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ADMIRALTY—JURISDICTION—BEACON.—UNITED STATES v. EVANS, 25 SUP. CT. 46.—*Held*, that admiralty jurisdiction extends to a libel *in rem* against a vessel for negligently injuring a beacon standing fifteen or twenty feet from the channel of a bay, in water twelve or fifteen feet deep, though it is built upon piles driven firmly into the bottom.

Formerly admiralty jurisdiction was limited to the high seas. *New Jersey Steam Nav. Co. v. Merchant's Bank*, 6 How. 344. Later it was held to extend to all public navigable water. *The Genesee Chief v. Fitzhugh*, 53 U. S. 443. But not to an injury done by a vessel to an object on land. *The Plymouth*, 3 Wall. 20. Courts of admiralty have also declined to assume jurisdiction where a fire is set to a house by a passing boat. *Ex parte Phoenix Ins. Co.*, 118 U. S. 610; where the injury is to a bridge, swinging on a pier, constructed on the bed of a river, *Curtis v. City of Milwaukee*, 37 Fed. 705; *John C. Sweeney*, 55 Fed. 540; where the injury is to a boom, though it extends into navigable water, *Brig "City of Erie" v. Canfield*, 27 Mich. 479; also where a vessel collides with and injures a derrick, attached to the bottom. *The Maud Webster*, Fed. Cas. No. 9,302. The present case is apparently in conflict with former decisions, and is illustrative of the tendency to enlarge admiralty jurisdiction.

ADVERSE POSSESSION—AGAINST WHOM.—MAAS V. BURDEZKE, 101 N. W. 182 (MINN.).—*Held*, that one may acquire title to land by adverse possession as against the true owner, though he erroneously believed it to be public land and intended to hold and claim it under the federal homestead law.

In some states to gain title by adverse possession it must be against the whole world; *Beate v. Hite*, 35 Ore. 176; thus it was held in *Flewellen v. Randall*, 74 S. W. 49, that where a man enters upon land supposing it to belong to the state and with the intention of acquiring it from the state he does not gain title by adverse possession against the true owner. But on the other hand, and, it seems, by weight of authority, it is held that the plaintiff must recover, if at all, on the strength of his own title, *Mather v. Walsh*, 107 Mo. 121; and that possession need not be adverse to the whole world but only to the one who is asserting title in himself. *Skipwith v. Martin*, 50 Ark. 141; and though one admit title in the state, he may gain title by holding continuously and adversely to the real owner for the statutory period. *Franceur v. Newhouse*, 14 *Sawy.* 601.

BANKRUPTCY—MANUFACTURING CORPORATION—LAUNDRY.—IN RE TROY STEAM LAUNDERING CO., 13 AM. B.R. 97.—*Held*, that a corporation organized for general laundry business, but whose principal business is the laundering of collars and cuffs, etc., for manufacturers of those articles, prior to their being put on the market, is engaged in manufacturing and subject to be adjudged a bankrupt.

To be adjudged an involuntary bankrupt, the corporation must be one clearly within the provisions of the act. *Wilson v. City Bank*, 17 Wall. 473. The process of manufacture is supposed to produce some new article, and does not consist in a mere change of form of the original article. *Hartranft*

v. Wiegman, 121 U. S. 609; *People v. Roberts*, 145 N. Y. 377. A manufacturing corporation may be one that merely performs work and labor, the materials being furnished by other parties. *In re Niagara Contracting Co.*, 127 Fed. 782. It is clear that a laundry company, doing only domestic work, is not a manufacturer. *In re White Star Laundry Co.*, 117 Fed. 570.

BANKS—LIABILITY TO THE LEGAL REPRESENTATIVES OF A DECEASED DEPOSITOR.—KELLEY V. BUFFALO SAV. BANK, 72 N. E. 995 (N. Y.).—Where, after the death of a depositor in a saving's bank, of which fact the bank was ignorant, his bank book was produced, and a draft presented, purporting to bear his signature, which was paid by the bank, *held*, that failure to make a physical comparison of such signature to the draft with the signature of the depositor on file in the bank, renders the bank liable for such payment, for failure to exercise due care and ordinary caution.

