RECENT CASES

ADVERSE POSSESSION—PROPERTY SUBJECT TO PRESCRIPTION—PROPERTY DEDICATED TO PUBLIC USE.—TOWN OF ELDORADO V. RITCHIE GROCERY CO., 104 S. W. 549 (ARK.).—Where land donated to a town for street purposes on condition that it survey the same and lay out streets thereon, and keep them in good condition, was thereafter, on failure to perform such condition, conveyed to another, and for more than seven years held adversely to the town, and permanent and valuable improvements put thereon, title was in the occupant.

The rules laid down by the courts in this matter are exceedingly diverse and unsatisfactory. In *Sheen v. Stothart,* 29 La. Ann. 630, it was stated that after a dedication to public use, no silence or length of time or non-user can deprive a public corporation of its power, and until the time arrives when the land is actually needed for street purposes, no mere non-user will operate as an abandonment, *Reilly v. Racine,* 51 Wis. 526; so also in *Webb v. Demopolis,* 95 Ala. 116, the city holds in trust for its citizens and statute of limitations does not run against her; and public rights cannot be destroyed by long continued trespasses, *Kittaning v. Brown,* 41 Pa. St. 269, therefore, there is no loss of public right by non-user, *Hfd. v. N. Y. & N. E. R. R. Co.,* 59 Conn. 250. In *Rowan's Ex'rs. v. Town of Portland,* 47 Ky. 232, it was said that ground being dedicated to a town for public use, the right is not lost for want of use, while in *Williams v. First Presbyterian Society of Cincinnati,* 1 Ohio St. 478, the court held that the right of a county or town to property dedicated may be barred by statute of limitations.

APPEAL—HARMLESS ERROR—ADMISSION OF EVIDENCE.—LOUISVILLE & N. R. CO. ET AL., V. GOLLIHUR, 82 N. E. 492 (IND.).—In an action for death in a railroad collision, caused by negligence of the train dispatcher, the admission of a letter from a railroad officer, which was pinned to the original dispatch, *held,* under the circumstances, not prejudicial to defendant.

ATTORNEY AND CLIENT—AUTHORITY OF ATTORNEY—PRESUMPTION.—AARON V. U. S. ET AL., 155 FED. 833.—*Held,* the entry of appearance for a defendant by an attorney is presumed to have been authorized, and, to relieve himself from the effect of such appearance, such defendant has the burden of proving to the satisfaction of the court that it was unauthorized.

BURGLARY—NATURE AND ELEMENTS OF OFFENSE—BREAKING AND ENTERING—STATUTES.—ANDERSON V. STATE, 104 S. W. 1096 (ARK.).—*Held,* that the prying off of a wooden shutter over a window of a store without opening or breaking the window, and the cutting of an inch square hole through the door of the store too far from the latch to permit the use of an instrument to unfasten the door, did not constitute a breaking or entering sufficient to sustain a charge of burglary under a statute which provided that burglary

is committed by breaking or entering the house or other building of another in the night-time with intent to commit a felony. Hill, C. J., *dissenting.*

In some states the Common Law definition of burglary is changed by statute so that breaking and entering are not both essential, the mere entering being sufficient with other elements. *People v. Barry,* 94 Cal. 481; in other states a breaking is the requirement. *Mullins v. Com.,* 20 S. W. (Ky.) 1035. There exists some want of harmony as to the amount of force that would be a violation of the security of the house. A screen fastened into the window with nails was removed by defendant and it was held to be a breaking. *Sims v. State,* 136 Ind. 358, while the removal of planks in a partition wall was not burglary. *Com. v. Trimmer,* 1 Mass. 476. In another instance, the pushing open of a screen door, the inner door standing open, constituted the crime. *State v. Conners,* 95 Iowa 485. "Forcible" breaking, as required by some statutes, only expresses the degree of force that was implied at common law from the word "break." *Timmons v. State,* 34 Ohio St. 426.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—LICENSES—EX PARTE ACKERMAN, 91 PAC. 429 (CAL.).—*Held,* that an ordinance imposing a license tax on the keepers of dogs is not invalid for unreasonableness and as providing for the taking of property without due process of law, because providing for the destruction of the dog upon which no license tax has been paid two days after the dog has been impounded, unless it has been redeemed, without notifying the owner.

