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ARREST—PRIVILEGES—ATTENDING JUDICIAL PROCEEDINGS.—WEALE v. CLINTON CIRCUIT JUDGE, 123 N. W. 31 (MICH.).—*Held*, that where a person was arrested in another state where he was residing with the relator's wife, and was returned to Michigan upon a requisition for non-support of his own wife, he was privileged from arrest upon relator's civil suit for alienation of relator's wife's affections, made upon the day that the criminal action was dismissed, and before he had an opportunity to leave the state.

In criminal cases it is generally accepted that a fugitive from justice, surrendered by one state upon demand of another is not protected from prosecution for offenses other than that for which he was surrendered, but may be tried for any crimes committed in the demanding state either before or ofter extradition. *State v. Kealey*, 85 Ia. 94; *People v. Cross*, 135 N. Y. 536. The majority of states, it seems, extend this doctrine, and hold that the federal law should not be construed as affording exemption to him from being subject to civil suits. *Reid v. Ham*, 54 Minn. 305; *Williams v. Bacon*, 10 Wend. 636 (N. Y.). In these states he is therefore not even entitled to exemption from service for a reasonable time to return to the state from which he was brought by requisition. *In re Walker*, 61 Neb. 803. The courts of several states have decided, however, that service in a civil suit obtained by the surrender of the fugitive is void. *Compton v. Wilder*, 40 Ohio St. 130; *Moletor v. Sinnen*, 76 Wis. 308. In *Wilson v. Donaldson*, 117 Ind. 356, the court stated the reason for this exemption, saying, that one should not be burdened with the hazard of having to appear and defend a civil action on account of his defending a criminal action, for such a holding would tend to prejudice the defendant against his privilege to testify in his own behalf.

CARRIERS—CARRIAGE OF PASSENGERS—CARE REQUIRED.—INDIANA UNION TRACTION CO. v. OHNE, 89 N. E. 507 (IND.).—*Held*, that a common carrier is not absolved from liability for injuries, occurring through a car sliding and colliding with another car, owing to the rails being wet with the rain.

A common carrier must use the highest degree of human care, prudence and foresight to avoid an injury to a passenger. *Louisville, etc., R. Co. v. Ritter*, 85 Ky. 368; *Louisville, etc., R. Co. v. Swann*, 81 Md. 400. And for the slightest negligence with reference to the exercise of such care, he will be liable. *Jamison v. San Jose, etc., Ry. Co.*, 55 Cal. 593. Thus, running an extra car so close to the preceding car that it could not be stopped on the slippery rails when the preceding car had stopped at a street crossing, was held to show negligence in managing the car. *Chicago City Ry. Co. v. Schmidt*, 217 Ill. 396. But the negligence must be the proximate and not the remote cause of the accident. *Gillespie v. St. Louis, etc., R. Co.*, 6 Mo. App. 554. However, if the accident resulting in injuries is due to natural causes and is inevitable, the carrier will not be liable. *McPadden v. New York Cent.*

R. Co., 44 N. Y. 478. For carriers are not liable as insurers of the safety of their passengers. *Hall v. Conn. River Steamboat Co.*, 13 Conn., 319. Nor can a passenger hold a carrier liable for an injury from any cause, if his own negligence was a natural and proximate cause contributing to the injurious result. *Penn. R. Co. v. Aspell*, 23 Pa. St. 147; *Jamison v. Chesapeake & Ohio R. Co.*, 92 Va. 327.

CORPORATIONS—ADVERSE INTERESTS OF OFFICERS—LEASE OF PROPERTY OCCUPIED BY A CORPORATION.—PIKES PEAK CO. V. PFUNTER, 123 N. W. REP. 19 (MICH.).—*Held*, that an officer of a corporation who secures the renewal of a lease in his own name, which lease is held at the time of his renewal by the corporation, holds the new lease as trustee and for the benefit of the corporation, even though it was in financial difficulties at the time of such renewal, and was subsequently adjudged bankrupt.

