RECENT CASES

ADVERSE POSSESSION—EXTENT OF POSSESSION.—HOLLAND V. NANCE, 114 S. W. 346 (TEX.).—Where the owner of land in fencing, included by mistake a portion of an adjoining tract, and thereafter, on discovering his mistake purchased an alleged outstanding title to the adjoining tract, and recorded the deed and paid taxes on the entire tract from the time of recording, but continued to occupy and cultivate only the potion he had originally included by mistake, *held*, that limitations would not run as to that part of the tract not enclosed or occupied, though the recorded deed was for the entire tract.

It is the general rule that where a person, having a colorable title, enters upon land which is not in any adversary possession, his possession is deemed to be co-extensive with the boundaries as described in the writing or transaction which gives him colorable title to the land. *Donohue v. Whitney*, 133 N. Y. 178; *Barger v. Hobbs*, 67 Ill. 592. Actual possession of the whole tract is unnecessary provided there has been an entry upon and an actual possession of part of the tract. *Momgona Coal Co. v. Blair*, 51 Ia. 448. But some courts put a limitation upon the general rule to the effect that the actual occupancy of only a part of the tract under colorable title will give possession to the remainder provided it is naturally connected with, and adaptable to use with the part actually occupied. *Murphy v. Doyle*, 37 Minn. 113; *Thompson v. Burhans*, 61 N. Y. 52.

BOARD OF HEALTH—LIABILITIES.—VALENTINE V. CITY OF ENGLEWOOD, 71 ATL. 344 (N. J.).—*Held*, that the members of a board of health, acting in performance of a public duty under a public statute to prevent the spread of an infectious or contagious disease, are not personally liable in a civil action for damages arising out of their acts in establishing a quarantine, even where the disease does not exist, provided they acted in good faith.

Public policy demands that those to whom the public welfare is entrusted are not to be hampered in their work, which as a rule demands prompt action, by fear of civil proceedings against them as individuals and generally, therefore, health officers, if they are acting in good faith, are not held personally liable for errors of judgment, where they are afforded some discretion, either implied or express, under the statute under which they are acting. *Raymond v. Fish*, 51 Conn. 80; *Seavey v. Preble*, 64 Me. 120; *Rohn v. Osmun*, 143 Mich. 68. But where the statute under which the board is created gives only administrative powers the *personnel* of such board act at their peril, when destroying property or interfering with personal liberty, without an order of court, and they have been held liable for damages so caused. *Miller v. Horton*, 152 Mass. 540; *Lowe v. Conroy*, 120 Wis. 151. In either case they lay themselves open to an action for tort where negligent or acting in excess of their authority. *Hersey v. Chapin*, 162 Mass. 176; *Brown v. Murdock*, 140 Mass. 314; *Barry v. Smith*, 191 Mass. 78.

CARRIERS—CARRIAGE OF PASSENGERS—EJECTION OF PERSON AT PLACE OTHER THAN STATION.—CAHER V. GRAND TRUNK RY. CO., 71 ATL. 225 (N. H.).—*Held,* that a carrier which ejected a person from a train for nonpayment of fare at a place other than a passenger station, in violation of a public statute, is not necessarily liable for resulting damages, but it must appear that it occurred through its failure to perform the duty imposed by statute; and, to recover, the ejected person must prove the insufficiency of the station at the place of expulsion, his own care, and that the injury resulted from defendant's fault. Bingham, J., *dissenting.*

The common law rule is that a railroad may eject at any place a passenger who refuses to pay his fare. *Scott v. Clev., Cin., Chi. & St. Louis Ry. Co.,* 144 Ind. 125; *Rudy v. Rio Grande Western Ry Co.,* 8 Utah 165. But this rule is qualified in that the ejectment must be at a place that is reasonably safe from danger. *Wyman v. Northern Pacific Ry. Co.,* 34 Minn. 210; *Atchison, T. & S. F. R. Co. v. Grant,* 38 Kan. 608. Another qualification is that where a statute provision forbids the ejectment of a passenger at a place other than a station, an action for damages will usually lie. *Texas & Pacific R. Co. v. Casey,* 52 Tex. 112; *St. Louis Southwestern Ry. Co. v. Harper,* 69 Ark. 186; *Loomis v. Jewett, Receiver, Eric R. Co.,* 35 Hun. (N. Y.) 313. But the passenger would be entitled only to nominal damages, unless circumstances warranted greater recovery. *Chicago & Alton R. Co. v. Roberts,* 40 Ill. 503. On the other hand it has been held that where a person went on the train intending not to pay fare, and refused to do so, became a trespasser and could be ejected at any place, the statute provision not applying to trespassers. *Lillis v. St. Louis, Kansas City & Northern Ry. Co.,* 64 Mo. 464.

