but he must take reasonable precaution to clearly distinguish his goods from those of the plaintiff, and to prevent the public from being led into the belief that his business was that of the plaintiff.

The lower court restrained defendant from selling frilling under the name of Cash, but this court was of the opinion that the order went too far, and modified it. Williams L. J. said that there never had been a case yet where a man has been restrained altogether from carrying on a particular trade in his own name. Every decision has been limited to restraining him from carrying on a trade, the products of which when used in connection with a particular trade name, have become identified with the business of another person, without taking such steps as any honest man would wish to