License tax on dogs is not a tax in the sense of a burden or charge put upon persons or property for public uses, *Mitchell v. Williams, 27* Md. 62, but is a mere regulative expedient, and summary destruction of the dogs for violation of the law, *Van Born v. People,* 46 Mich. 183, finds its basis in law of necessity and is imposed by police power, *Morewood v. Wakefield,* 133 Mass. 240, and is wholly free from constitutional objection either as depriving one of property without process or being denied equal protection of the law; *The State v. City of Topeka,* 36 Kan. 76; *Carter v. Done,* 16 Wis. 298, because, although property rights are recognized in dogs, it is a base and inferior right, *Woolf v. Chalker,* 31 Conn. 121, and further, because the police power must protect the lives, health, comfort and quiet of all persons and protect all property within the state, *Thorpe v. Rutland, etc., R. R. Co., 27* Vt. 140, from destruction and annoyance, *City of Hagerstown v. Witner,* 86 Md. 293. *Lynn v. State,* 33 Tex. Com. Rep. 153, is *contra.*

CONTRACTS—PARTNERSHIP—STATUTE OF FRAUDS.—KOYER V. WILLIAMS, 90 P. 135 (CAL.).—*Held,* that a partnership to buy, hold and sell lands may be validly formed by parol.

Parol agreements to procure land on joint account are not generally enforceable as within the Statute of Frauds. *Parsons v. Phelan,* 134 Mass. 109; *Brosnan v. Parsons,* 63 Mich. 454. Where one party procures title to land transferred to himself, the other parties to the agreement cannot compel a division in the absence of a writing. *Robbins v. Kimball,* 55 Ark. 416; *Young v. Wheeler,* 34 Fed. 98. The courts may, however, even if they refuse to consider the question of partnership, enforce the agreement as a case of resulting trust. *Larkins v. Rhodes,* 5 Port. 195; *Wallace v. Carpenter,* 85 Ill. 590. Some courts hold that a parol agreement to divide the land itself is not enforceable. *Morton v. Nelson,* 145 Ill. 586. But the rule does not apply to agreements for the division of the profits arising from the sale of lands.

Eaton v. Graham, 104 Ill. App. 296; *Everhart's App.,* 106 Pa. 349; *contra, Schultz v. Waldons,* 60 N. J. Eq. 71; *Von Trotha v. Bamberger,* 15 Col. 1. And it seems that if the partnership is once established it may purchase lands, although it exists merely in parol. And it is immaterial that the title is in one of the partners. *Allison v. Perry,* 130 Ill. 9. It has been said that the statute is not so broad as to prevent proof by parol of an interest in land, it being aimed simply at the creation and conveyance of estates in land. *Chester v. Dickerson,* 54 N. Y. 1. The real distinction between the cases has been stated to be whether the agreement attempts to transfer an interest in the land or is an agreement to buy and sell at a joint risk for profit and loss. *Dale v. Hamilton,* 5 Hare 383. And it seems to be the weight of authority that a partnership formed for the purpose of dealing in lands, not contemplating the creation of any estates or interests other than a pecuniary interest, may be formed by parol and proved by parol evidence. *Bates v. Babcock,* 95 Cal. 479; *Dexter v. Blanchard,* 11 Allen 361.

COUNTIES—PUBLIC PURPOSES—TAXING DISTRICTS.—STATE EX REL. BOARD OF COM'RS OF HENDRICKS COUNTY V. BOARD OF COM'RS OF MARION COUNTY, 82 N. E. 482 (IND.).—*Held,* in exercising the power of improving public highways, the Legislature may, by a general law, provide for taxing districts without regard to the boundaries of counties, townships, or municipalities.

CRIMINAL LAW—POSSESSION OF STOLEN PROPERTY.—STATE V. WRIGHT, 66 ATL. REP. (DEL.) 364.—*Held,* that in order that possession of recently stolen property unexplained may create a presumption of guilt of the possessor, it is necessary that his possession of the property should be exclusive.

The general rule seems to be that mere possesion of the stolen property raises no presumption of guilt. *State v. Jennings,* 79 Iowa 513; *Taliaferio v. Commonwealth,* 77 Va. 411, but besides being recently stolen property, *Brooks v. State,* 96 Ga. 353; *Salrin v. State,* 93 Ind. 550, for presumption is stronger or weaker as time is more recent, *Satlick v. People,* 40 Mich. 292, the possession must be unexplained, *U. S. v. Jones,* 31 Fed. Rep. 718, exclusive; *Commonwealth v. Millard,* 1 Mass. 6; *State v. Scott,* 109 Mo. 226; Personal, *People v. Hurley,* 60 Cal. 74, and must involve a distinct and conscious assertion of property by the defendant, *Regina v. Exall,* 4 F. & F. 922; *Knickerbocker v. State,* 43 N. Y. 177, the presumption in such case being one of fact and not law,*State v. Raymond,* 46 Conn. 345; *State v. Hodz,* 50 N. H. 510.

DAMAGES—ATTEMPT TO ARREST LOSS.—MOGOLLON GOLD & COPPER CO. V. STOUT, 91 PAC. 724 (N. M.).—*Held,* that when an injured party finds that a wrong is being done him, he should use all reasonable means to arrest the loss, and when a reasonable and *bona fide* attempt is made to reduce the damage, even if by such attempts the loss is increased, it does not relieve the wrong-doer from a suit for the full recovery of the damages claimed.

