RECENT CASES.

ASSAULT—EXEMPLARY DAMAGES—IMPLICATION OF MALICE.—DAVIS V. COLLINS, 48 S. E. 469. (S. C.).—Collins, in carrying out a well prepared assault on one Goldstein, unintentionally struck, beat and bruised the plaintiff. *Held*, that it was proper to give exemplary damages, because of the general malice implied by law in case of such wanton actions. Gray, J., *dissenting*.

If a person do one wrong, intending to do another, he is, as a general rule, punished for the wrong done as the substantive offense. *Bratton v State*, 10 Humph. 103; *State v. Meadows*, 18 W. Va. 658. It will be noted that this theory seems to have arisen only in criminal law. However, exemplary damages are recoverable in addition to compensatory damages, when it appears that the defendant was actuated by malice, and a total disregard of laws, and that the plaintiff was in no wise to blame. *Cook v. Ellis*, 6 Hill 466; *Causee v Anders*, 4 Dev. and B. 246. Also, where the assault is of a grievous or wanton nature, manifesting willful disregard of the rights of others, actual malice need not be shown to entitle the aggrieved party to exemplary damages. *Borland v. Barrett*, 76 Va. 128. The decision of this case on these two principles gives a principle in civil assault, almost identical with that, stated at the beginning of this comment, in criminal assault.

BANK—LIEN ON FUNDS—REFUSAL TO PAY CHECK.—CALLAHAN V. BANK OF ANDERSON, 48 S. E. 293. (S. C.).—When a bank refuses to pay a check drawn by a depositor in favor of a third person, having applied the fund on deposit in the extinguishment of past due claims against the depositor, *held*, that, in the absence of notice of such application to the depositor, the bank is liable to him for the resulting damages. By a divided court.

The general rule that a bank has a right to set off any funds of a depositor against any claim it may have against him no doubt had its origin in the lien given by the law merchant to a bank upon securities upon which it had advanced money. *Brandas v. Barnet*, 12 Cl. & F. 787. When the doctrine of set-off between mutual debts became established, this right of the bank found its basis also in the relation of depositor and creditor created by a deposit. *Lamb v. Morris*, 118 Ind. 179. In either view it is difficult to see what place in the doctrine notice can have. The bank may apply the funds of the depositors at once. *Muench v. Bank*, 11 Mo. App. 194; *Wyman v. Bank*, 181 Ill. 279. Regarded on the lien theory, this seems to result from these principles: the holder of a common law lien had no right to dispose of that upon which it existed. *Doane v. Russell*, 3 Gray 382; but, if he did, in a suit for conversion he could set off the amount of his lien. *Briggs v. R. Co.*, 6 Allen 246; *Jones, Liens*, p. 1034; as applied to a money deposit, the result would be as tho' an immediate application of the fund had been made. On the basis of the set-off doctrine, the debt to the depositor at any one time is for the balance of the credit over the debit. *Goldthwait v. Day*, 149 Mass. 185; *Tomkins v. Willshear*, 5 Taunt. 431. And other cases have disregarded the element of notice. *Wyman v. Bank, supra.*

BANKRUPTCY—EXEMPTIONS—WEARING APPAREL.—IN RE EVERLETH, 12 AM. B. R. 236.—*Held*, that a watch and chain, or belt and sword are not exempt to a bankrupt as wearing apparel.

In this case that, only, is considered wearing apparel, which is fitted for the protection of the body. Many other courts hold like opinions, as *Towns v. Pratt*, 33 N. H. 345, which held that a cabinet box and breast pin were not exempt, also *Rothschild v. Boelter*, 18 Minn. 332, where a watch and chain were not exempt. On the other hand, the great weight of authority is in favor of considering a watch and chain as wearing apparel. *In re Steele*, 2 Flipp (U.S.) 325. And the general rule, in opposition to the present case, seems to be that reasonable ornaments for the person come under the head of wearing apparel. *Mack v. Parks*, 8 Grey (Mass.) 517.

BANKRUPTCY—INVOLUNTARY PROCEEDINGS—WHO MAY MAINTAIN.—IN RE CALLISON, 130 FED. 987. (FLA.).—*Held*, that a creditor must have been in existence, as such, at time alleged act of bankruptcy was committed, to entitle him to maintain a petition in involuntary bankruptcy against his debtor.