CARRIERS—CARRIAGE OF PASSENGERS—ESTABLISHMENT OF RELATION.—LOCKWOOD V. BOSTON ELEVATED RY. CO., 86 N. E. 934 (MASS.).—*Held,* that where the plaintiff and his companion desiring to become passengers signaled an open car, and the motorman having inclined his head, they started from the sidewalk and on it being stopped, boarded the car with the conductor's knowledge, and the plaintiff had reached and stood upon the running board on his way to a seat at the time of his injury, the relation of passenger and carrier had been established.

It is a well established point of law that a person is a passenger if a street car has been stopped for him and he is in the act of getting aboard when the car starts. *Gordon v. West End St. Ry. Co.,* 175 Mass. 181. And the carrier is bound to give him reasonable time to enter and leave its cars and while it may start before the passenger is seated, it must exercise the greatest degree of care that a cautious and prudent man would use under the same circumstances in starting a car so as not to jerk or jar and thereby injure him. *Barth v. Kan. City Elevated Ry. Co.,* 142 Mo. 535. Some courts regard the carrier as the offeror, and hold the acceptance as not made until the offeree has actually boarded the car. *Chicago Union Traction Co. v. O'Brien,* 219 Ill. 803; *Donovan v. Hartford St. Ry. Co.,* 65 Conn. 201. The weight of authority, however, considers the sign to the motorman as the offer and the checking the speed of the car as the acceptance. *Brien v. Bennett,* 8 C. P. 724; *McDonough v. Met.*

R. R. Co., 135 N. E. 682. The payment of fare is not necessary to create the relation of common carrier and passenger. *Rose v. Railroad*, 39 Ia. 246.

CARRIERS—INJURY TO FREIGHT—EVIDENCE.—DUNCAN V. GREAT NORTHERN RY. CO., 118 N. W. 826 (N. D.).—*Held*, on proof of delivery of the property to the carrier in sound condition, and of its redelivery by the same carrier at end of the route in damaged condition, or a failure to redeliver it, a sufficient case is made to sustain a recovery for the damages or loss by the shipper.

It is well settled that at common law a common carrier is an insurer of the goods intrusted to him and is responsible for all losses to the same, save such as are occasioned by act of God or the public enemy. *Angell on Carriers*, § 67, 148, 153; *N. J. Steam Nav. Co. v. Merchants' Bank*, 6 Howard 381. The right of a common carrier to limit his responsibility by a special contract has long been settled law in England. *Carriers' Act*, 1830. And in this country it is settled by the great preponderance of authority that such carrier may avoid all liability except from its own negligence, by a special contract. *York v. Central R. R.*, 6 Allen 489. The doctrine that he may avoid all but *gross* negligence is repudiated in *Christenson v. American Express Co.*, 15 Minn. 208, 270. In case of such special contract, the burden of proof is still on the carrier to show not only that the cause of loss was within such exception but that there was no negligence on his part. *2 Greenl. Ev.*, 219. The liability for live stock is the same as for other freight except for loss or injury resulting from the nature and propensities of the animals themselves. *Cooley on Torts*, 3rd Ed., 1351.

CONTRACTS—LEGALITY—RELIEF—PART PERFORMANCE.—SAUERHERING V. RUEPING, 119 N. W. 184 (WIS.).—*Held*, that where there is part performance of an illegal contract, the court will not aid either party thereto. Marshall and Barnes, J. J., *dissenting*.