A person must use ordinary and reasonable care and means to prevent an injury to his property and he can only recover such damages as could not by such care and means be avoided. *City of Dallas v. Cooper,* 34 S. W. 321 (Tex.); *Jutte v. Hughes,* 67 N. Y. 267. The courts, in general, have held that evidence of the negligence of one injured to attend to his injuries, whereby they were aggravated, may be introduced by the defendant in mitigation of damages. *City of Waxahachia v. Connor,* 35 S. W. 692 (Tex.);

City of Goshen v. England, 5 L. R. A. 253 (Ind.). The prevailing rule concerning injuries to persons is that where a person is injured by the negligence of another party, and the injured person employs surgeons and doctors of ordinary skill and care in their profession, and the injury fails to heal properly, the party injured may recover for the unfavorable result of the injury, *Pullman Palace Car Co. v. Bluhm,* 109 Ill. 20; *Radman v. Habersto,* 1 N. Y. Supp. 561.

DAMAGES—EXCESSIVE VERDICT—INJURIES.—VESTER V. RHODE ISLAND CO., 67 ATL. (R. I.) 444.—*Held,* that a verdict of $21,000 for personal injuries resulting in a miscarriage and an aggravation of a dislocated kidney, not causing total disability, is excessive.

An Appellate Court will not set aside a verdict on the ground of excessive damages unless it is so excessive as to suggest that the jury was actuated by bias, prejudice, pasion, or some undue influence. *Jacobs v. Bangor,* 16 Me. 187; *Schmidt v. Milwaukee & St. Paul Ry. Co.,* 23 Wis. 186; *Howland v. Oakland St. Ry. Co.,* 110 Cal. 513. The trial judge should exercise his discretion to cut down excessive verdicts in personal injury cases. *Chicago v. Leseth,* 43 Ill. App. 480. In actions for personal torts the law does not fix any precise rule for the admeasurement of damages, but leaves their assessment to the good sense and unbiased judgment of the jury. *Aldrich v. Palmer,* 24 Cal. 513. The amount of damages awarded should be the amount awarded for injuries of a like nature and extent. *Lockwood v. 23d St. Ry. Co.,* 7 N. Y. Supp. 663. "We cannot disturb the verdict, because it may seem to us too large." *Brown v. Sullivan,* 71 Tex. 470. Courts are reluctant to interfere with verdicts of juries on account of excessive damages. *Kennon v. Gilmer,* 5 Mont. 273. For a case somewhat similar in its nature to this one where the court did reduce the damages, see *Hamilton v. Gt. Falls St. Ry. Co.,* 17 Mont. 334. For somewhat analagous cases where the courts refused to reduce the damages, see *Groves v. Rochester,* 39 Hun. (N. Y.) 5 Ga.; *Pac. Ry. Co. v. Dooley,* 86 Ga. 295.

DIVORCE—EVIDENCE—SUFFICIENCY.—MURPHY V. MURPHY, 113 N. W. 582. —*Held,* there is no hard and fast rule preventing the granting of a divorce on complainant's testimony alone, though it is undoubtedly the correct rule that where a divorce is so granted, the right thereto must be very clearly established.

DIVORCE—FAILURE TO PAY ALIMONY.—OTILLIO V. OTILLIO, 44 So. 799 (LA.).—*Held,* the failure of a defendant to pay promptly the alimony which he is ordered to pay by a judgment does not carry with it a contempt of court *pro se* and *ipso facto* as the result of such failure.

JUDGMENT—RES JUDICATA.—PARTIES, SOUTHERN ELECTRIC SECURITIES CO. ET AL. V. STATE, 44 SOUTH. 785 (MISS.).—*Held,* where a corporation was not a party to a bill to restrain another corporation from voting a large amount of the first corporation's stock because the holding company was a trust, the judgment in such action would not be binding on the original company in a subsequent action by the state to forfeit its charter.

EQUITY—JURISDICTION—CREDITORS AND STOCKHOLDERS OF CORPORATIONS.— TORREY ET AL. V. TOLEDO PORTLAND CEMENT CO. ET AL., 113 N. W. 580 (MICH.).

—*Held,* that courts of law are inadequate to protect rights of stockholders and creditors, and equity will take jurisdiction of a suit involving such rights.

EVIDENCE—JUDICIAL NOTICE—MATTERS OF COMMON KNOWLEDGE.—AUTEN V. BOARD OF DIRECTORS OF SPECIAL SCHOOL DIST. OF LITTLE ROCK, 104 S. W. 130 (ARK.).—*Held,* that the court will take judicial notice, as a matter of common knowledge, that a great majority of medical writers and practitioners advocate vaccination as an efficient means of preventing smallpox.