The authorities are in conflict on this point. Some courts hold that the debt, only, and not the creditor as such, must have been in existence at time alleged act was committed. The debt may be subsequently assigned, and the assignee be entitled to maintain a petition. *Glaiser v. Hewer*, 7 T. R. 495; *Ex Parte Lee*, 1 P. Williams, 782; *Ex Parte Shouse*, Crabb (U. S.) 482; *In Re Woodford*, 30 Fed. Cas. No. 17,972; *Amer. Carpet Lining Co. v. Chipman*, 146 Mass. 385. In *Ex P. Shouse, supra*, Randal, J. says: "All that is required is, that the petitioners should be creditors at the time of presenting their petition." From this, it would seem that even the debt is not required to have been in existence at time of alleged act; but it is not believed that this was intended by the court. Though the decisions cited by the court in *In re Callison*, support its opinion, the better rule seems to be, as above stated, that only the debt need have been in existence at the time debtor became a bankrupt to entitle a creditor to maintain a petition.

BANKRUPTCY—LIEN—JUDGMENT WITHIN FOUR MONTHS.—MOHR V. MATTOX, 12 AM. B. R. 330.—*Held*, that a sheriff who neglects to execute a judgment on insolvent's property until after a petition in insolvency is filed which renders said judgment void is not liable in damages to the judgment creditor.

This case seems to be contrary to authority. In *Kimbro v. Edmondson*, 46 Ga. 130, the sheriff was held liable for failure to levy on goods which were later exempted under the homestead act. While in *Noble v. Whetstone*, 45 Ala. 361, it was held that the sheriff was liable for not using due care to execute a void judgment that did not show its invalidity on its face. In Georgia, where this case was decided, if the judgment creditor has reduced the judgment to possession and received the proceeds he can hold it against the trustee in bankruptcy. *In re Blair*, 4 Am. B. R.; *Levas v. Seiter*, 8 Am. B. R. 459. Therefore, the judgment is not void as claimed by the court but merely voidable. A levy of execution would have been good up to the time of the filing of the petition. The defendant then by his neglect certainly injured the plaintiff and should have been held liable.

BANKRUPTCY—ORDER TO PAY MONEY—CONTEMPT.—IN RE LEINWEBER, 12 AM. B. R. 175.—When the bankrupt testifies that he has paid away his assets

to several far-away creditors and being allowed to produce the creditors fails to produce more than one, *held*, that the foregoing is sufficient evidence to satisfy the court that at the date of the order of bankruptcy the bankrupt had said assets in his hands and could be punished for contempt for refusal to pay them over.

Of course when the bankrupt refuses to account at all for his money he may be committed for contempt. *In re Rosser*, 96 Fed. 308; *In re Schlessinger*, 97 Fed. 930. But when he furnishes evidence of having paid the money elsewhere the burden is on the other side to prove beyond a reasonable doubt that he has the money. *In re Adler*, 12 Am. B. R. 19. Usually something more is required than mere proof of an unsatisfactory accounting. *Boyd v. Glucklich*, 116 Fed. 131. But, considering the fact that it is much easier for the bankrupt to show definitely what he has done with the money than for the other side to prove that he has done nothing, failure to account should be sufficient evidence that he still has it in his possession and hence contempt proceedings are not too drastic.

CARRIERS—CONSTRUCTION OF CONTRACT OF EMPLOYMENT.—LONG V. LEHIGH VALLEY R. CO., 130 FED. 870. (C. C. A.).—Where an express messenger as a condition of his employment assumed all risk of personal injury and agreed to release and indemnify not only the express company but also the transportation line upon which he might be riding, *held*, that the contract must be construed to apply to an injury resulting from negligence of employees of transportation line.

It is well established that an agreement made by a passenger to indemnify a common carrier for injuries received while riding on its cars is invalid on the ground of public policy. *N. Y. Cent. R. Co. v. Lockwood*, 84 U. S. 357. Nor can one having a free pass make such an agreement. *Ill. Cent. R. Co. v. Read*, 37 Ill. 484. Nor one having a drover's pass *O. & M. R. Co. v. Selby*, 47 Ind. 471; the drover is a passenger for hire. *B. & O. R. Co. v. Voigt*, *176 U. S. 498*. On the other hand, a transportation line in carrying an express messenger in its baggage car acts with relation to that express messenger not as a common carrier but rather as a private carrier and as such an agreement of indemnity made by the express messenger is valid. *C. M. & St. P. R. Co. v. Wallace*, 66 Fed. 506.