In illegal contracts, partly performed, the courts make a distinction between those that are merely *malum prohibitum*, and those *malum in se*, and hold that in the former class money paid thereon can be recovered. *Pratt v. Short*, 79 N. Y. 437; *Knowlton v. Spring Co.*, Fed. Case No. 7903 (N. Y.). So, though the contract is void, money which has been paid on a lottery ticket may be recovered. *Wardell v. Waite*, 7 Johns. (N. Y.) 434. And, even though wagers are void by statute, money deposited with a stakeholder may be recovered by the loser even after the event has taken place; *Wheeler v. Spenser*, 15 Conn. 28; *Lewis v. Burton*, 74 Ala. 317; and the same rule applies where the money on a fully executed illegal contract remains in the hands of a mere depository. *Woodworth v. Bennett*, 43 N. Y. 273. Notwithstanding the illegal contract, the complaining party can recover if he can establish his case without relying upon the illegality of the transaction. *Phalen v. Clark*, 19 Conn. 421. And it seems to be settled that after a contract, confessedly against public policy, has been carried out and money contributed by one partner, the

other partner in whose hands the profits are, cannot refuse to account for and divide them on the grounds of the illegal character of the original contract. *Brooks v. Martin,* 69 U. S. 70; *Central Trust Co. v. Ohio Cent. Ry.,* 23 Fed. 306. The general principle, however, as to contracts *malum in se* is that they are against public policy and the courts will not aid either party to escape the consequences. *Goodrich v. Tenny,* 144 Ill. 422; *Oliver v. Gilman,* 52 Fed. 562.

CONTRACTS—SEVERABLE CONTRACTS.—JOHNSON ET AL. V. FEHSEFEDDT, 118 N. W. 797 (MINN.).—*Held,* that the mere fact that a price has been affixed to each bushel of a crop contracted to be threshed, is not sufficient to make it severable.

It is the universal rule that the intention of the parties determines whether a contract is entire or severable. *Shinn et al. v. Bodine,* 60 Pa. St. 182. And this intention must be discovered by considering the language employed and the subject matter of the contract. *Southwell v. Beezley,* 5 Ore. 458. The consideration to be paid is a means of determining this question. *Clay Commercial Tel. Co. v. Root,* 4 Atl. 828 (Pa.); but it is frequently a question of fact. *Mingct et al. v. Corbin,* 142 N. Y. 334.

CRIMINAL LAW—CONFESSIONS—ADMISSIBILITY.—PEOPLE V. OWEN, 118 N. W. 590 (MICH.).—Where one was arrested after having attempted to commit murder, and without expressing any desire to make a statement, was put under oath by a notary and examined by the chief detective in the presence of a police commissioner, two police officers, and the official stenographer of the police department, and in the course of such examination made answers which amounted to a confession, *held,* that such confession was voluntary and admissible in evidence. Moore and McAlvay, J. J., *dissenting.*

The simple fact that a confession is made to a police officer does not render it inadmissible; *People v. Rogers,* 18 N. Y. 9; even if made in reply to questions, in the absence of any inducements of hope or fear. *Spicer v. State,* 69 Ala. 159. But it is a well settled rule that an extra judicial confession is not admissible in evidence against the accused unless it has been freely and voluntarily made. *Wilson v. U. S.,* 162 U. S. 622. And this rule applies when the prisoner has been influenced by any inducement of hope or fear, however slight, for the reason that the law cannot measure the force of the influence used or decide upon its effect on the mind of the prisoner. *People v. Clark,* 105 Mich. 169. So where a prisoner testifies he must not be sworn, for if to the embarrassments and perplexities of the situation are added the danger of perjury and the dread of additional penalties, the confession can scarcely be regarded as voluntary, but on the contrary it seem to be made under the very influences which the law is particularly solicitious to avoid. *Greenleaf on Evidence,* § 225; *State v. Garvey,* 25 La. Ann. 191.