It has been held in a case exactly in point with *Pikes Peak Co. v. Pfunter*, that the expectancy of renewal belonging to the corporation ceased with the landlroad's express refusal to renew, and the director's securing the renewal for himself was not such a breach of trust as would entitle the corporation to interfere with his benefit from it. *Crittenden & Cowler Co. v. Cowler*, 72 N. Y. Sup. 701. And in *Scott v. Farmers' Nat'l Bk.*, 97 Tex. 31, it seems to be implied that an officer may take full title to himself if there has been made a valid contract to that effect between him and the corporation. Or if land has been purchased by an officer of a corporation with his own money, or with money which he supposed belonged to him, an enforceable trust is not created for the benefit of the corporation, although it had authorized him to act for it in the purchase of land ,and he may have intended ultimately to sell the land to the corporation. *Camden Land Co. v. Lewis*, 101 Me. 78. However, the weight of authority is that directors of a corporation represent the stockholders and cannot acquire any interest adverse to them. *Cook v. Sherman*, 20 Fed. 167. A director's position is fiduciary, and he cannot take advantage of his position to secure personal rights to the corporate property; for instance, by buying at an executor's sale of property of the corporation. *Hoffman v. Reichert*, 147 Ill. 274. And his fiduciary position demands all the more that he acquire no property for his own use if such property is necessary for the purpose of the corporation. *Blake v. Buffalo Creek R. Co.*, 56 N. Y. 485. Even where corporate officers execute a contract for the sale of corporate property to a stranger, a repurchase by them from such a stranger, while the contract of the corporation is merely executory, is voidable. *Cook v. Berlin Woolen Mill Co.*, 43 Wis. 433. In fact the officers are nothing more nor less than trustees for the corporation. *Center Creek Water & Irrigation Co. v. Lindsay*, 21 Utah 192.

CRIMINAL LAW—CONFESSION—WHAT CONSTITUTES.—STATE V. KEELAND ET AL., 104 PAC. 513 (MONT.).—*Held*, that where defendant told witness that he had committed the crime because of differences which he had had with the witness and offered to pay him money if the witness would let him go, such statements were mere admissions, and therefore

it was not necessary to show that the statements were not induced by fear, threats or the hope of leniency.

A confession in criminal law, is the voluntary declaration of guilt made to another by a person who has committed a crime. *People v. Strong,* 30 Cal. 151. Such confession must be voluntary, that is, not induced by any promise of forbearance or threat of punishment. *Hopt v. Utah,* 110 U. S. 574, 584. A confession is restricted to an acknowledgment of having committed the act for which the confessor is being tried. *People v. Parton,* 49 Cal. 632; *State v. Jackson,* 95 Mo. 623. So a statement of fact not constituting an actual confession of guilt is not a confession and is not admissible as such. It may, however, be admissible as an admission. *State v. Picton,* 51 La. 624.

CRIMINAL LAW—EVIDENCE—TESTIMONY ON A FORMER TRIAL.—HOLIFIELD V. CITY OF LAUREL, 50 So. 488 (MISS.).—*Held,* that testimony of a witness against the defendant on a prosecution in the police court may not be used on the trial on appeal to the circuit court, though the witness has removed from the state.

The general rule is that where testimony was given under oath, in a judicial proceeding, to which the adverse litigant was a party, and where he had the power to cross-examine, the testimony so given is admissible in any subsequent suit between the parties, after the decease of the witness, or when he is out of the jurisdiction of the court, or when he cannot be found after diligent search, or when he is being kept away by the opposite party. 1 *Greenleaf Ev.,* 16th ed., Sect. 163. But, the courts of this country are not in harmony on this point. In some jurisdictions such evidence has been ruled inadmissible, unless it appeared that the witness was absent through the connivance, or by the procurement of the accused. *State v. Wing,* 66 Ohio St. 407. While other courts have held such evidence admissible only when the doctrine of necessity arises; *i. e.,* when no amount of diligence can bring the witness into court. *State v. Jordan,* 34 La. Ann. 1219. And such evidence is inadmissible, unless it is shown that the full process of the court has been vainly invoked in an effort to compel the attendance of the absent witness. *State v. Evans,* 65 Mo. 574. But in any case it must be shown that the defendant had the opportunity of subjecting the witness to cross-examination at the former trial. *Garcia v. State,* 12 Tex. App. 335.