Courts are not limited in their researches to legal literature, but may consult works on collateral sciences or arts, touching the topic on trial. *Wharton's Ev.,* section 282, but judicial notice will not be taken of facts stated in encyclopædias, dictionaries, or other publications unless they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. *Kavlotype Engraving Co. v. Hoke,* 30 Fed. 444. Common belief, in order to become common knowledge, as to be judicially noticed by the State courts, must be common in the State, although in a matter pertaining to science it may be strengthened somewhat by the general acceptance of mankind. *King v. Gallun,* 109 U. S. 99; *Waller v. State,* 38 Ark. 656. Courts will extend the scope of judicial knowledge so as to keep proper pace with the rapid advance of art, science and general knowledge, but this extension must be confined to matters of a general and public nature, *Georgia Pacific R. R. Co. v. Gaines,* 88 Ala. 377; *Wiggin's Ferry Co. v. Chicago & Alton R. R. Co.,* 5 Mo. App. 347, and should be exercised with caution as judicial minds differ as to what should be "generally known." *Brown v. Piper,* 91 U. S. 37; *Miller v. Texas, etc., R. R. Co.,* 83 Tex. 518. Judicial notice will not be taken of scientific facts concerning which men eminent in the particular branch of learning widely differ. *The St. Louis Gas Light Co. v. The American Fire Ins. Co. of Phil.,* 33 Mo. App. 348.

HIGHWAYS—ESTABLISHMENT—ADVERSE USE.—RIVERSIDE TP. V. PENNSYLVANIA R. CO., 66 ATL. 433 (N. J.).—*Held,* that mere adverse user of the *locus quo,* acquiesced in for twenty years, will conclusively show abandonment to the public.

Dedication as a common law method of creating public easements, *People v. Dreher,* 101 Cal. 271; *Cincinnati v. White,* 6 Peters 427, differs from title by prescription, in that no grant is presumed, *Beatty v. Kurtz,* 2 Pet. (U. S.) 566; *Stevens v. Nashua,* 46 N. H. 192, and when it rests on mere user, which must be adverse, exclusive, continous and with owner's knowledge and acquiescence, *Kennedy v. Cumberland,* 65 Md. 514; *Nelson v. Madison,* 17 Fed. Cas. 10, 110, the question as to length of time such user is necessary to establish dedication is in hopeless conflict. And although some courts would let each particular case be decided acording to its own circumstances, *Irwin v. Dixon,* 9 Howard (U. S.) 10; *Wood v. Hurd,* 34 N. J. L. 91, the better and more supported doctrine appears to be that such user must exist for such length of time that the public accommodation and private rights might be materially affected by interruption, *Noyes v. Ward,* 19 Conn. 250; *People v. Jones,* 6 Mich. 176; in majority of cases, such period being either the regular prescription period, usually twenty years, *Hayes v. Honke,* 45 Kan. 466; *State v. Savannah,* 26 Ga. 665, or the period prescribed by statutes as bar to real actions, *Weiss v. South Bethlehem Borough,* 136 Pa. St. 294.

HOMICIDE—EVIDENCE—DYING DECLARATIONS.—PEOPLE V. BRECHT, 105 N. Y. SUPP. 436.—The victim of a criminal operation for abortion in answer to categorical questions by the coroner, stated that she believed she was about to die and that she hoped God would let her recover.—*Held,* not sufficient to establish a belief of impending death and abandonment of hope of recovery necessary for the reception of her statement as a dying declaration.

The situation attending a dying declaration is of such a character that it is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. *Woodcock's Case,* 1 Leach 500. They must be made under sense of impending death and deceased himself must be conscious of his condition. *Montgomery v. State,* 11 Ohio 424; if he has any hope of recovery they are inadmissable. *Com. v. Roberts,* 108 Mass. 296. He need not apprehend immediate dissolution. *Com. v. Cooper,* 5 Allen 495; and such apprehension may be expressed in words or implied from circumstances. *Dunn v. State,* 2 Ark. 229. Such evidence is admissible only in cases of homicide. *Wilson v. Boerem,* 15 Johns 286; and where the indictment is for the murder of the party making the declarations. *Brown v. Com.,* 73 Pa. 329.

HUSBAND AND WIFE—ALIENATION OF AFFECTIONS—WIFE'S RIGHT TO SUE. —WHITE V. WHITE, 90 P. 1087 (KAN.).—*Held,* that the wife has a right of action for the alienation of the affections of her husband.

