RECENT CASES

BAILMENT—CONTRACT—LIABILITY OF BAILEE—NIAGARA ALKALI CO. v. CHAMPION COATED PAPER CO., 146 N. Y. S. 284.—Plaintiff entered into a contract to sell defendant two years' supply of muratic acid, and agreed to ship to him 500 empty carboys to remain in defendant's possession during the life of the contract without charge, to be used for the storage of the acid; the carboys to be returned at the end of the contract and all not so returned to be paid for. The carboys, while stored in a safe place by defendant, were carried away by an unprecedented flood. *Held,* the defendant was merely bailee of the carboys, and was not liable for their loss occurring through an act of God.

Where a private carrier for hire contracted that he "would move them (the goods) with care and deliver them safely", *held,* this was not a warranty against every loss and did not enlarge his obligation beyond that of mere bailee so as to make him liable for loss other than that caused by his failure to use care and skill. *Jaminet v. American Storage Co.,* 109 Mo. App, 257. Where patterns had been delivered to bailee to make castings with an agreement to be responsible for the patterns and to safely return them, and they were destroyed by fire without the fault of the bailee, *held,* bailee is not liable in the absence of a special agreement to insure. *Caldwell-Wilcox Co. v. Sullivan,* 3 N. Y. App. Div. 359; *Young v. Leary,* 135 N. Y. 569. Plaintiff leased fire extinguishers to defendant under an agreement that if any damage were done the lessee would pay the "value of the property so damaged or destroyed" to lessor. *Held,* the lessee was liable where they were destroyed by fire though the fire did not result from his negligence. Greenbaum, J., *dissenting. Rapid Fire Extinguisher Co. v. Hay-Budden Mfg. Co.,* 75 N. Y. S., 1008. Where a bailee for hire said "I will take the horse and return him in as good or better condition than I took him and if I don't I will agree to pay for him", *held,* bailee was liable for the value of the horse which died on his hands, though without the fault of the bailee. *Grady v. Schwermler,* 113 N. W. (N. D.) 1031. In contracts of bailment providing for the return of the article bailed at the end of the period of bailment, there is a conflict of authority whether the bailee becomes an insurer of the thing bailed. All authorities agree that the bailee may make such a contract of insurance. In the absence of a clear, express agreement to insure, the better view is that there is an implied condition precedent that the article bailed will be in existence at the end of the bailment period, and if it lost without the fault or negligence of the bailee, he is not liable.

DIVORCE—PROHIBITION AGAINST REMARRIAGE—WHAT LAW GOVERNS.—PEOPLE v. PROUTY, 104 N. E. (ILL.) 387.—*Held,* the divorce act effective July 1, 1905, prohibiting the remarriage of parties divorced for certain causes, and providing that a marriage in violation of the act shall be held absolutely void, governs as to the rights of the parties within this state even though the subsequent marriage be performed within another jurisdiction.

It is a general rule of law that a contract entered into in another state, if valid, according to the law of that place, is valid everywhere. *Potter v. Brown,* 5 East 130; Story's *Conflict of Laws,* par. 242. A second marriage, solemnized in another state of a divorced person before the expiration of the period provided for such second marriage in Sec. 61 of the Civil Code, which is valid by the laws of that state is valid in this state. Temple, Vandyke, Harrison, JJ., *dissenting. Wood v. Wood,* 137 Cal. 129; *State v. Richardson,* 72 Vt. 49; *Comm. v. Lane,* 113 Mass. 458; *Van Voorhis v. Brintnall,* 86 N. Y. 18. Where a mulatto and a white woman residents of Massachustts were married in Rhode Island and then returned to the former state, the marriage was held valid though prohibited by statute, because the marriage was valid in Rhode Island. *Medway v. Nedham,* 16 Mass. 157. The contrary was held in a similar case, *Pennegar & Henry v. State,* 87 Tenn. 244. Accord, *McLennan v. McLennan,* 31 Ore. 480. Where the parties went to another state and were married in order to evade the law of their own state, and the statute provided that the intent to evade the law would invalidate the marriage, the court held the marriage void. *Tyler v. Tyler,* 170 Mass. 150. The great weight of authority is contrary to the holding of the principal case, the underlying reason being a question of policy in both lines of authority. The majority view takes the position that property rights will be safer and the rights of children will be better subserved by giving effect to the marriage than by annulling the marriage and thereby giving effect to the statute.

JUSTICES OF THE PEACE—JURISDICTION—RESIDENCE OF PARTIES—WAIVER OF OBJECTION.—ROGERS V. TOWNES, 81 S. E. (S. C.) 278.—*Held,* that where a defendant in an action in a magistrate's court did not reside within the territorial jurisdiction of the court, and did not appear, though duly notified, he waived the want of jurisdiction over him, and a default judgment was valid.

As a general rule any exercise of jurisdiction by a justice of the peace beyond his prescribed territory is *coram non judice* and void. *People v. Campbell,* 22 Hun 574. But the rule that jurisdiction of the person may be conferred by waiver applies to justice courts. *Grimm v. Dundee Land Co.,* 55 Mo. App. 457. Such waiver of one defendant will not give jurisdiction over other joint defendants. *Davis v. Osborne,* 156 Ind. 86; *Stoddard v. Holmes,* 1 Cow. (N. Y.) 245. When a judgment of a justice court is void for want of jurisdiction of the person, the non-appearance of the defendant is no waiver. *Lowe v. Alexander,* 15 Cal. 296; *Tiffany v. Gilbert,* 4 Barb. (N. Y.) 320. But there are some courts that hold that the defendant, after process, must appear and claim his privilege. *State v. Carter,* 6 Ind. 37; *Laroque v. Harvey,* 57 Hun (N. Y.) 366. The rule seems to be in Connecticut that where a justice is disqualified from trying a case from any cause, a waiver, to be effective, must be in writing. *Keeler v. Stead,* 56 Conn. 501.