CROPS—DEED OF LAND—ORAL RESERVATION OF GROWING CROPS FOR THIRD PERSON.—BECK V. MCLANE, 114 N. Y. SUPP. 44.—After the tenant

of the plaintiff's farm had sowed rye, on an oral agreement that half the crop was to belong to him, and that he might harvest it after the expiration of the lease, the plaintiff conveyed the land to the defendant who orally agreed to respect the agreement with the tenant. *Held*, that the rye being personal property and belonging to a third person, the agreement between the parties to the deed amounted to a constructive severance of the rye, and effectively reserved or excepted it. McLennan, P. J., and Kruse, J., *dissenting*.

When land is sold which has upon it immature crops, these crops generally pass with the land. *Brown v. Thurston*, 56 Me. 126; *Trip v. Hasceig*, 20 Mich. 254. However, there are some cases where the title to the crops does not thus pass. One case is where the crop has been severed by a valid sale, *Austin v. Sawyer*, 9 Cow. (N. Y.) 39, but this sale must be in writing to satisfy the Statutes of Fraud. *Powell v. Rich*, 41 Ill. 466. Another exception is where by weight of authority the crop is reserved by a written agreement at the time of the sale. *McIlvaine v. Harris*, 20 Mo. 457; *Clap v. Draper*, 4 Mass. 266. *Contra*: *Backenstoss v. Stahler*, 33 Pa. St. 251, holds that crops may be reserved by parol agreement.

EVIDENCE—ADMISSIBILITY OF PAROL EVIDENCE—REFORMATION OF A WRITTEN AGREEMENT.—HUGHES V. PAYNE, 117 N. W. 363 (S. D.).—*Held*, that where the reformation of a written contract is sought on the ground of mistake resulting from the omission of certain terms, parol evidence is admissible to prove the mistake and the omitted terms. Fuller, J., *dissenting*.

The general rule is that parol evidence prior or contemporaneous to a written agreement is not admissible for the purpose of contradicting, altering or in any way varying it. *Courtwright v. Burns*, 13 Fed. 317. In equity this rule applies as well as in law, but here it is subject to the exceptions of fraud, accident or mistake in which cases the courts will grant relief. *First National Bank v. Bast*, 101 U. S. 93. But the contrary has been held in Rhode Island. *Macomber v. Peckman*, 16 R. I. 485. In Pennsylvania, even in courts of law, parol evidence is admissible in case of fraud, accident or mistake. *Melcher v. Hill*, 194 Pa. St. 440. But it must be borne in mind, that equity will exercise the power of reforming instruments with caution, and only when a proper case is made by the pleadings. *Striker v. Tinkham*, 35 Ga. 176. In all these cases the party that seeks reformation of the written instrument has the burden of proof. *Smith v. Allen*, 102 Ala. 406.

INSURANCE—NON-PAYMENT OF PREMIUM NOTES—EFFECT.—ARKANSAS INS. CO. V. COX, 98 PAC. 552 (OKLA.).—*Held*, that where two notes are given in payment of the premium on a fire insurance policy, and no reference is made to them in the policy, nor the validity of the policy is in any way made contingent upon the payment of the notes, the policy is not invalidated by non-payment of the notes at their maturity.

Where a policy provides that if premium notes be not paid the policy

shall become void, it is a good defense to an action on the policy that the premium notes were unpaid at the time of the loss. *American Ins. Co. v. Leonard,* 80 Ind. 272; *Thompson v. Knickerbocker Ins. Co.,* 104 U. S. 252. But if there is no stipulation to that effect, failure to pay a premium note at maturity will not defeat the policy. *Trade Ins. Co. v. Barracliff,* 45 N. J. Law, (16 Vroom) 543. And a stipulation in the premium note itself that its non-payment shall avoid the policy (no such provision being contained in the policy) is nugatory. *Ins. Co. v. Hardie,* 37 Kan. 674. However, where a company claims a forfeiture for non-payment of a premium note, it must offer to surrender the note. It cannot forfeit the policy and keep the note. *Johnson v. Southern Mut. Ins. Co.,* 79 Ky. 403.