At common law, the legal existence of the wife was, for most purposes, suspended during coverture. I Bl. Com. 442. It was said that her right with respect to her husband's affections and companionship existed but remained in abeyance because of her disability to sue without joining her husband. *Bennett v. Bennett,* 116 N. Y. 584. And that the husband could not be joined with the wife in redress for a wrong in which he was a participant. *Bassett v. Bassett,* 20 Ill. App. 543. But under modern statutes, giving the wife the right to sue in her own name, her disability is removed and no obstacle remains to the enforcement of her right. *Westlake v. Westlake,* 34 Ohio St. 621. Some courts, however, have denied that the wife had any property right in her husband at common law. *Doe v. Roe,* 82 Me. 503. Holding that statutes giving limited property and contracting rights do not authorize the maintenance of such an action. *Lonstorf v. Lonstorf,* 118 Wis. 159. And that in the absence of an express statute she has no right to her husband's *consortium. Hodge v. Wetzler,* 69 N. J. L. 490. Neither has she the right to maintain an action for mere alienation of the affections of her husband. *Crocker v. Crocker,* 98 Fed. 702. Still, a majority of the courts of this country have entertained this action on behalf of the wife, some, even, without any discussion of her right to maintain it. *Bailey v. Bailey,* 94 Iowa 598; *Bowersox v. Bowersox,* 115 Mich. 24.

JUSTICE OF THE PEACE—DECISIONS REVIEWABLE—FINALITY OF DETERMINATION.—VAN VLISSINGEN V. OLIVER ET AL., 113 N. W. 383 (MINN.)—*Held,* a judgment in favor of the defendant in a justice court, dismissing an action of forcible entry and unlawful detainer and for costs, upon the withdrawal of the plaintiff from the trial of the case, is a final judgment, and appealable by the plaintiff. Lewis, J., *dissenting.*

An appeal will lie only from a final judgment. *Denslow v. Dodendorf,* 47 Neb. 328. And a party cannot appeal from the general findings of a justice of the peace to the District Court, where no final judgment has been

rendered, *Butt v. Herndon,* 36 Kan. 370. But in *Morse v. Brownfield, 27* Mo. 224, where a judge entered on his docket the verdict of the jury, but omitted to render judgment, the other party was allowed to appeal to the Circuit Court. And a verdict for costs merely is not final and no appeal lies therefrom. *Riddle v. Yates,* 10 Neb. 510. Nor can an appeal be taken from a judgment of a justice of the peace, rendered upon default. *Smith v. French,* 46 Conn. 239. But a judgment, dismissing the case, at the costs of the plaintiff, is a final judgment from which an appeal can be taken. *Fuerman v. Ruhle,* 16 S. W. 536 (Tex.).

MASTER AND SERVANT—RULES—DELEGATION OF DUTY TO MAKE RULES.—GASKA ET AL. V. AMERICAN CAR & FOUNDRY CO., 105 S. W. 3 (Mo.).—*Held,* the duty of a master to use ordinary care in regulating his business and prescribing proper rules for its conduct is a personal non-delegable duty.

NEW TRIAL—VERDICT CONTRARY TO EVIDENCE.—SLUSHER ET AL. V. PENNINGTON, 104 S. W. 354 (KY.).—*Held,* where the jury, in disregard of the evidence, which entitled defendant to a verdict, found for the plaintiff, the court should grant a new trial on the ground that the verdict was against the evidence.

Where the verdict is not supported by the evidence, it is the duty of the trial court to award a new trial. *Lawson v. Mills,* 130 Mo. 170. And even, if the judges give the case to the jury under instructions, which permit them to find a verdict which the evidence does not sustain, the other party is entitled to a new trial, although the instructions in the abstract were correct. *Brightman v. Eddy,* 97 Mass. 478. But whenever there is any legal and competent evidence submitted to the jury by the court, and a verdict is found, the court has no legal authority to set aside and grant a new trial on the ground that the verdict of the jury was without evidence, *Warner v. Robertson,* 13 Ga. 370. And when the proof, though slight, supports the verdict and is uncontradicted, the court will not disturb it. *Chicago & N. W. Ry. Co. v. Williams,* 44 Ill. 176.

NUISANCE—PRIVATE NUISANCE—SMOKE AND ODOR—LAIRD ET AL. V. ATLANTIC COAST SANITARY CO., 67 ATLANTIC REP. 387.—*Held,* that the operation of a crematory in such a manner as to render uncomfortable for habitation, houses within a distance of 2,000 to 2,500 feet, constitutes a nuisance.

Every business should be carried on in a suitable and convenient place, and by convenient is meant, not a place which may be convenient to the party himself, but a place suitable and convenient when the interests of others are considered. *Bamford v. Turnley,* 3 Best & S. 65. The apparent divergency of decisions in this country, *McKeon v. See,* 51 N. Y. 300; *Huckenstein's Appeal,* 70 Penn. St. 102, may be attributed to local or special circumstances. *Cooley on Torts,* 709. A brewery is sometimes a nuisance. *Jones v. Williams,* 11 M. & W., 176, but a distillery is more likely to be one. *Smith v. McConathy,* 11 Mo. 517. An offensive smell need not be unwholesome to constitute a nuisance. *Davidson v. Isham,* 9 N. J. Eq. 189.