The officers of a savings bank are to be held to the exercise of reasonable care and diligence. *Eaves v. Peoples' S. Bank*, 27 Conn. 229; *Boone v. Citizens' S. Bank*, 84 N. Y. 83. The exercise of mere diligence will not protect the bank where it knows of the depositor's death. *Farmer v. Manhattan S. Inst.*, 60 Hun 462; *Fowler v. B. S. Bank*, 113 N. Y. 450. A rule or clause in the deposit book is part of the contract between the bank and its depositor. *White v. Bank*, 22 Pick. 183; *Wallace v. Bank*, 7 Gray 134; *Eaves v. Peoples' S. Bank, supra.* The common rule, authorizing payment on the death of a depositor to his legal representatives, is designed to protect the depositor when he no longer can protect himself, and requires the bank to employ special care to see that payment is made to the proper person. *Farmer v. M. S. Inst., Supra.*

CONSTITUTIONAL LAW—CONSTRUCTION OF VIADUCT—LIABILITY OF MUNICIPALITY TO ABUTTING OWNER.—SAUER V. CITY OF NEW YORK, 72 N. E. 579 (N. Y.).—When a statute authorizes the construction of a viaduct above the surface of a street and such construction diminishes the value of an abutting owner's property, occasioning dust and noise, impairing ingress and egress, and interrupting light and air, *held*, that the statute is not unconstitutional, the damages sustained being *damnum absque injuria.* Vann and Bartlett, J J., *dissenting.*

This decision is distinguishable from *Story v. R. Co.*, 90 N. Y. 122, where damages were allowed, on the ground that the obstructions were incompatible with, and destructive of, the use of the street as such. Under a constitutional provision prohibiting the taking of private property for public use without compensation, it is held that abutting property owners who sustain special damages from the construction of street improvements are entitled to compensation. *Pause v. Atlanta*, 98 Ga. 92; *Barrows v. Sycamore*, 150 Ill. 588. In *Rening v. R. Co.*, 128 N. Y. 157, it was said that the owner is entitled to the benefit of the street for egress and other purposes and cannot be deprived thereof without compensation. Indirect injuries, however, suffered in common with the general public, are not recoverable. *Rigney v. Chicago*, 102 Ill. 64. A diversion of public traffic from the street in front of the property is not ground for compensation, *Hobson v. Philadelphia*, 155 Pa. 131; and the construction of an elevated approach to a viaduct occupying the entire width of the street is *damnum absque injuria. Coldough v. Milwaukee*, 92 Wis. 182.

CONSTITUTIONAL LAW—INSPECTION LAWS.—TERRITORY EX REL. E. J. MCLEAN & CO. V. DENVER & R. G. R. CO., 79 PAC. 74 (NEW MEXICO.).—

Held, that an inspection law for the sole purpose of aiding in the detection and punishment of crime or fraud against an industry is valid. Baker, J., *dissenting*.

A state may make rules for the conduct of the most necessary and common occupations when from their nature they afford peculiar opportunities for imposition and fraud. *Cooley, Cons. Lim.*, 7th Ed., 886; *Hawthorn v. People*, 109 Ill. 308. Also when the business affords peculiar opportunities for the commission of crime. *Comm. v. Ducey*, 126 Mass. 269. But a state cannot make a law designed to detect or prevent crime an inspection law, within the constitutional meaning of that word, by calling it so in the title. *People v. Compagnie Générale*, 107 U. S. 59; *Soon Hing v. Crowley*, 113 U. S. 703, 710. Such inspection law to be valid must not substantially hamper or burden either foreign or interstate commerce. *Railroad v. Husen*, 95 U. S. 465. Yet although such state regulations may affect interstate commerce in some measure, if the regulations are local in their nature and adapted to the locality they will not be considered void unless they run counter to legislation that Congress has enacted. *Cooley, Prin. of Cons. Law*, 71.