GRAND JURY—QUALIFICATION OF JURORS—TAXABLE PERSONS—NORTH CAROLINA STATUTE.—U. S. V. BREESE, ET AL., 172 FED. 761.—*Held,* that a code provision providing that grand jurors should be selected from persons only who had paid tax for the preceding year, does not disqualify a person from being a legal grand juror who did not own property above the amount exempt from taxation, and was not therefore assessed with any tax for the preceding year.

The disqualification of a grand juror prescribed by statute is a matter of substance, which cannot be regarded as a mere defect or imper-

fection of form, within the meaning of a statute providing that no indictment shall be deemed insufficient, or the trial, judgment or other proceedings thereon be affected, by reason of any defect or imperfection in matter of form only, which does not tend to the prejudice of the defendant. *Crowley v. U. S.,* 194 U. S. 461. Under the code provision mentioned in headnote, an indictment was rightly quashed when three of the grand jurors had not paid taxes for the preceding year. *State v. Durham Fertilizer Co.,* 111 N. C. 658. But objection under said code provision does not disqualify a grand juror 21 years old, who was not liable for poll tax the preceding year, and may have had no property liable to taxation. *State v. Perry,* 122 N. C. 1018. A covenant to transfer all his taxable property does not make one ineligible to serve as grand juror under such a statute. *Commonwealth v. Reynolds,* 4 Leigh (Va.) 663. Where a person appears on the assessment roll as owning no land except that which is exempt, he is a taxable person within a statute requiring grand jurors to be taxable persons. *State v. Carlson,* 39 Ore. 19.

INJUNCTION—COMBINATIONS—INTERFERENCE WITH CONTRACT BY THIRD PERSONS.—HITCHMAN COAL CO. V. MITCHELL ET AL., 172 FED. 963.—*Held,* that an employer and employes may lawfully contract with respect to the terms of employment, and as incidental thereto that the employes shall not join a labor union and that the employer shall not employ union men; and when such a contract has been made, a combination between officers or members of a labor union, to induce either party to violate the contract, with which they have no rightful concern, constitutes an unlawful conspiracy, to restrain the carrying out of which, the other party is entitled to an injunction.

The preponderance of authority is in accord with the leading case and, as a general rule, equity will grant an injunction to restrain a combination, which is formed to induce employes, who are not dissatisfied with the terms of their employment, to strike for the purpose of inflicting damage upon the employer. *Hamilton-Brown Shoe Co. v. Saxey,* 131 Mo. 212; *United States v. Haggerty,* 116 Fed. 510. And likewise, where one adopts a system in his business of employing only non-union workmen, and of stipulating in his contracts with them, that they shall join no union, interference therewith, enticing, or endeavoring to entice them to join a union will be enjoined. *Flaccus v. Smith,* 199 Pa. 128. But inducements offered by way of entreaty and persuasion, where intimidation is not used, have been held insufficient to grant an injunction. *Reynolds v. Everett,* 144 N. Y. 189. But in such cases the remedy is damages in a court at law. *Haight v. Bodgeley,* 15 Barb. 499. And the right of employers to sue for relief, where third parties are interfering, in any manner whatsoever, with their employes, against the latter's consent, has been upheld. *Frank & Dugan v. Herold,* 63 N. J. Eq. 443. And, in accord, an injunction is the proper remedy to restrain third parties from doing acts, or making threats and inducements, without justifiable cause, to prevent a party to a contract, from carrying out the same. *Employing Printers Club v. Blosser,* 122 Ga. 509; *American Law Book Co. v. Thompson,* 84

N. Y. Supp. 225. But some authorities deny the right, in the absence of unlawful means, such as fraud or deceit. *Boysen v. Thorn,* 98 Cal. 578; *Perkins v. Pendleton,* 90 Me. 166.

INSANE PERSON—ACTION BY GUARDIAN—PAYMENT ON CONTRACT—RECOVERY OF PAYMENT.—GOLDBERG V. WEST END HOMESTEAD CO., 73 ATL. 128 (N. J.).—*Held,* that in a suit by a guardian of a lunatic to recover money paid by the lunatic upon a contract for the sale of land, knowledge of the insanity by the defendant must be proved.