LIBEL AND SLANDER—EVIDENCE.—DENNISON V. DAILY NEWS PUB. CO., 118 N. W. 568 (NEB.).—*Held,* that in a civil action to recover damages for libel, it is proper to produce evidence showing the relations existing between the plaintiff and the author of the alleged libel, for the purpose of proving that the plaintiff was the person referred to, when his name does not appear in the article, and the defendant does not admit that he is the one referred to.

In an action for libel, the plaintiff may show by extrinsic evidence that the publication referred to him, though it did not name him. *Van Ingen v. M. & E. Pub. Co.,* 35 N. Y. Supp. 838. And where the person is ambiguously described, extrinsic evidence may be admitted to establish the identity. *Mix v. Woodward,* 12 Conn. 262; *Van Vechten v. Hopkins,* 5 Johns 211. It was further held in *Mix v. Woodward, supra,* that the plaintiff is at liberty to prove that the libel was published of and concerning him in the same manner and by the same kind of evidence as he might prove any other fact in the case. But an acquaintance of the plaintiff cannot testify that, uopn reading the libellous publication, he understood it to refer to the plaintiff. *White v. Sayward,* 35 Me. 322. *Contra: Enquirer Co. v. Johnston,* 72 Fed. 443.

MALICIOUS PROSECUTION—PROBABLE CAUSE—CONVICTION.—SMITH V. THOMAS ET AL., 62 S. E. (N. C.) 772.—*Held,* that probable cause for a prosecution, barring an action for malicious prosecution, is conclusively established by a conviction, on a confession of guilt before a justice having jurisdiction of the offense, though there was a reversal on appeal.

To sustain an action for malicious prosecution, it must be shown that probable cause was lacking for the institution of the proceedings complained of. *Ferguson v. Arnow,* 142 N. Y. 580. A conviction is conclusive evidence of probable cause. *Herman v. Brookerhoff,* 8 Watts (Pa.) 240. But whether or not this proposition is true when the conviction is followed by an appeal and acquittal gives rise to a conflict of opinion. The weight of authority holds in the affirmative. *Morrow v. Wheeler & Wilson Mfg. Co.,* 165 Mass. 349; *Crescent City L. S. Co. v. Butcher's Union,* 120 U. S. 141. But generally with the qualification that the conviction in the lower court must have been procured without fraud or other undue means. *Murphy v. Ernst,* 46 Neb. 1. Another line of authori-

ties holds, however, that a conviction followed by a reversal upon appeal is not conclusive of probable cause, but is deserving of great consideration. *Goodrich v. Warner,* 21 Conn. 432; *Richter v. Koster,* 45 Md. 441.

MASTER AND SERVANT—INJURIES TO THIRD PERSONS—ACTIONS—RELATION OF PARTIES.—HIROUX V. BAUM ET AL., 118 N. W. 533 (WIS.).—*Held,* that one who is running an automobile at the time of a collision with a person in the street is *prima facie* the servant of the owner of the automobile.

The responsibility of the master for the tortious acts of his servants grows out of, is measured by, and begins and ends with his control over them. *Caudup v. Schreiner,* 98 Ill. App. 337, and the master is not responsible for acts of the servant, unless the acts were done in the execution of the authority, express or implied given by the master. *Little Miami R. R. Co. v. Wetmore,* 19 Ohio 110. So a master is not liable for an injury occasioned by the negligence of servant, while driving the horse and carriage of the master in his absence. *Parsons v. Winchell et al.,* 5 Cush. 592. *Contra*: *Evans v. Davidson,* 53 Md. 245. If servant does the act in the execution of the authority given by the master, the master is responsible, whether the wrong done be occasioned by negligence or by a wanton and reckless purpose. *Howe v. Newmarch,* 12 Allen (Mass.) 49; *Garretzen v. Duenckel,* 50 Mo. 104. A somewhat analogous case is that of *Reynolds v. Buck,* 127 Ia. 601, where it was held that the owner of an automobile is not liable for an injury resulting from the negligent operation of the machine by his son, without the father's knowledge and consent, and not at the time in his employ or about his business.