CRIMINAL LAW—EVIDENCE—REFRESHING MEMORY.—STATE V. ASPARA, 37 So. 883 (LA.).—*Held*, that a witness in a criminal trial may refresh his memory by referring to testimony previously given by him on the preliminary hearing of the accused.

In most jurisdictions a witness cannot have recourse to his previous testimony before the grand jury. *Putnam v. U. S.*, 162 U. S. 687; *Comm. v. Phelps*, 77 Mass. 73; *contra*, *State v. Miller*, 53 Iowa 154. But when a witness for the prosecution manifests a disposition to favor the defendant, the prosecution may call his attention to such previous testimony. *Hurley v. State*, 46 O. St. 320. It is generally held that the attention of a witness may be called to the testimony given by him in a previous trial of the same case. *People v. Palmer*, 105 Mich. 568. But the testimony of a witness on the trial of another defendant in the same indictment cannot be read to him for any purpose. *Brown v. State*, 28 Ga. 199. The ruling in the present case regarding testimony given at a prior preliminary examination seems to follow the weight of authority. *Harvey v. State*, 40 Ind. 516; *White v. State*, 18 Tex. App. 57.

DEAD BODIES—ACTION FOR MUTILATION—DAMAGES.—KOERBER V. PATEK, 102 N. W. 40 (WIS.).—*Held*, that the sense of outrage and mental suffering resulting directly from the wilful mutilation by defendant of the body of plaintiff's deceased mother are proper independent elements of compensatory damages.

Damages will be allowed for mental suffering, without physical injury, where the suffering was caused by a wanton act. *Gillespie v. Brooklyn H. R. R.*, 178 N. Y. 347. For an authorized autopsy damages will not lie where it was shown to be conducted in the ordinary way. *Winkler v. Hawkes et al.*, 102 N. W. 418 (Iowa); *Cook v. Walley*, 1 Colo. App. 163. As to authorized autopsies see the leading case of *Larson v. Chase*, 47 Minn. 307; also a discussion in the *N. Y. Law Journal*, Vol. 32, p. 1954; *Hockenhammer v. L. & E. Ry. Co.*, 24 Ky. L. Rep. 2383.

DEATH BY WRONGFUL ACT—PASSENGER ON CONSTRUCTION TRAIN—LIABILITY OF COMPANY.—PENNSYLVANIA CO. V. COYER, 72 N. W. 875 (ILL.).—Decedent, an employee of a construction company, received notice from the railroad company of a rule forbidding the employees of the construction company to ride on a work train. *Held*, that habitual violation of such rule by

such employees, and a failure to enforce it by the conductor or other persons having charge of the trains will not render the company liable for the death of the decedent, in the absence of proof that the company had knowledge of such disregard, and acquiesced therein.

A passenger is "one who travels in some public conveyance, by virtue of a contract, express or implied, with the carrier, as to the payment of fare or that which is accepted as an equivalent therefor." *Bucker v. R. Co.*, 132 Pa. 1; *Penn. R. Co. v. Price*, 96 Pa. 256. It is presumed that persons riding on trains which clearly are not designed for the transportation of passengers are not lawfully there. *Waterbury v. N. Y., etc., R. Co.*, 21 Blatchf. 314. The burden of proof is on one riding on such a train to show that the carrier has departed from this rule. *Robertson v. N. Y., etc., R. Co.*, 22 Barb. 91. Conductors and other employees in charge of a train have no authority to relax such rule, either to invite or permit persons to take passage thereon. *Eaton v. Del., etc., R. Co.*, 57 N. Y. 382; *Houston, etc., Ry. Co. v. Moore*, 49 Tex. 31; *Waterbury v.N. Y., etc., R.Co., supra.* But one having paid his fare and entered the "saloon" car of a freight train, contrary to the company's regulations, was allowed to collect for injuries, on the ground that the company knew of such violation. *Dunn v. G. T. R. Co.*, 58 Me. 187.