In accord with the principal case, many courts hold that where a party contracting with a lunatic acts in good faith and in ignorance of insanity, the contract will be upheld. *Scott v. Hay,* 90 Minn. 304; *Haines v. Scott,* 54 N. Y. Supp. 844. Some courts follow this rule when the sane party cannot be placed in *statu quo. Smith's Committee v. Forsythe,* 28 Ky. Law Rep. 1034. But it has been held that ignorance of the insanity will not uphold a contract. *Feigenbaum v. Howe,* 66 N. Y. Supp. 378. And this rule has been followed even where an ordinarily prudent person could not discover insanity. *Orr v. Equitable Co.,* 107 Ga. 499. And some courts hold the contract binding only when the lunatic has received actual benefit. *Lincoln v. Buckmaster,* 32 Vt. 659.

INSURANCE—WHAT CONSTUTUTES "FIRE."—O'CONNOR V. QUEEN INS. CO. OF AMERICA, 122 N. W. 1038 (WIS.).—*Held,* that a fire in a furnace of material so highly inflammable in character as to cause volumes of heat and smoke to escape through the registers into the rooms, damaging the house and furniture, though without ignition outside of the furnace, is a "fire" within the policy of insurance against "direct loss or damage by fire." Marshall, J., *dissenting* in part.

In general, fire insurance policies should be construed so as to give effect to the evident intention of the parties. *Ripley v. Aetna Ins. Co.,* 30 N. Y. 136; *Snyder v. Groff,* 8 Pa. Dist. 291. And, if the policy is susceptible to two constructions, that construction should be adopted which is favorable to the insured. *Forest City Ins. Co. v. Hardesty,* 182 Ill. 39; *Imperial Shale Brick Co. v. Jewett,* 169 N. Y. 143. The prevailing doctrine as to injury to insured property by heat, although the heat is caused by combustion, seems to be that if the injury does not result from fire outside of its usual place of confinement, such as a furnace, it is not covered by the policy. This rule has been applied, and the damage not held to be covered by the policy, when the scorching of sugar in a refinery resulted from overheating the pans used in drying. *Austin v. Drew,* 4 Campb. 361 (Eng.). The same rule was applied to damage to a library, due to a break in the steam heating pipes, resulting in the charring of furniture and books, *Gibbons v. German Ins., etc., Inst.,* 30 Ill. App. 263, to damage by smoke from the flame of a flaring lamp, *Fitzgerald v. German-American Ins. Co.,* 30 Misc. (N. Y.) 72, or from smoke and soot escaping from a defective stove pipe. *Cannon v. Phoenix Ins. Co.,* 110

Ga. 563. But where a fire in a chimney caused by the accidental ignition of soot damaged the insured property, it was held that the loss was by fire within the terms of the policy. *Way v. Abington Mut. Ins. Co.,* 166 Mass. 67.

JURY—COMPETENCY OF JURORS—RELIGIOUS AFFILIATION.—SEARLE V. ROMAN CATHOLIC BISHOP OF SPRINGFIELD, 89 N. E. 809 (MASS.).—*Held,* that where a party to an action, relating to the ownership of a building on land purchased, was a Roman Catholic bishop, a corporation sole, who held title to the land in trust for a local Roman Catholic church, it was error to exclude from the jury all persons of Roman Catholic faith, without reference to their residence, or to any close affiliation with the local church.

The smallest degree of direct interest is a decisive objection to a juror. *Lynch v. Horry,* 1 Bay (S. C.) 229. So in actions between the trustees of different religious denominations, involving the right of possession of lands, the members of each denomination interested in the lands are incompetent to act as jurors. *Cleage v. Hyden,* 53 Tenn. 73. But an indirect interest, however great, will not so exclude jurors and witnesses. *Walker's American Law,* 9th ed., p. 671. It is no objection to a juror that he is a member of a religious denomination, but not of the particular congregation whose property rights are involved in the issue to be tried. *Barton v. Erickson,* 14 Neb. 164. Nor is the fact that one party is a free mason ground for disqualifying other free masons from sitting on the jury. *People v. Horton,* 13 Wend. (N. Y.) 9; *Reed v. Peacock,* 123 Mich. 244.

MUNICIPAL CORPORATIONS—PUBLIC DEBT—AID TO CORPORATIONS.—FISHER ET UX. V. CITY OF SEATTLE ET AL., 104 PAC. 655 (WASH.).—*Held,* that a constitutional provision prohibiting cities from loaning their money or credit in aid of any other corporation, does not apply to the issue of funding bonds for the payment of debts of territory annexed to the city.