CONFLICT OF LAWS—FEDERAL AND STATE COURTS—EQUITY.—JAMES V. GRAY, 131 FED. 401.—*Held*, that a loan made by a wife to her husband from her separate estate, being valid by equity principles, which govern in bankruptcy, is provable as a debt against his estate in bankruptcy without regard to its enforceability under the laws of the state. Aldrich, J., *dissenting*.

At law, when a state court has established rules of property, the federal courts sitting in the state will follow them. *Gaines v. Fuentes*, 92 U. S. 10; *Burgess v. Seligman*, 107 U. S. 20. And so where the state decisions affect rights as distinguished from remedies *Bucher v. R. Co.*, 125 U. S. 555. So too, in the construction of statutes of the state. *Bell v. Morrison*, 1 Pet-351. Where, however, principles of common law general throughout the United States are involved, the federal court acts without regard to the state decisions. *Swift v. Tyson*, 16 Pet. 1: *Burgess v. Seligman*, *supra*. In equity, rights given by the statutes or customary law of a state, will usually be enforced. *Gaines v. Fuentes*, *supra; Cummings v. Bank*, 101 U. S. 153, 157. But it will not be bound by state laws governing the procedure or affect-

ing the remedy; *Boyle v. Zacherie*, 6 Pet. 648; although there is some dispute as to this rule. *Dick v. Whitman*, 96 Fed. 873; *Knickerbocker Co. v. Mfg. Co.*, 100 Fed. 814. But whether the equity jurisprudence of the federal court is in general independent of that of the state court where it is nothing is not clear. *Meade v. Beale*, Taney, 339, relied on by the dissenting judge to support his view, would seem virtually to be overruled by *Neves v. Scott*, 13 How. 268, decided the succeeding year.

CONSPIRACY—COERCION—FINIS—TRADE ASSOCIATION.—MARTELL V. WHITE, 69 N. E. 1085, (MASS,).—Defendants, granite manufacturers, formed an association, a by-law of which provided that any member doing business with one of the same trade not a member should contribute from $1 to $5 to the Association's treasury, the amount to be fixed by the Association. By reason of fines thus imposed the business of plaintiff, who was not a member, was ruined. *Held*, that the imposition of these fines constituted such coercion as to make the agreement illegal and the Association answerable in damages.

Since *Mogul Steamship Co. v. McGregor*, L. R. 21 Q. B. Div. 544, the principle has been established that persons entering into an agreement to further their own interests along the lines of legitimate competition are not liable for injuries which another may suffer thereby. But since *Allen v. Flood*, 1898, App. Cas. 1, it is equally clear that where wrongful coercion is brought to bear upon one to compel him to cease to trade with another, he who seeks to coerce is liable for any damages that may result. But what coercion is wrongful is not settled. A mere notice by an association to its members that one has incurred its displeasure and should not be dealt with is not such. *Bohn Mfg. Co. v. Hollis*, 54 Minn. 223, So a threat to withdraw patronage has been held insufficient. *Macauley v. Tierney*, 19 R. I. 255. And, in *Brewster v. Miller*, 101 Ky. 368, we find dicta to the effect that the imposition of fines is not wrongful coercion; while some of the judges in *Allen v. Flood*, *supra*, would seem to hold any inducement insufficient short of such as would vitiate a contract if exercised on the promisee therein. *Clark*, *Contracts*, § 170, 171. On the other hand, in *Jackson v. Stanfield*, 137 Ind. 592, provisions substantially similar to those involved in the principal case, except that the threat of loss of trade was added, were held to give a right of action. And the court here has followed *Boutwell v. Marr*, 71 Vt. 1, in which the same agreement was in question.