EASEMENTS—LOT BOUNDED ON STREET MARKED ON PLAT.—EDWARDS V. MOUNDSVILLE LAND CO., 48 S. E. 754 (W. VA.).—*Held*, that purchasers of lots have a right to have all the streets marked on the plat by which they purchased kept open as streets, and their rights are not confined to the part of the street in front of the lots purchased by them.

The extent of the rights acquired by purchasers of lots with reference to a plat does not seem to be definitely settled. This court follows the best decisions, and adopts the "unity plan," whereby purchasers acquire an easement in the streets as marked in the whole plat, and not merely in an adjacent street. *Moale v. Mayor*, 5 Md. 314; *Derby v. Alling*, 40 Conn. 410; *Winona v. Huff*, 11 Minn. 119. A private purchaser acquires this right at the time of purchase, although the public has as yet no right to use and control, by either acceptance or user. *Wolfe v. Sullivan*, 133 Ind. 331; *In re Pearl Street*, 111 Pa. 565. But many courts hold, in the absence of either acceptance or user by the public, that the purchaser is entitled only to have an adjacent street kept open for its full width to the nearest traveled highway, and that he has no right in other streets designated on the plat. *Randall v Hall*, 4 DeG. & Sm. 343; *Mahler v. Brumder*, 92 Wis. 477.

EQUITY—NOTICE—SALE BY BONA FIDE PURCHASER.—LIVINGSTONE V. MURPHY, 72 N. E. 1012 (MASS.).—*Held*, that one purchasing from a bona fide purchaser though himself having notice takes the title of his grantor.

A person who has bought in good faith, without notice of an equity, and thereby holds a good title can convey an equally good title to any purchaser whether that purchaser has notice of the equity or not. *The D. M. French*, Fed. Cas. No. 3,938; *Barber v. Richardson*, 57 Vt. 408. The reason for the above rule is to prevent a stagnation of property and because the purchaser being entitled to hold and enjoy must be equally entitled to sell. *Bumpus v. Platner*, 1 Johns. Ch. 213; *Trueluck v. Peoples*, 3 Kelly 446. But the rule does not apply where the purchaser without notice or his successor sells to one through whose hands the property has once passed and who at that time could not shield himself behind a *bona fide* purchaser by himself or one through whom he took. *Church v. Ruland*, 64 Pa. 444; *Bisp., Equity*, sec. 265.

EVIDENCE—PRESUMPTION—PROBATIVE FORCE.—VINCENT V. MUTUAL FUND LIFE ASSO., 77 CONN. 281.—*Held*, overruling *Sturdevant's Appeal*, 71 Conn. 392, that when the law presumes statements made by one deceased in an application for insurance to be true, such presumption is not entitled to be weighed and considered as evidence by the jury.

It has been held that a presumption of innocence does not cease upon submission of a cause to the jury, *People v. O'Brien*, 106 Cal. 104; but operates during the deliberation of the jury until they have arrived at a verdict. *Coffin v. U. S.*, 156 U. S. 432; *People v. McManus*, 94 Cal. 509. These cases are based upon a misunderstanding of the loosely used phrase, that "presumption of innocence is to be regarded by the jury in every case, as a matter of evidence," and which merely means that the burden of proof is on the other party, *Greenleaf on Ev.*, (16th ed.) Sec. 34; and it is not error to refuse to direct a jury that they ought to regard a presumption of innocence as evidence, *Woolen v. State*, 24 Fla. 335; the true rule being that a legal presumption should not be considered by the jury as a matter of evidence entitled to be weighed by them in arriving at a verdict. *State v. Linoff*, 121 Iowa 632; *State v. Kennedy*, 55 S. W. 273.

HOMESTEAD—ADDITION.—WILKS V. VAUGHAN, 83 S. W. 913 (ARK.).—*Held*, that when a homestead right has once been acquired in land less than the maximum area allowed by a statute it may be increased to that maximum area by purchasing adjoining land, though the homesteader is not at the time residing on the homestead. McCulloch, J., *dissenting*.