The law is well settled that where a municipal corporation is legislated out of existence, and its territory annexed to another corporation, the latter, unless the legislature otherwise provides, becomes entitled to all its properties and immunities, and is liable for all its then existing debts. *Morgan v. City of Beloit, City and Town,* 7 Wall. 613; *Thompson v. Abbott,* 61 Mo. 176. And in such a case, the present existing municipal corporation is vested with the power to raise money, wherewith to pay the liabilities and debts, by levying taxes upon the property transferred and upon the persons residing therein. *Mount Pleasant v. Beckwith,* 100 U. S. 514. Likewise, where the municipality has the power to contract a debt, it also has the implied power of resorting to the usual method of raising revenue to pay it; and this usual method is by taxation. *Commonwealth v. Perkins et al.,* 43 Pa. St. 400. It has also been held that the debts contracted for, by a city in its acquisition of property,

which is for the benefit of taxpayers, must be paid by the city. *Wheeler v. Phila.*, 77 Pa. St. 338. Neither does the constitutional provision, prohibiting a city from loaning its money or credit in aid of any other corporation, restrict municipalities from constructing their own railroads and paying therefor when necessary and when authorized by the legislature. *Sun Printing Co. et. al. v. Mayor et als., of New York*, 152 N. Y. 257. And so it has been held that even though a city is required in the first instance to pay the cost of a public burden, to be reimbursed thereafter by a tax upon the property, this does not constitute a loan to the property owners within the constitutional prohibition against loaning. *People v. Banks*, 67 N. Y., 568.

PATENTS—INFRINGEMENT—USE OF ARTICLE BROUGHT FROM FOREIGN COUNTRY.—DAUNLER MFG. CO. V. CONKLIN, 170 FED. 70.—*Held*, that a purchaser, in a foreign country of an article patented in the United States, although from one authorized to sell it, is chargeable with infringement if he brings it into the United States and there uses it.

It is well settled that an article, patented in the United States, purchased in a foreign country from one authorized to sell it, cannot be imported for sale in the United States. *Boesch v. Graff*, 133 U. S. 697. And some cases hold that there is no difference between using and selling. *Fetherstone v. Ormonde Cycle Co.*, 53 Fed. 110. But many courts hold that the sale of a patented article by an assignee within his territory carries the right to use it everywhere. *Edeson Co. v. Goelet*, 65 Fed. 613.

PHYSICIANS AND SURGEONS—EMPLOYMENT—CONTRACTS.—HALL V. ALLEN, 104 PAC. 489 (COL.).—A brother, twenty-five years old, without means and away from his parents was injured and a physician began to treat him. A sister subsequently wrote to the physician requesting information as to his condition and stating that the expenses would be paid. *Held*, that the sister directly employed the physician at her own expense, authorizing a recovery against her for services rendered after the receipt of the letter.

Where there has been a promise, express or implied, to pay for the services rendered by a physician to a third person, the physician has a right to maintain an action against the person making such promise to recover for professional services. *Bradley v. Dodge*, 45 Howe Pr. 57 (N. Y.); *White v. Mastin*, 38 Ala. 147. And such liability is not affected by the fact that the liability was not assumed until after the physician had made several visits to the patient without the knowledge or procurement of such person. *King v. Edmiston*, 88 Ill. 257. He may also recover where the circumstances are such as to show an intention to pay him for his professional services. *Smith v. Watson*, 14 Vt. 332. Some states even hold that one who requests a physician to attend another,

without indicating that he acts as agent or messenger, is liable for his charges. *Best v. McAuslan,* 27 R. I. 107. *Contra*: Others hold that a promise to pay will not be implied unless the relation of that person to the patient is such as raises a legal obligation on his part to call in a physician and pay for the services. *Meisenback v. Southern Cooperage Co.,* 45 Mo. App. 232; *Starrett v. Miley,* 79 Ill. App. 658. For example, where the manager of a hotel, in which yellow fever had broken out among the guests, sent a telegram to a neighboring town to send a physician, the manager was held not liable for services rendered. *Williams v. Brickell,* 37 Miss. 682.