BY-LAWS OF PRIVATE CORPORATIONS. By LOUIS BOISOT, Jr. Chicago: The United States Corporation Bureau, 1892.

A MANUAL OF MEDICAL JURISPRUDENCE. By ALFRED SWAINE TAYLOR, M.D., F.R.D. Eleventh American edition. By CLARK BELL, Esq. Philadelphia: Lea Brothers & Co., 1892.

THE AMERICAN DIGEST ANNUAL, 1892. A digest of all the decisions of the courts of the United States and the courts of last resort of the States and Territories, etc., September 1st, 1891, to August 31st, 1892. Prepared and edited by the Editorial Staff of the National Reporter System. St. Paul, Minn.: West Publishing Co., 1892.

AN INTRODUCTION TO THE STUDY OF THE CONSTITUTION. By MORRIS M. COHN. Baltimore: Johns Hopkins Press, 1892.

UNITED STATES CIRCUIT COURT OF APPEALS REPORTS. Vol. I. St. Paul, Minn.: West Publishing Co., 1892.

ABSTRACTS OF RECENT CASES.

[Selected from the current of American and English Decisions.]

BY

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AEROLITE—APPROPRIATION BY FINDER.—The owner of the soil upon which aerolite falls may maintain replevin against one who finds it there and carries it off: Goddard *v.* Winchell, Supreme Court of Iowa, October 4, 1892, WINCHELL, J. (52 Northwestern Rep., 1124).—*J. A. McC.*

BAILMENTS, GRATUITOUS—BANKS—SPECIAL DEPOSITS—LIABILITY FOR LOSS.—The essence of a contract for bailment is diligence. A special deposit was received by a bank through its cashier for gratuitous safe keeping. The cashier appropriated the deposit to its own use. *Held:* the bank is not liable if it can prove that it exercised due diligence in selecting the cashier, and in not keeping him in office after it knew or ought to have known, that he was untrustworthy. For in appropriating the deposit to his own use, the cashier would not be acting in the bank's business or within the scope of his employment: Merchants' National Bank of Savannah *v.* Guilmartin, LUMPKIN, J., August 23, 1892 (15 S. E. Rep., 831).—*W. D. L.*

CARRIERS—INJURIES TO PASSENGERS—CONTRIBUTORY NEGLIGENCE—RULES OF COMPANY—RIDING IN EXPRESS CAR.—In an action for damages received in a collision, it appeared that the plaintiff, knowingly violating the defendant's rule, was in the express car at the time the accident occurred; that he would not have been injured had he been in a passenger coach, in which there was room; and that the conductor of the train, although he knew the plaintiff's position, did not enforce the rule. *Held:* that where a passenger, knowing the existence of a rule of the company, willfully violates it, in an action for the recovery of damages for injuries received in consequence of such violation, he cannot rely upon the mere delinquency of the conductor or other agent charged

with its enforcement in the absence of anything which establishes the concurrence of the company in the disregard of the regulation: Florida So. Railway Co. *v.* Hirst, Supreme Court of Florida, July 20, 1892, per RANEY, C. J. (11 So. Rep., 506).—*H. N. S.*

COMMON CARRIERS—LIABILITY FOR LOSS OF GOODS—ACT OF GOD. —The 2066 section of the code of Georgia reads as follows: "A common carrier . . . is bound to use extraordinary diligence. In case of loss the presumption is against him, and no excuse avails him, unless it was occasioned by the Act of God, or the public enemies of the State." *Held:* that no degree of diligence whatever will excuse a common carrier unless the loss occurs through an act of God or public enemies, and where the immediate agency of the loss is shown to be an act of God, the presumption still is that the loss is due to negligence, and in order to combat this presumption it must be shown by the carrier that the act of God is the *sole* cause of the loss: Richmond and D. R. R. Co. *v.* White, Supreme Court of Georgia, BLECKLEY, C. J., October 1, 1892 (15 S. E. Rep., 802).—*W. D. L.*