This is a case of first impression but it has been held that a debtor might purchase adjoining land, bringing his homestead up to the maximum area, and have the homestead rights attach to it, *Campbell v. McManus*, 32 Tex. 442; and when he once acquires a homestead by actual occupation and then moves away, but with the intention of returning and making it his home, it is protected from foreclosure sale. *Hand v. Winn*, 52 Miss. 784. Not only is continuity of occupancy not indispensable to preserve the homestead rights but it must be shown clearly and decisively that the homesteader intended to absolutely abandon it in order to destroy them. *Campbell v. Adair*, 45 Miss. 170. It is well established that the law recognizes no difference between actual and constructive occupation so far as retaining homestead rights, *Parr v. Newby*, 73 Tex. 468; there seems to be no reason why it should so far as adding to these rights.

INJUNCTION—PUBLIC OFFICERS—TRESPASS IN DISCHARGE OF DUTY.—HALE V. BURNS, 91 N. Y. SUPP. 929.—Police officers were stationed by the defendant, a captain of police in New York City, in the plaintiff's saloon on suspicion that gambling was being conducted therein. An injunction was sought and the court *held* that the public officers could be restrained from performing acts in the discharge of their duties which come within the nature of a trespass, to the irreparable injury of the aggrieved party.

Equity will interfere where trespasses are repeated or continuing, *Chiles v. Ringo*, 14 Ky. L. Rep. 302; *Miller v. Lynch*, 149 Pa. 460; *Wheelock v. Noonan*, 108 N. Y. 179; or where damages can only be estimated by conjecture and not by accurate standards. *Johnson v. Kier*, 3 Pitts. R. 204. An injunction will issue to prevent a public officer from unlawfully assuming power over property in such manner as to infringe upon or violate the rights

of a citizen. *Noble v. U. R. L. R. Co.*, 147 U. S. 165. Plaintiff must show that some act in violation of his rights has been actually done, or irreparable injury is threatened. *Judd v. Town of Fox Lake*, 28 Wis. 583. The court in this case follow *Weiss v. Herlihy*, 23 App. Div. 608, in requiring that the defendant show with some degree of certainty that illegal acts have been done on the premises. Similar actions have been denied, *City of Chicago v. Wright*, 69 Ill. 318; even where the supervision of the police was exercised in an arbitrary and unlawful manner. *Stennan v. Kennedy*, 15 Abb. Prac. 201.

LICENSES—RECOVERY OF FEE—VOLUNTARY PAYMENT.—SOUTHERN RY. CO. V. CITY OF FLORENCE, 37 So. 844 (Ala.).—*Held*, that a threat to begin action for collection of penalty for failure to pay license fee does not render payment under protest an involuntary payment.

Mere threats do not ordinarily constitute such coercion as to render a tax payment involuntary. *Williams v. Stewart*, 115 Ga. 864; *DeBaker v. Carillo*, 52 Cal. 473. But if the demand is made under color of office and threat of immediate and effectual enforcement, the rule is otherwise. *St. Anthony Elevator Co. v. Bottineau*, 9 N. Dak. 346; *First Nat. Bank v. Watkins*, 21 Mich. 483. And the payment is involuntary if made to prevent discontinuance of business. *Swift Co. v. U. S.*, 111 U. S. 29; *Scottish Union Ins. Co. v. Herriott*, 109 Iowa 606. But all rights must be expressly reserved. *Yates v. Royal Ins. Co.*, 200 Ill. 202. When the payment is made to avoid a penalty it is commonly held, contrary to the present case, that the payment is involuntary. *Magnolia v. Sherman*, 46 Ark. 358; *Allen v. Burlington*, 46 Vt. 202.

LOTTERY—WHAT CONSTITUTES—SUIT CLUB.—DEFLORIN V. STATE, 49 S. E. 699 (GA.).—*Held*, that a "suit club" whose members pay $1 per week, and which holds weekly drawings, as a result of which the member holding the lucky number receives his suit and ceases to be a member of the club, is a lottery.