PRINCIPAL AND AGENT—LIABILITY OF UNDISCLOSED PRINCIPAL.—HILLMAN V. HULETT, 112 N. W. (MICH.) 918. A member of a lodge in Michigan affiliated with a lodge in Nevada. The chief officer of the latter lodge on the death of the member notified the Michigan lodge and a daughter thereof.

The telegram to the daughter was delivered to her husband, who authorized the operator to have the body shipped to Michigan at his expense. The operator did so and a casket was furnished and the body sent to Michigan, the undertaker incurring the expenses on the faith of the lodge in Nevada, and it in turn looked to the Michigan lodge, which guaranteed the charges of shipment. *Held,* that the undertaker was entitled to hold the husband responsible as the undisclosed principal for whom the two lodges acted. Blair, Hooker and Montgomery, JJ., *dissenting.*

An undisclosed principal, subsequently discovered, may be held liable on a contract made by agent. *Frank v. Olin,* 15 N. Y. St. Rep. 161; *Schendel v. Stevenson,* 153 Mass. 351; subject to the qualification that the state of the account between the principal and the agent is not altered to the detriment of the principal, 1 *Parsons on Contracts,* 63; or where the plaintiff elects to sue agent after discovering principal. *Kingsley v. Davis,* 104 Mass. 178. As principal receives a benefit, he should bear burden. *Kayton v. Barnett,* 116 N. Y. 625. The Common Law doctrine of privity of contract is not followed, but the principle is probably the otucome of a common law equity. *Huffcut on Agency,* 120. The agency must first be proved before the principal can be affected by the declarations or acts of the agent. *Coon v. Curley,* 49 Ind. 199.

RAILROADS—INJURIES TO ANIMALS ON TRACK—FENCES—EVIDENCE.—SMITH V. CHICAGO & R. RY. CO., 105 S. W. 10 (Mo.).—*Held,* evidence in an action against a railroad company for killing and injuring stock which entered on its right of way through a gap in the fence left no doubt that defendant's servants knew of the gap, and tended to show that it was made with the section boss' consent.

RAILROADS—TRESPASSER ON TRACKS—LOOKOUT.—FRYE V. ST. LOUIS I. M. & S. R. R. CO., 200 Mo. 377.—*Held,* that those in charge of a railroad locomotive are under no obligation to keep a lookout for pedestrians on the track between points where they have a right to expect a clear track.

Crossing a railroad track, whether in town or country, is not a trespass, but walking along a railroad track is a trespass. *Glass v. Memphis & Charleston R. R. Co.,* 94 Ala. 581; *L. & N. R. R. Co. v. Webb,* 90 Ala. 185. In most jurisdictions the rule, when not modified by statute, is that railroads are not bound to be on the lookout for trespassers except in places where they have reason to anticipate their presence. *Louisville & N. R. R. Co. v. Logsden's Admr.,* 78 S. W. 409 (Ky.); *Embry v. Louisville & N. R. R. Co.,* 18 Ky. L. 434; *Memphis & C. R. R. Co. v. Womack,* 84 Ala. 149. A railroad company is not bound to any act or service in anticipation of trespassers on its track, nor is the engineer obliged to look out for them, and a trespasser, venturing upon the track for purposes of his own, assumes all risk of conditions which may be found there, including the operation of engines and cars. *Sheehan v. St. Paul & D. Ry. Co.,* 76 Fed. 201; *Wright v. Railroad Co.,* 129 Mass. 440; *Railroad Co. v. Hummell,* 44 Pa. St. 375. The liability of a railroad company for the death of a trespasser upon its track depends upon the failure to exercise the highest possible degree of care to avoid the accident after the peril is discovered. *Gregory, Admr., v. Wabash Ry. Co.,* 126 Iowa 230; *Kelly v. Chicago B. & Q. Ry. Co.,* 118 Iowa 387. Some courts have held that the same rule applies to children as well as to adults, *Ala. G. S. Ry.*

Co. v. Moorer, 116 Ala. 642, but the better opinion is contrary. *Louisville & N. Ry. Co. v. Logsden's, Admr., supra.*

RAPE—EVIDENCE—SUFFICIENCY.—STATE V. KATON, 91 PAC. (WASH.) 250. There was practically no direct evidence in favor of the prosecution, and the prosecutrix on the cross-examination admitted that the defendant was not the father of her child. *Held,* that the conviction for rape of a female under the age of consent will be upheld, notwithstanding the impeachment of the prosecutrix by her own conduct and admissions, and the testimony of other witnesses. Root, J., *dissenting.*