CONSTITUTIONAL LAW—COMPELLING INCRIMINATING TESTIMONY—LEGISLATIVE PARDON.—IN RE BRIGGS, 47 S. E. 403. (N. C.).—Sec. 1215 of the North Carolina code provides that a witness may be compelled to give evidence concerning gaming by himself or others, but that such evidence shall not be used against him, and that he shall be pardoned of any offenses involved. *Held*, that such provision is not unconstitutional, as it furnishes absolute immunity to the witness.

In *Brown v. Walker*, 161 U. S. 591, a similar federal statute was held to give the necessary immunity. See also *State v. Nowell*, 43 N. H. 314; *People v. Foundry*, 201 Ill. 236. A statute providing merely that such testimony "should not be used in any prosecution or proceeding against the witness" was upheld in *People v. Hackley*, 24 N. Y. 74. And similar statutes in other jurisdictions. *Frazee v. State*, 53 Ind. 8; *Ex parte Buskett*, 106 Mo. 602. On the other hand other courts, including that of Missouri in a later decision, have declined to go the length of these latter cases. *Emery's Case*, 107 Mass.

172; *Ex parte Carter*, 166 Mo. 604. And the Federal Supreme Court has sanctioned this view. *Counselmen v. Hitchcock*, 142 U. S. 204. There seems little room, however, to dispute the validity of a provision as explicit and far-reaching as that in the principal case.

DIVORCE—CONDONATION.—WOLVERTON V. WOLVERTON, 71 N. E. 123 (IND.). —Plaintiff, after having been treated with extreme brutality by defendant, co-habited with him during the night following such treatment. *Held*, that such act of co-habitation on the part of the plaintiff did not constitute condonation.

It is now well established that the doctrine of condonation applies to cruelty as well as to adultery. *Wilson v. Wilson*, 16 R. I. 122; *Clague v. Clague*, 46 Minn. 461; *Sasser v. Sasser*, 69 Ga. 576. But condonation by a wife, even after repeated acts of cruelty will not be lightly presumed. *Douglas v. Douglas*, 81 Iowa 258; *Smith v. Smith*, 119 Cal. 183. Even though a wife remains for an extended period in same house with her husband after the offense, there is no condonation if marital relations are not resumed. *Rudd v. Rudd*, 66 Vt. 91; *Dennison v. Dennison*, 4 Wash. 705. Where evidence showed co-habitation for some time after acts complained of, it was held that the court need not rule that condonation was shown as matter of law. *Osborn v. Osborn*, 174 Mass. 399. The present case thus seems to follow the general trend of decisions.

GAMING—BETS ON HORSE RACES—SENDING MONEY OUTSIDE THE STATE.—MCQUESTEN V. STEINMETZ, 58 ATL. 876. (N. H.).—*Held*, that one, who as agent receives and transmits money by telegraph to parties in another state to be placed upon horse races, does not violate statute which declares illegal the carrying on of a gambling business.

Statutes declaring the keeping of a gambling house illegal are passed on grounds of public policy. See XIV *Yale Law Journal* 11. A statute making illegal the maintaining of a gaming house, says Judge Cooley in *People v. Weithoff*, 51 Mich. 215, applies obviously in the case of a room intended to facilitate betting on horse races although they are distant. *People v. Weithoff*, 93 Mich. 634; *Williams et al. v. State*, 92 Tenn. (8 Pickle). 275. The present case, totally oblivious of the principles above and following the lead of *Lescallet v. Com.*, 89 Va. 878, given by a divided court, considers bets offered by telegraph to be contracts completed in another state and lawful, thus making the statute of no effect. There is a growing tendency to prevent the sending of money for betting purposes outside the state by direct statutory provision.

INNKEEPERS—LIABILITY TO GUESTS—PERSONAL INJURIES.—CLANCY V. BARKER, 131 FED. 161.—*Held*, that an innkeeper does not insure the safety of his guests against injuries which are inflicted upon them by the negligent or wilful acts of his servants beyond the scope of their employment. Thayer, J., *dissenting*.