Any method of dealing by which a pecuniary consideration is paid and it is determined by lot or chance, according to some scheme held out to the public, what and how much he who pays the money is to have for it, or whether he is to have anything, is a lottery. *MacDonald v. U. S.*, 63 Fed. 426; *Hull v. Ruggles*, 56 N. Y. 424. Thus where lots are sold at a fixed price, and the particular lots are ascertained by chance, it is a lottery. *Wooden v. Shotwell*, 24 N. J. L. 789; *Allebach v. Godshalk*, 116 Pa. 329. When, as in the principal case, each knows by the terms of his contract just what he is to receive, but not how much he is going to have to pay therefor, the principle is the same. It depends absolutely on the chance element being present. *People v. Elliott*, 74 Mich. 264; *Ex P. Kameta*, 36 Ore. 251.

MORTGAGES—DEED ABSOLUTE ON ITS FACE—EVIDENCE.—REICH V. DYER ET. AL., 72 N. E. 922 (N. Y.).—*Held*, that a deed, absolute in form cannot be held, as a matter of law, to be a mortgage when the grantee advanced part of the price to the grantor under an agreement that the grantee might within a year from the date of the deed retain the title to the premises by paying the balance of the price—with the understanding that the money should be treated as a loan if the grantee concluded not to purchase—and there was evidence that the parties intended the instrument to be a deed and that the possession of the premises was surrendered to the grantee. Martin, O'Brien and Vann, JJ., *dissenting*.

Whether a conveyance of land accompanied by an agreement by the grantee to reconvey on condition is a mortgage or a sale depends on the intention of the parties. *Murray v. Riley*, 140 Mass. 490. But the grantor's intention in making a deed is not material upon the question whether or not it is a mortgage, if not communicated to the grantee. *Phoenix v. Gardner*, 13 Minn. 430. A covenant to reconvey may be one among other facts showing that the parties intended the deed to operate as a mortgage. *Henley v. Hotaling*, 41 Cal. 22. In determining whether a deed absolute on its face is a mortgage great weight is attached to these circumstances, that the alleged price was greatly inadequate, that the vendor remained in possession of the property and that there had been pending negotiations for a loan. *Davis v. Demming*, 12 W. Va. 246.

PARTNERSHIP—SALE OF PROPERTY—ACCOUNTING.—COMSTOCK V. MCDONALD, 101 N. W. 55 (MICH.).—Where the administrator and widow of a deceased partner were induced to sell partnership realty by a secret agreement with the intending purchaser to pay them an additional sum for their assent, *held*, that the additional sum would be treated as a part of the partnership funds and an accounting would be in favor of the surviving partners. Moore, C. J., *dissenting*.

An administrator who deals with or undertakes to control partnership assets is deemed to be an agent of the surviving partner and benificiaries and can make no profit for himself. *Marlott v. Scantland*, 19 Ark. 443; *Hewes v. Baxter*, 48 La. 1303. The trustee is regarded as trustee of the surviving partner, *Griffith v. Godey*, 113 U. S. 89; and cannot gain any personal advantage touching the thing or subject as to which the fiduciary position exists. *Bispham, Equity*, Sec. 92.

PRINCIPAL AND AGENT—DELEGATION OF AUTHORITY—SUBSTITUTION.—CULLINAN, COMMISSIONER OF EXCISE, V. BOWKER ET AL., 72 N. E. 911 (N. Y.).—*Held*, that where a surety company appointed an agent to sign, execute and attach the seal of the company to bonds filed under the liquor tax law the agent cannot delegate his powers to a clerk in his office. Vann, Bartlett and Martin, JJ., *dissenting*.

If authority to do an act be delegated to one he must in general do that act himself and cannot delegate his authority to another. *Shankland v. Washington*, 30 U. S. 390; *Stoughton v. Baker*, 4 Mass. 522. But such authority to employ a sub-agent is implied where from the nature of the agency a substitute is necessary. *Dorchester Bank v. N. E. Bank*, 55 Mass. 177. An agent may delegate his powers which are merely mechanical. *Commonwealth Bank v. Norton*, 1 Hill 501. But where a personal trust and confidence is confided in an agent, requiring the exercise of judgment and discretion, his powers cannot be delegated to another without special power of substitution. *Daly v. Stetson*, 54 N. Y. Super. Ct. 202.