MASTER AND SERVANT—INJURY TO SERVANT—ASSUMPTION OF RISK.—GILMARTIN ET AL. V. KILGORE, 114 S. W. 398 (TEX.).—*Held,* that an experienced employee who undertakes work with knowledge of a defect in an appliance and of the danger involved in its use and with time for deliberation, assumes the risk of the resulting injury, though the work is performed over the protest and by the express command of the employer.

It is a well settled rule that a servant who knowingly undertakes a hazardous work assumes all risk. *Coal Co. v. Jones,* 127 Ill. 379. And the law will presume that he assumed the risk when he entered upon the duties of the position. *Woodworth v. St. Paul, etc.,* 18 Fed. 282. Yet the employee may contract to the contrary. *Foster v. Pusscy,* 14 Atl. 545. But where the master coerces the servant into entering dangerous work, the servant does not assume risk. *Wells, French Co. v. Gortorski,* 50 Ill. App. 445. And there is no obligation on servant to continue at work under protest. *Reese v. Clark,* 146 Pa. 465; *Snowberg v. Nelson,* 43 Minn. 532. The rule rests on the theory that the master is under no obligation to take more care of the servant than the servant takes of himself. *Penn. Co. v. Lynch,* 90 Ill. 333; *I. B. W. R. R. Co. v. Flannigan,* 77 Ill. 365. But *Graham v. Newburg Orrel Coal & Coke Co.,* 38 W. Va. 273, holds that the servant can assume a small risk without forfeiting his right to recovery.

MASTER AND SERVANT—INJURY TO SERVANT—DUTY OF INSPECTION.—JOHNSTON V. SYRACUSE LIGHTING CO., 86 N. E. (N. Y.) 539.—*Held,* that it is the duty of a lineman, before going onto the cross-arm of an electric light pole to fix wires, to inspect the cross-arm as to its being strong and sound enough to hold him.

The master personally owes to his servants the duty of using ordinary care and diligence to provide for them a reasonably safe place to work, and is bound to inspect it from time to time, and to use ordinary care to discover and to repair defects in it. *Dixon v. Western Union Tel. Co.,* 71 Fed. 143. It is held that a telephone company which undertakes to inspect its poles, as most companies do, will be liable for injuries to a lineman by the fall of the pole if it neglects to use reasonable care to see that the pole is safe. *McGuire v. Bell Tel. Co.,* 167 N. Y. 208. But inasmuch as a servant will be presumed to have notice of, and to have assumed the risks incident to all dangers and defects, which to a person of his experience and understanding are, or ought to be patent and obvious; *Wood v. Heiges,* 83 Md. 257; it seems to be good law, as held in at least one other case similar in facts to *Johnston v. Syracuse Lighting Co., supra,* that the lineman is competent to, and should inspect the cross-arm upon which he is about to trust his weight. *Flood v. Western Union Tel. Co.,* 131 N. Y. 603.

MASTER AND SERVANT—MASTER'S LIABILITY FOR INJURIES TO SERVANT—WARNING AND INSTRUCTING SERVANT.—CLEVELAND, C., C. & ST. L. RY. CO. V. PERKINS, 86 N. E. 405 (IND.).—*Held,* that a master need not warn and instruct employees who are under no disability of dangers patent to persons of ordinary intelligence.

The general rule is that a master is not bound to give his servants notice of ordinary dangers, where they are obvious or apparent to anyone of common intelligence, well known to servant, or subject to ordinary observation. *Findlay v. Russell Wheel & Foundry Co.,* 108 Mich. 286; *Eisenberg v. Fraim,* 215 Pa. 570. One court defines an obvious danger, with reference to the character of an employment, to be one that is discoverable in the exercise of that reasonable care which persons of ordinary intelligence may be expected to take of their own safety. *Hardy v. Chicago, R. I. & P. Ry. Co.,* 115 N. W. 8. (Ia.). Another court holds that where it does not appear that there was a statutory duty to give a warning, no obligation rests upon the master to give such warning. *Toledo, St. L. & W. R. Co. v. Cross,* 127 Ill. App. 204. When the danger, however, is not so apparent to a person in the exercise of ordinary care, a master is bound to warn the servant. *Bowen, Jewell & Co. v. Adams,* 129 Ga. 688; *W. A. Gaines & Co. v. Johnson,* 32 Ky. Law Rep. 58; *Owensboro Stave & Barrel Co. v. Daugherty,* 110 S. W. 319 (Ky.).