Even a carrier of passengers is not an insurer of their safety. *Chicago, etc., R. Co. v. Carrol*, 144 Ill. 261; *Gr. Rap. & Ind. R. Co. v. Huntley*, 38 Mich. 537; but he is bound to exercise the highest degree of care. *Jackson v. Tollett*, 2 Stack. 37; *P. & R. R. Co. v. Derby*, 14 How. 168. The basis of this requirement is the dangerous nature of the service he renders. *Indianapolis, etc. R. Co. v. Horst*, 93 U. S. 291; *Hale, Bailments*, 518. This

consideration does not apply to innkeepers, and they are held only to that care which is required of others who invite persons upon their premises, that is, ordinary care. *Sneed v. Moorehead*, 70 Miss. 690; *Weeks v. McNulty*, 101 Tenn. 495. And the carrier is also generally held liable for injuries inflicted by its employees though not in the course of their employment. *Bryant v. Rich*, 106 Mass. 180; the basis of this decision is a clause read into the contract by construction of law. *Chic., etc. R. Co. v. Barrett*, 16 Ill. App. 17. But liability is, in England, and in some of our states, restricted to injuries done within the course and scope of the employment. *Bayley v. Ry. Co.*, L. R. 8 C. P. 148; *Evansville, &c., R. Co. v. Baum*, 26 Ind. 70. It is difficult to see why the contract of the innkeeper does not, in this aspect, stand on the same ground as that of the carrier; and we find the same conflict of authority; thus in *Rommel v. Schambacher*, 120 Pa. St. 579, the innkeeper is held liable for injuries inflicted by his servants beyond the course of their employment; but *Wade v. Thayer*, 40 Cal. 578, in applying the usual rules of agency, perhaps represents the view of most courts.

JURORS—COMPETENCY—NUMBER OF PEREMPTORY CHALLENGES.—STEVENS v. UNION R. CO., 58 ATL. 492 (R. I.).—*Held*, that the allowance of peremptory challenges of jurors, in excess of the statutory provision, is not reversible error in the absence of a showing of prejudice to the party excepting.

On the other hand, the allowance to a party of a peremptory challenge after those allowed by law have been exhausted is held harmful error in *Funk v. Ely*, 45 Pa. St. 448. So the Texas court speaks on the seeming assumption that a party had the right to retain for the jury one who was excluded on insufficient cause and without peremptory challenge by the opposing party. *Pierson v. State*, 21 Tex. App. 14. The Pennsylvania rule seems to harmonize best with the reasons for allowing peremptory challenges, but the weight of authority appears to favor the rule in the present case. Thus it is said that a party has no vested right to any particular juror, but only to an impartial jury. *State v. Dalton*, 69 Miss. 611; and the allowance of too many peremptory challenges to one party is held not to be sufficient ground for appeal by the opposing party who is not prejudiced thereby. *Bibb v. Reid*, 3 Ala. 88.

LIBEL—ARTICLES LIBELOUS PER SE.—MARTIN V. PRESS PUB. CO., 87 N. Y. SUPP. 859.—*Held*, that a publication, concerning one who possesses extraordinary attainments in learning, that he is poverty stricken and starving because of over education, holds him up to ridicule, tends to alter his station in society for the worse, and is hence libelous *per se*. Bartlett and Jenks, JJ., *dissenting*.

The doctrine that, where no crime is imputed, special damages must be proven, was very early set aside, a distinction being recognized between mere words and printed or written statements; *Holt, Libel*, (1st Amer. Ed.) 218. Scandalous matter is not necessary to make a libel. It is enough if the publication induce an ill opinion to be had of the plaintiff or make him appear ridiculous. *Cropp v. Tilney*, 3 Salk. 226. An accusation of poverty is not libelous *per se*. *Moffatt v. Cauldwell*, 3 Hun 26. But one's circumstances and the fact of his alleged poverty may be so put as to excite ridicule. The inquiry is into its natural effect upon the friends and neighbors of the person aimed at. *Moffatt v. Cauldwell, supra*. An article tending to hold one up to ridicule as a man is libelous *per se*. *Battersby v. Collier*, 48 N. Y. Supp. 976; *Giles v. State*, 6 Ga. 276.

LICENSES—MUNICIPAL CORPORATIONS—REASONABLENESS.—STATE ET AL. V. COOPER, 47 S. E. 129 (N. C.).—*Held*, that when a liveryman being licensed in his own town, meets a person in another and drives him into the country, such town cannot require a license, the contract having been made without its limits. Montgomery, J., *dissenting*.