CONSTITUTIONAL LAW—TAXATION—WHAT CONTITUTES A DEALER. —The State of Georgia taxes in the form of a license all sewing machine companies doing business in the State. The license tax is fixed; that is it does not depend on the amount of the business. *Held:* that this tax was constitutional as applied to sewing machine companies whose plants were in other States. And, *Held:* that one who receives orders for sewing machines, forwards these orders to the manufacturer, receives the machines when sent in pursuance of the order and sends them to the purchasers, does *not* engage in the business of selling sewing machines, or become a dealer in them, or an agent: Weaver *v.* State, Supreme Court of Georgia, SUMMONS, J., May 16, 1892 (15 Fed. Rep., 840).—*W. D. L.*

CONTRACT OF EMPLOYMENT—EIGHT HOUR LAW.—Plaintiff, who was an engineer in the employ of defendant, brought an action to recover compensation for services rendered beyond the eight hours which constitute a day's work under the laws of Indiana. There had been no agreement as to the number of hours which should constitute a day's work, and the plaintiff worked overtime solely because required so to do by the defendants. *Held:* that while under the laws of Indiana work overtime by agreement is permitted for an extra compensation, yet where one enters into an employment knowing he will be expected to work overtime, and continues to work overtime without objection, or giving notice of his intention to charge therefor, it will be implied that he consented to the requirements of his employees, and he cannot recover for the hours he worked each day beyond eight hours, as extra time: Helphensteine *v.* Hartig, *et al.*, Appellate Court of Indiana, September 27, 1892, per NEW, J. (31 N. E. Rep., 845).—*H. N. S.*

CONTRACT, ASSIGNMENT OF — FORECLOSURE — EJECTMENT BY MORTGAGEE.—A leased eighty acres of school land from the State, and subsequently entered into a contract with B to surrender the lease to

him, B to advance the first payment and purchase the land from the State taking the contract in his own name, while A, upon repayment of the money advanced and interest thereon was to receive an assignment of the contract. A died, and B filed his claim against the estate for the money loaned, but afterwards withdrew the same and assigned the contract to the plaintiff, A's father. Neither A nor his wife, the defendant, had repaid any part of the money loaned and paid out by B. *Held* (1), that the plaintiff stands in the shoes of B, and if therefore entitled to a decree of foreclosure and sale for the amount due; (2) but that the plaintiff could not recover possession of the land in a legal action of ejectment, since he had only an equitable title, and in this State a mortgagee cannot maintain ejectment. Malloy *v.* Malloy, Supreme Court of Nebraska, September 21, 1892 (MAXWELL, C. J.), 52 N. W. Rep., 1097. —*J. A. McC.*

EQUITY, DISMISSAL IN—PAYMENT OF COSTS.—The plaintiff brought an action in the United States Circuit Court, which was dismissed upon the plaintiff's failure to appear, and an order directed ordering the plaintiff to pay costs. He subsequently brought an action in the State Court where upon a motion to dismiss the suit because of non-payment of costs in the Federal Court, it was *held*: that the rule of the common law which prevented the plaintiff from maintaining a second suit until the costs in a former action concerning the same subject-matter were paid, had not been adopted by the Code; but that the rule of equity which is governed by all the circumstances of any case, permitting the second action to proceed whenever a valid excuse is shown by the non-payment of costs, prevails. Union Pac. R.R. *v.* Mertes, Supreme Court of Nebraska, September 21 1892, MAXWELL, C. J. (52 Northwestern Rep., 1099).—*J. A. McC.*

GIFTS—INTER VIVOS—DELIVERY—ELECTION OF ACTIONS.—A donor had deposited bonds and coupons with a bank, and took a writing signed by the cashier acknowledging their receipt, and that they were to be sold and the proceeds placed to her credit. She subsequently endorsed this receipt as follows: "Please let my nephew have the amount of the within bill, and oblige L. P." The defendant, upon the faith of this receipt, paid over to the nephew the amount represented by the bill. *Held* (1), that delivery of the receipt was sufficient to uphold a gift of the money represented by it; (2) that in an action brought by the donor's administrators against the bank, the fact that the administrators formerly sued the donee and recovered judgment for the same funds constitutes an election and ratification of the payment made by the bank to the donee, and precluded a subsequent action against the bank on the same claim. Crook *v.* First National Bank, Supreme Court of Wisconsin, September 27, 1892, PINNEY, J. (52 N. W. Rep., 1131).—*J. A. McC.*