The majority rule and that which seems to be the more just and reasonable is that absence of a defendant out of the jurisdiction is no waiver of his privilege. There are two reasons for this. First that the summons and judgment would be invalid as having extra-territorial effect,

and second because it seems unjust that a defendant be put to the expense of answering to a summons in a place that may be at a great distance from his domicile. It is to be noted, however, that in some of the states where there is a constitutional right to have the cause brought in the jurisdiction of the defendant, it is held that he must appear and claim his privilege or be deemed to have waived it.

MASTER AND SERVANT—INJURY TO SERVANT—COURSE OF EMPLOYMENT.—TERLECKI V. STRAUSS ET AL., 89 *A9*. (N. J.) 1023.—A factory employee quit work at her machine shortly before noon, and was, in accordance with the custom, combing particles of wool out of her hair preparatory to going home, at a point away from her machine, when her hair was caught in other machinery and she was injured. *Held,* that the accident arose out of and in the course of her employment.

Where a teamster by reason of loss of memory caused by a personal injury received about five years before in the same employment, wandered about and fell into a swamp, where he remained all night, and died from pneumonia brought on by exposure, his death did not arise out of, and in the course of his employment. *Milliken v. A. Towle & Co.,* 103 N. E. (Mass.) 898. Where an employee going to his work was injured because of the slippery condition of the floor, it was held the employer was not liable. *Tollman v. Chippewa Sugar Co.,* 143 N. W. (Wis.) 1054. Where the employer invited his employees to lunch during working hours, and one of the employees was fatally injured by the rope breaking on which he was descending, though a flight of stairs was the usual and safe means of descending, it was held he was injured while in the course of his employment. McAlvey, J., *dissenting. Clem v. Chalmers Motor Co.,* 144 N. W. (Mich.) 848. An injury inflicted by an obviously intoxicated fellow workman whose quarrelsome and dangerous disposition was well known to the employer, arose out of and in the course of his employment. *In re Employer's Liability Assur. Corp.,* 102 N. E. (Mass.) 697. So also are injuries received from a cat habitually kept in the place of employment. *Rowland v. Wright,* (1908) 1 K. B. 963. Where an employee was discharged on Wednesday and returned to the mill on Friday for her wages, and on going down the stairs from the mill was injured, it was held that the accident arose out of and in the course of her employment. Buckley, L. J., *dissenting. Riley v. William Holland & Sons, Ltd.,* 1 K. B. (1911) 1029. It appears from the above decisions that the holding of the principal case follows the general tendency of the courts and is in accord with the weight of authority.

SEDUCTION—DEFENSE—MARRIAGE OF FEMALE.—MORRIS V. STATE, 81 S. E. 257 (GA.)—*Held,* that the mere fact that a female alleged to have been seduced has subsequently contracted marriage with another than the alleged seducer does not afford a good defense to an indictment which charges the offense of seduction.

That a prosecution for seduction is barred by the subsequent marriage of the female to the seducer is familiar law. *Henneger v. Lomas,* 145 Ind. 287; 32 L. R. A. 848. But in some jurisdictions it only serves to suspend

the prosecution. *Burnett v. State,* 72 Ark. 398. While in a very few jurisdictions it is no bar at all. *Re Lewis,* 67 Kan. 562. But where she marries a third party it will not bar a civil action against her seducer for damages. *Dowling v. Crapo,* 65 Ind. 209.

The question whether marriage to a third party will bar the criminal prosecution of the seducer is one upon which there seems to be no authority either in text books or cases. The provision which allows a seducer to repair in some degree the injury he has caused, by marriage to the injured female, is an anomaly and is only justified upon the ground that it is in the interest of the woman and the possible offspring. It is not a principle of mercy to the accused or condonation of his offense, and where the cause that induced the formation of the rule is removed there can be no reason why the offender should not suffer as if there had been no marriage on the part of the female at all.

WILLS—CONSTRUCTION—ESTATES DEVISED.—CASHMAN V. ROSS, 145 N. W. (WIS.) 199.—Where a testator devised his real and personal property to his wife for life, the same to be equally divided between his children at her death, the children did not take vested interests, and the legacy of the female child who died before the wife, lapsed, and her husband, though her heir, had no interest in the property. Timlin, J., *dissenting.*

A bequest to the wife of real and personal property "during life and at her decease to be left to my son" vests immediately in the son as an executory devise. *Farley v. Gilman,* 12 Ala. 141. A will giving a sum of money to *B* in trust, the interest to be paid to *B* for life, and at her death the sum to be divided among her children, vested in the children a right to the legacy upon her death. *In re Vreeland's Estate,* 66 N. J. Eq. 297. Under a devise to *A* for life, remainder to his widow for life or during widowhood, then to pay the same to the issue of *A,* the issue living at the death of *A* take a vested estate with right of possession postponed. *Gray v. Whittemore,* 192 Mass. 367. Where language used by the testator is of doubtful import, remainders will preferably be regarded as vested unless a contrary intention is to be gathered from the will. *Minot v. Purington,* 190 Mass. 336. The construction of the will adopted in the principal case does not appear to be in accord with the weight of authority.