MASTER AND SERVANT—RAILROADS—ENGINEERS—RISK ASSUMED.—PEARSALL V. NEW YORK CENT. & H. R. R. CO., 112 N. Y. SUPP. 872.—*Held,* that where an experienced locomotive engineer knew of the improper location of a semaphore, and was injured in an accident resulting therefrom, no action would lie for injuries sustained.

It is a general rule, that by remaining in the service of his master after having learned of the risks of his employment, a servant assumes such risks, and cannot recover for injuries. *Chic. & E. I. R. Co. v. Geary,* 110 Ill. 383. Also when an emlpoyee, after having the opportunity of becoming acquainted with the risks of his situation, accepts them, he cannot complain if subsequently injured by such exposure. *Masterson v. Eldridge,* 208 Pa. 242. However, the employee takes the risk of knowing of obvious dangers, and not of others. *Scanlon v. B. & A. R. Co.,* 147 Mass. 484. The servant, although he may know that the instrumentalities of the business are not in good repair and condition does not thereby assume all risks provided the defects be not plainly dangerous. *Graham v. Newbery Orrel Coal & Coke Co.,* 38 W. Va. 273. In some states the defendant railroad comapny is estoppel to set up "assumption of risk" by statute. *Walker v. Carolina Cent. R. Co.,* 135 N. C. 738.

MUNICIPAL CORPORATIONS—DEFECTIVE STREETS—INJURIES TO PEDESTRIAN—NEGLIGENCE.—WINCKLER V. CITY OF NEW YORK, 113 N. Y. SUPP. 412.—In an action against a city for injuries to a pedestrian slipping on ice and snow on a sidewalk, evidence *held,* not to show actionable negligence of the city. Patterson and McLaughlin, J. J., *dissenting.*

That a municipal corporation is liable for damages arising from neglect in keeping streets in good condition, is established by many authorities. *Dean v. New Milford Township,* 5 W. & S. (Pa.) 545; *Pittsburg v. Grier,* 10 Harris 54. But ordinary care is all that is required on the part of city. *City of Quincy v. Barber,* 81 Ill. 300; *Town of Grayville v. Whitaker,* 85 Ill. App. 602. Sidewalks need only be reasonably safe. *City of Chicago v. McGivern,* 78 Ill. 347. The city is not liable for mere general slipperiness. *Maunch Chunk v. Kline,* 100 Pa. 122; *Cloughessy v. City,* 51 Conn. 405. The liability is not affected by the fact that city ordinance requires owners of property to clean walk in front of their premises. *Staton v. City of Springfield,* 12 Gray 571 (Mass.); *Wallace v. Mayor,* 18 How. 169.

NUISANCE—PUBLIC NUISANCE—STORING EXPLOSIVES.—FANNING V. J. G. WHITE & CO., 62 S. E. 734 (N. C.).—Where dynamite is stored in a shanty, on which there is no warning, near a railroad and a path where people walk at times, *held,* that the storing of dynamite was not a nuisance and did not violate any duty to persons coming on the premises without a license. Clark, C. J. and Hoke, J., *dissenting.*

The question as to whether or not the storing of dynamite is a public nuisance depends upon the locality, the quantity, and the surrounding circumstances. *Lounsbury v. Foss,* 30 N. Y. Supp. 89; *Heeg v. Licht,* 80 N. Y. 579. It has been held that the storing of explosives so located as to endanger the household may constitute a nuisance. *Emory v. Hazard Powder Co.,* 22 S. C. 476. Also that the storing of explosives on premises situated near the branch of a navigable river, a railroad and a public road, is a public nuisance *per se. Huntington Land Dev. Co. v. Phoenix Powder Mfg. Co.,* 40 W. Va. 711. However, the mere keeping of a large quantity of gunpowder near dwelling houses does not constitute a nuisance unless it is negligently and improvidently kept. *People v. Lands,* 1 Johns 78.