Municipalities may lay taxes for municipal purposes on privileges. *Moore v. Commissioners of Fayetteville*, 80 N. C. 154; *Wilmington v. Macks*, 86 N. C. 88. A single act does not constitute a business. *Kipp v. Patterson*, 26 N. J. 288; *Durham v. Rochester*, 5 Cow. 462. Municipal powers are to be strictly construed. *State v. Charleston Council*, 2 Speers L. (S. C.) 624. On the other hand, unreasonableness cannot be maintained on ground of non residence, within corporate limits. *Bates v. Mobile*, 46 Ala. 158; *City of St. Charles v. Nolle*, 51 Mo. 122.

MORTGAGE—LIFE TENANT—VALIDITY.—BRYAN V. DUPOYSTER, 130 FED. 83 (C. C. A.).—*Held*, that an instrument in the nature of a mortgage creates no lien on land which can be enforced after the end of the estate of the *cestui que trust*.

In most jurisdictions when, as in the case under consideration, the trustee has merely been given power to sell the trust property, such power does not authorize him to mortgage the property even during the existence of the estate of the *cestui que trust*. *Stronghill v. Austey*, 22 L. J. Ch. 130; *Hannah v. Carnahan*, 65 Mich. 601; *Hoyt v. Jacques*, 129 Mass. 286: But the courts of Georgia and Pennsylvania hold otherwise. *Miller v. Redwine*, 75 Ga. 130; *Zane v. Kennedy*, 42 Pa. St. 259. In *McCreary v. Bomberger*, 151 Pa. St. 323, it was held that a life tenant with power to sell may execute a mortgage which will bind even the remaindermen. The general rule is that a trustee has no implied power to mortgage. *Jamison v. McWhorter*, 7 Houst. 242 (Del.); *Griffin v Blanchar*, 17 Cal. 70. But where it is reasonable or necessary for the execution of the trust, a power to mortgage may be implied. *Gilbert v. Penfield*, 124 Cal. 234.

NEGLIGENCE—JOINT LIABILITY.—GRAVES V. CITY AND S. TEL. ASS'N., 132 FED. 387 (D. C.).—Where a trolley feed-wire was negligently allowed to form a circuit with irons on a telegraph pole, whereby plaintiff's intestate received a mortal shock and fall, *held*, that the negligence of the trolley and telegraph companies, though independent, was identical and made them joint tort feasors.

As to what constitutes joint wrongs the courts seem to conflict. Thus independent speakers of identical slanderous words are not joint wrongdoers. *Chamberlain v. Goodwin*, Cro. Jac. 647. But persons uttering identical statements in furtherance of a single fraud are jointly liable. *Patten v. Gurney*, 17 Mass. 182. And one injured by collision, through negligence of a railroad company and a trolley company, may sue them both jointly, though their acts of negligence were diverse. *Matthews v. Delaware, L. & W. Co.*, 56 N. J. L. 34. Persons whose animals, being kept on common premises, commit a trespass, may be sued jointly, though the animals are owned severally and individually. *Jack v. Hudnall*, 25 Ohio St. 255. Indivisibility of damage seems to be a frequent factor in determining joint liability.

PRESCRIPTION—WAY OF NECESSITY—ADVERSE USE.—ANN ARBOR FRUIT CO. V. RAILROAD CO., 99 N. W. 869 (MICH.).—Plaintiff continued to use a way

of necessity after the necessity had ceased, owing to the opening of a street. *Held*, that his user did not become adverse until the land owner had notice of the hostile claim.

The possession of one who enters upon land under a license, and who does nothing inconsistent with his holding as licensee, does not begin to be adverse until he notifies the licensor of the hostile claim. *St. Joseph v Steel*, 122 Mich. 70. A use which begins under a license will not be considered adverse until the license is repudiated and such repudiation brought home to the knowledge of the owner of the servient estate. 22 Am. Eng. Enc. Law. 1198. The decision in the principal case appears to be based upon the doctrine laid down in these two citations taken from the opinion while nothing is said of the difference which manifestly exists between the position of one who uses a way in the capacity of a license and one who continues to use a way which the law gave to him on account of his necessitous condition, the right to the use of which disappears *ipso facto* when the necessity is removed. There are no decisions directly on this point, but since it is well established that a way of necessity ceases as soon as the necessity to use it ceases, *Collins v. Prentice*, 15 Conn. 35; *Trust Co. v. Milnor*, 1 Barb. 353; *Viall v. Carpenter*, 80 Mass. 126, it may well be argued that the user being open, notorious and under claim of right, the statute would begin to run irrespective of whether or not the owner of the servient estate had knowledge that the user was no longer due to necessity.