The jury can convict for rape on the uncorroborated testimony of the injured party. *Bishop's Crim. Proc.* 3d edition, section 968; *State v. Fetterly,* 33 Wash. 599; *People v. Mayes,* 66 Cal. 597; *State v. Lattin,* 29 Conn. 389; *Bennett v. State,* 83 Ala. 40, and it is so held in ten other states. The jury should be cautioned against conviction on the testimony of the prosecutrix alone, uncorroborated by other testimony or by direct circumstances. *People v. Benson,* 6 Cal. 221. Statute requires that the testimony of the prosecutrix must be corroborated. *State v. Bartlett,* 127 Io. 689. And likewise in several other states, although not regulated by statute. *Davis v. State,* 120 Ga. 433. As a general rule, the reputation of the prosecutrix for chastity may be impeached, but not by proof of particular instances of unchastity. *Shirwin v. People,* 69 Ill. 55; *McQuirk v. State,* 84 Ala. 435; *Rice v. State,* 35 Fla. 236. In Vermont, particular instances of unchastity may be shown. *State v. Reed,* 39 Vt. 417. Where crime charged is rape on a female child under the age of consent, testimony as to her general reputation for chastity is not admissible. *State v. Hilberg,* 22 Utah 27; *Plunkett v. State,* 72 Ark. 409; *State v. Whitesell,* 142 Mo. 467. But to refute corroborative evidence it may be shown that the prosecutrix has had intercourse with certain other men. *People v. Flaherty,* 29 N. Y. Sup. 641.

SHIPPING—DUTY OF STEAMERS WITH RESPECT TO SWELL—STRUCTURES AT DOCK, JAMES SHEWAN V. NEW ENG. NAVIGATION CO., 155 FED. 860.—*Held,* the duty of a passing steamer with respect to causing dangerous swells is the same toward a floating dry dock permanently located alongside of a pier as toward vessels in the same situation, and she is bound to exercise reasonable care to avoid causing injury to such dock, having regard to the character of the structure and its greater liability to injury from its size, and therefore, longer subjection to the action of the swells; and it is also the duty of the owner of the dock to take into account the same liability to injury from swells and to make reasonable provisions against it.

TRADE UNIONS—STRIKES—INJUNCTIONS.—SEARLE MFG. CO. V. TERRY ET AL., 106 N. Y. SUPP. 438.—*Held,* that an injunction against striking members of a labor union will not be granted so as to prevent defendants from peacefully picketing, in reasonable numbers for the purpose of observation only, the premises of their former employer from the highways or streets in the vicinity of the employer's place of business and endeavoring, by argument, persuasion or appeal only, to prevent other persons from becoming employees.

The narrow doctrine, which is still held in a number of states, is that picketing by a labor organization in a strike, in and of itself, when properly conducted, is lawful, but when accompanied by violence or any manner of

coercion or intimidation, to prevent others from entering or remaining in the service of their employer, is unlawful, *Union Pac. R. Co. v. Ruef et al.*, 120 Fed. 102; *Butterick Pub. Co. v. Typog. Union, No. 6*, 100 N. Y. Supp. 292; *Levy v. Rosenstein*, 66 N. Y. Supp. 101; but a broader and better doctrine that there may be a moral intimidation was announced by the Supreme Court of Massachusetts in *Vegelahn v. Guntner*, 167 Mass. 92; this was among the first of the judicial steps taken in this country towards overturning the rule permitting peaceable picketing and was a forerunner of the later rule that there can be no such thing as peaceable picketing and consequently, that all picketing is illegal. *Franklin Union v. People*, 220 Ill. 355; *Beck v. Railway Teamsters Protective Union*, 118 Mich. 497. Picketing will be enjoined as a continuing injury to business, notwithstanding it may be punishable as a crime, and the right to injuction against it has been based upon the ground that the aggrieved person is entitled to protection of his "probable expectancy," which is defined as the right to enjoy a free and natural condition of the labor market. *Consolidating Steel, etc., Co. v. Murray*, 80 Fed. 811; *Arthur v. Oakes*, 63 Fed. 310.

TRIAL—REMARKS OF COUNSEL—EXCEPTIONS.—PRESSY V. RHODE ISLAND CO., 67 ATL. (R. I.) 447.—*Held*, an exception does not generally lie to the remark of counsel, but to the refusal to charge the jury in regard thereto, when reasonably requested so to do.