STREET RAILROADS—COLLISION WITH PERSON ON TRACK—DUTY TO LOOK AND LISTEN.—DENIS v. LEWISTON, B. & B. ST. RY. CO., 70 ATL. 1074 (PA.).—*Held*, whether or not the failure of a traveler to look and listen when about to cross a street railway track, is to be deemed negligence, must be determined by all the facts and circumstances disclosed by the evidence.

A traveler about to cross the track of a street railway is bound to use ordinary care, and whether it is neglect for him to omit to look and listen depends on the circumstances. *Kan. City, Leavenworth R. Co. v. Gallagher*, 68 Kan. 424; *Cin. St. R. Co. v. Snell*, 54 Ohio St. 197; *Evansville St. R. Co. v. Gentry*, 147 Ind. 408. Some courts hold that a traveler must look and listen before crossing. *McGee v. Con. St. R. Co.*, 102 Mich. 107. And whenever the plaintiff's case shows any want of ordinary care, his right of recovery is destroyed. *Haelzel v. Crescent City R. Co.*, 49 La. Ann. 1302. It is contributory negligence for a person not to look and listen before crossing a railroad track, and where the doctrine of comparative negligence does not prevail, no recovery can be had. *Tesch v. Mil. Elec. R. & L. Co.*, 108 Wis. 593.

TORTS—RELEASE—JOINT AND SEVERAL LIABILITY—RELEASE OF ONE JOINT TORT-FEASOR.—CLEVELAND, C., C. & ST. L. RY. CO. v. HILLIGOSS, 86 N. E. 485 (IND.).—Plaintiff, a street car conductor, left his car at a railroad crossing to see if any trains were approaching. Seeing none, he gave the motorman the signal to cross and got on, when defendant negligently ran a car into the trolley, injuring the conductor. Plaintiff executed a deed of release to the street car company in satisfaction of all claims against it in consideration of an agreement to re-employ the plaintiff. *Held*, that while one who compromises a claim does not necessarily admit that the claim was well founded, the one who receives the consideration is precluded from denying that it was well founded, and when a pretended claim for a tort has been settled and satisfaction has been rendered, the claimant by one so connected with the wrong as to be reasonably subject to an action and possible liability as a joint tort feasor, the satisfaction will release all who may be liable, though the one released was not liable.

It is well settled that a release to, or an agreement not to sue, one in fact liable, which is not under seal and is without full satisfaction of the claim, is no release of the other tort feasors. *Arnett v. Missouri P. R. Co.*, 64 Mo. App. 368; *Snow v. Chandler*, 10 N. H. 92; *Matthews v. Chicopee Mfg. Co.*, 3 Robt. 711. But that an absolute release under seal, to, or full satisfaction from, one joint wrong-doer, releases all for the reason that there can be but one satisfaction of the same wrong. *Ellis v. Esson*, 50 Wis. 138; *Rogers v. Cox*, 66 N. J. L. 432; *Goss v. Ellison*, 136 Mass. 503. Upon the question whether the release of an apparent joint wrong-doer releases those who are actually at fault, there is a conflict of authority. *Cooley on Torts*, p. 103; *Thomas v. Cent. R. R. Co.*, 194 Pa. St. 511; *Missouri, K. & T. Ry. Co. v. McWherter*, 59 Kan. 345; *Western Tube Co. v. Zang*, 85 Ill. App. 63. However, the weight of authority would seem to be with the above case, as indicated by the citations in the opinion.

VENDOR AND PURCHASER—OPTION—WITHDRAWAL.—GOODMAN v. SPURLIN, 62 S. E. 1029 (GA.).—*Held*, that a written option, without consideration, for the sale of land, may be withdrawn or revoked before its acceptance.

An option is a mere continuing offer. *Crandall v. Willig*, 166 Ill. 233; *Sizer v. Clark*, 93 N. W. 539. Like all other contracts, it must have consideration in order to be binding. *Ide v. Leiser*, 10 Mont. 5. And the fact that a period is named within which it may be accepted, will not prevent a withdrawal within that time. *B. & M. R. v. Bartlett*, 3 Cush. 224.