RECORDING—SUFFICIENT COMPLIANCE WITH STATUTE.—MURRAY ET AL V. ZELLER, 59 ATL. 261 (N. J.).—*Held*, that it is not sufficient compliance with the statute requiring chattel mortgages to be immediately recorded, and strangers are not charged with notice of the mortgage, when the clerk, after making the indorsement of receipt in which the book and page of recording are left blank, returns the mortgage to the mortgagee without recording it.

Where there is a discrepancy between the date of actual record of a mortgage, as it appears on the record book, and the constructive record shown by the indorsement made upon the instrument when deposited, the former must prevail, unless in the case of those having notice and knowledge of the latter. *Donald v. Beals*, 57 Cal. 399. An entire copy of the mortgage need not be recorded. Enough to give the public notice with reasonable certainty of the particulars is sufficient. *Poutz v. Reggio*, 25 La. Ann. 154. There are a good many cases holding that, when the holder of an instrument leaves it with the recorder for record, it is to be regarded as recorded from that time, though not then actually recorded or recorded in the wrong book. *Farabee v. McKerrihan*, 172 Pa. 234; *Throckmorton v. Price*, 28 Tex. 605. The presumption is that an instrument is recorded when received for record. *Wing v. Hall*, 47 Vt. 182.

TORTS—LIBEL—PRIVILEGED STATEMENTS.—HOLMES V. CLISBY, 48 S. E. 934 (GA.).—*Held*, that statements published in good faith by one to protect his own interests in a matter where he is concerned, as well as to protect the interests of another, whom he represents as agent, are privileged, when the character of the publication is such as to make it reasonably necessary, under the surrounding circumstances, to accomplish the desired purpose.

This is an exception to the general rule and it is based on the ground that some apparently recognized obligation or motive may fairly be presumed to have led to the publication. *White v. Nicholls*, 3 How. 266; *Locke v. Bradstreet Co.*, 22 Fed. 771. The publisher must have a legitimate interest in the matter communicated. *Simmonds v. Duane*, Ir. Rep. 5 Com. Law 358. Those to whom the communication is made must be parties having an immediate interest in the matter. *Fresh v. Cutter*, 73 Md. 87; *Sunderlin v. Bradstreet*, 46 N. Y. 188; *contra*, *Brow v. Hathaway*, 95 Mass. 239. The publisher is not liable, if such publication is made in the interest of other parties. *Lawler v. Earle*, 87 Mass. 22. To establish a qualified privilege, the defendant must show that he believed the published statement to be true. *State v. Haskins*, 109 Iowa 656.

WILLS—PROMISE TO CONVEY PROPERTY—TRUSTEE EX MALEFICIO.—CASSELS ET AL. V. FINN, 49 S. E. 749 (GA.).—*Held*, that the failure to perform an oral promise, made by the sole heir at law of one desiring to dispose of her estate to third persons, that he will dispose of her estate as she desires, cannot make the heir at law, in case of intestacy, a trustee *ex maleficio* as to the property inherited by him, in the absence of actual fraud.

This case seems to point out a clear rule upon a point about which there appears to be much confusion, by slightly modifying the rule that when the making of a will is prevented by the promise of an heir or distributee to hold the property in trust for a particular person, he will be held a constructive trustee. *Strickland v. Aldridge*, 9 Ves. Jr. 516; *Hoge v. Hoge*, 1 Watts 213. Some courts have held that no fraud need be present. *Ransdel v. Moore*, 153 Ind. 393. Others have denied the doctrine altogether. *Moore v. Campbell*, 102 Ala. 445. Where the heir attempts to carry out the promise with a defective conveyance, equity will in some jurisdictions remedy the defects. *Browne v. Browne*, 1 Har. & I. 430. The taker has also been held as for money had and received. *Williams v. Fitch*, 18 N. Y. 546.