This is rather an odd way of stating the rule which is usually put thus: "The remark must be objected to or called to the attention of the court in some way when made, or at least during the trial, that opportunity may be given to the court to prevent or correct any abuse." *Ill. v. Evanston*, 150 Ill. 616; *State v. Ward*, 61 Vt. 153; *State v. Waters*, 63 Me. 128. When no exception is taken to the remarks of counsel, and no motion is made to exclude them, objection to them will not be considered on appeal. *Nelson v. Shelby, etc., Co.*, 96 Ala. 515. If the court interferes and the objectionable remark is promptly withdrawn, the error will generally be deemed to be cured. *Dunlap v. U. S.*, 165 U. S. 486, 498. An abuse of attorney's privilege in this regard may be so flagrant as to warrant reversal, although the court and opposite counsel neglected to discharge their duty. *Klink v. People*, 16 Colo. 467. It has been held that it is error for the court to allow counsel to discuss irrelevant matter before the jury, and that this error is not cured by the failure of opposite counsel to interpose objection at the time. *Willis v. McNeill*, 57 Tex. 465; *Prather v. McClelland*, 26 S. W. (Ct. of Civ. App., Tex., 1894) 657. It has been held that it is not necessary for the counsel to present point of objection, and if he does not do so, the duty is where it properly belongs, on the judge. *Berry v. Georgia*, 10 Ga. 511.

TROVER AND CONVERSION—WHAT CONSTITUTES.—MEDINA GAS AND ELECTRIC LIGHT CO. V. BUFFALO LOAN, TRUST & SAFE DEPOSIT CO., 104 N. Y. SUPP. 625. Plaintiff corporation executed to defendant, as trustee, a mortgage to secure the payment of certain bonds, depositing the bonds with defendant. Subsequently, one of the officers of the plaintiff, who owned practically the entire stock of the corporation, agreed with the defendant that the bonds in its possession should be pledged to it for his own individual indebtedness. *Held*, that the subsequent delivery of the bonds by the defendant to another constituted a conversion by the defendant of the bonds. Scott and Laughlin, JJ., *dissenting*.

The gist of the action of conversion has been said to be the deprivation of the plaintiff's property. *Keyworth v. Hill,* 3 Barn. & Ald. 685. But it is also necessary that the bailee claim some title in himself or in a third person. *Heald v. Cary,* 11 C. B. 976. The mere wrongful asportation does not amount to a conversion unless there is an intent to convert it to one's own use or the use of a third person. *Fouldes v. Willoughby,* 8 M. & W. 540. However, the wrongful intent is not always an essential element in a conversion. It is enough if the rightful owner has been deprived of his property by some unauthorized act of another assuming control over it. *Boyce v. Brockway,* 31 N. Y. 490. It has been said that when a bailee comes into possession lawfully there is no apparent inconsistency between his possession and the plaintiff's ownership until a demand and refusal. *Pease v. Smith,* 61 N. Y. 477; *Polk's Adm'rs v. Allen,* 19 Mo. 467. But as a demand and refusal are only evidences of a conversion, if an actual conversion is proved, there is no necessity to prove a demand in order to sustain an action. *State v. Pattern,* 49 Me. 383; *Baker v. Lothrop,* 155 Mass. 376. It has been held that a mere paper sale of another's goods without transferring possession is no evidence of a conversion. *Davis v. Buffum,* 51 Me. 160. It is otherwise, however, where the defendant has the actual possession of the goods to which he asserts ownership or undertakes to sell. And it would seem, in such a case, that the conversion takes place when the defendant takes upon himself the right and assumes control of the property. *Gentry v. Madden,* 3 Ark. 127. There can be no doubt that there would be an actual conversion if the defendant wrongfully parted with possession of the property. *St. John v. O'Connell,* 7 Port. 466; *Hotchkiss v. Hunt,* 49 Me. 213.

WILLS—TESTAMENTARY CAPACITY—BELIEF IN SPIRITUALISM.—OWEN V. CRUMBAUGH, 81 N. E. (ILL.) 1044.—*Held,* that a mere belief in spiritualism is no evidence of monomania or insane delusion.

Belief in spiritualism is a conviction arising from evidence or information, *Middleditch v. Williams,* 48 L. R. A. (N. J.) 738, *Humphreys v. McCall,* 9 Cal. 62, which, if permitted to constantly occupy his mind, might have the effect of unbalancing it, *Addington v. Wilson,* 5 Md. 137, but is never insanity nor evidence of an insane delusion, *Otto v. Doty,* 61 Iowa 23; *In re Smith's Will,* 52 Wis. 543; *Lyon v. Home,* L. R. 6 Eq. 655, except when they are such beliefs as a reasonable man would not, under the circumstances, entertain, *Kimberlys' Appeal,* 68 Conn. 428, thus differing from an insane delusion, which is a pigment of the imagination, *Robinson v. Adams,* 62 Me. 369; *Am. Seamen's Friend Society v. Hopper,* 33 N. Y. 619, springing only from a diseased and morbid mind, having no foundation in reality, *Banks v. Goodfellow,* L. R. 52 B. 560; *Taylor v. Trick,* 165 Pa. 586.