SHIPPING—LIMITATION OF LIABILITY—KNOWLEDGE OF OWNERS.—WEISSHAAR V. KIMBALL CO., 128 FED. 397 (C. C. A.).—Where the president of a steamship company was present in a small boat sent ashore by one of the company's ships, and acquiesced in the negligent overloading of a boat, whereby a passenger was drowned, *held*, that such negligent overloading was with the "knowledge of the ship owners," such that the company was not entitled to limitation of liability for the injuries resulting.

Where the unseaworthy condition of a vessel would be shown by a proper examination, her owners are chargeable with knowledge thereof, so that the owners cannot avail themselves of the limited liability acts of the United States. *In re Myers Co.*, 57 Fed. 240. But knowledge of latent defects in a boiler is not to be imputed to a corporation, if the corporation has in good faith employed a competent person to inspect the boiler. *The Annie Faxon*, 21 C. C. A. 366. And knowledge by a wrecking master employed by an underwriter is not knowledge of the owner so as to charge the owner with responsibility for negligence of a wrecking master beyond the value of the vessel. *Craig v. Ins. Co.*, 141 U. S. 638.

TORTS—JOINT WRONGDOERS—RELEASE OF ONE—EFFECT.—CAREY V. BILBY, 129 FED. 203 (C. C. A.).—Where one tortiously injured releases one of two joint tort feasors, but expressly reserves all right of action against the other tort feasor, *held*, that such reservation is valid, so that the release does not bar action against the other tort feasor.

Some courts hold that the policy of the law demands the discharge of other tort feasors when one is released, even though the release expressly provides to the contrary. *Mitchell v, Allen*, 25 Hun (N. Y.) 543. But others hold that the consideration for the release of one satisfies the claims against the other only *pro tanto*,—a rule which prevents double satisfaction and yet carries on the intention of the parties. *Smith v. Gayle*, 58 Ala. 600; *Cham-*

berlin v. Murphy, 41 Vt. 110. And the other tort feasors should be held liable for so much of the tort as remains unsatisfied. *Sloan v. Herrick*, 49 Vt. 328. These latter cases represent the trend of modern decisions, which prefer to enforce the equities and intention of the parties; whereas the older cases preferred what was considered to be strict consistency with the theory of releases.

TRADING STAMPS—"GIFT ENTERPRISE."—CITY OF WINSTON ET AL V. BEESON ET AL, 47 S. E. 451 (N. C.).—In an attempt by a municipal corporation to tax a "trading stamp" concern under a city charter authorizing the taxation of a "gift enterprise or lottery," *held*, that manufacturers and dealers in trading stamps sold to merchants, to be given to cash customers and absolutely redeemable in goods offered by the trading stamp concern, without restriction except as to the number redeemable at any one time, were not engaged in a "gift enterprise or lottery."

A lottery is a scheme for obtaining goods or money by chance or hazard. *State v. Mumford*, 73 Mo. 650; *State v. Clarke*, 33 N. H. 334; *Wilkinson v. Gill*, 74 N. Y. 63. "Gift enterprise" is an expression kindred to and used synonymously with the word "lottery." Trading stamp business is a legitimate exercise of one's right to prosecute his own business in his own way. *Young v. Commonwealth*, 101 Va. 853. It is a device to attract customers and is as innocent as any other form of advertising. *Ex parte McKenna*, 126 Cal. 429. There is nothing in the transaction offensive to the statute against lotteries and gift enterprises. *State v. Shugart*, 138 Ala. 86. The element of chance is wholly wanting. *State v. Dalton*, 22 R. I. 77; *Commonwealth v. Sisson*, 178 Mass. 578. The case of *Lansburgh v. District of Columbia*, 11 App. D. C. 512, while apparently an exception to the rule here laid down, is nevertheless readily distinguished. The Statutes of the District of Columbia defined "gift enterprises" and the way in which the plaintiff in error conducted the trading stamp business in this case was easily construed within that definition.