INSURANCE—CONDITIONS OF POLICY.—The fact that the loss of the party assured has not been submitted to arbitration before suit brought as provided by the conditions of the policy cannot avail as a defense, where the plaintiff upon seeking an adjustment of the loss soon after it occurred was met with a denial of all liability on the part of the defendant and an assertion that the policy was not in force. Savage *v.* Phœnix Ins. Co., Supreme Court of Montana, September 13, 1892, HARWOOD, J. (31 Pac. Rep., 68).—*J. A. McC.*

INSURANCE, LIFE—CONDITIONS IN POLICY—INSANITY—SUICIDE.—A life insurance policy did not cover the risk of suicide, but provided that in the event of the insured's suicide, "whether sane or insane," the company should be liable only for the "sum of the net premiums, previously received, without interest." The insured was found dead, and the coroner's jury found that the cause of death was insanity. There was no other evidence tending to show the circumstances or causes of death. Exceptions having been taken to the judgment of the lower court in an action of assumpsit in favor of the plaintiff for the amount of premiums: *held*, that there is no presumption of suicide, where the cause of death is "insanity," and the person was found dead, the circumstances of death remaining unknown. Under the facts, the presumption is that the death was natural or accidental, and the plaintiff is entitled to a directed verdict for the full amount of the policy. Waycott *v.* Metropolitan Life Ins. Co., Supreme Court of Vermont, August 25, 1892, per THOMPSON, J. TAFT, J., dissenting. (24 Ath. Rep., 992.)—*H. N. S.*

INSURANCE—POLICY—LIMITATION AS TO TIME OF BRINGING SUIT.—Where a policy of insurance provides that no suit or action against the company "unless such suit or action shall be commenced within twelve months next after the date of the fire from which such loss shall occur," and another clause of the same policy provides that the company shall be allowed sixty days after satisfactory proofs of loss shall have been submitted to the company in which to pay said loss; the twelve months limitation as to suit does not commence to run until the expiration of sixty days after presentation of proof of loss: Steel *v.* Phœnix Ins. Co., Circuit Court of Appeals of the United States, Ninth Circuit, July 18, 1892, HAWLEY, J., MCKENNA, J., dissenting (51 Fed. 715).—*H. L. C.*

MALICIOUS PROSECUTION—MALICE—PROBABLE CAUSE—ADVICE OF COUNSEL.—In an action brought for malicious prosecution it appeared, that the proceedings against the plaintiff had been commenced by the advice of the defendant's attorney; that at a hearing before a magistrate the plaintiff was discharged for want of jurisdiction; and that the prosecution was *nolle pros'd* in another county after the prosecutor had been advised by his attorney that, without reference to the truth of the charge, the prosecution was likely to fail for want of jurisdiction. *Held:* That the advice of counsel that the facts upon which the prosecution is based is not only a defence to an action for malicious prosecution, but taking such advice and acting thereon rebuts the inference of malice arising from the want of probable cause. That under the facts, neither the discharge by the magistrate nor by the Court was a fact from which either want of probable cause or malice could be inferred: McClafferty *v.* Philp, Supreme Court of Pennsylvania, October 3, 1892, per STERRETT, J. (24 Atl. Rep., 1042).—*H. N. S.*

MUNICIPAL CORPORATION—EXCAVATING BEYOND CITY LIMITS—LIABILITY FOR DAMAGES—ULTRA VIRES.—A declaration alleging that the mayor and council of a city had "cut or caused to be cut a deep ditch or excavation near, in and upon the south side of a lot of land belonging to petitioner" (outside the city limits), thereby causing damage, was rightly dismissed on demurrer, as it set forth no legal cause of action.

The acts of the city authorities complained of were *ultra vires*, they having, at the time the acts were done, no power or jurisdiction over the land in question. Consequently the municipal corporation is not liable for damages resulting from such acts: Lord *v.* Mayor, etc., of City of Columbus, Supreme Court of Georgia, per CURIAM, August 27, 1892 (15 S. E. Rep., 818).—*W. D. L.*

NEGOTIABLE INSTRUMENT—CONSIDERATION.—In an action on a note for $625 it appeared that as a consideration for the note, the plaintiff transferred to defendant a one-half interest in a note for $2,500, on which the maker thereof agreed to pay $1,250 as a compromise. *Held:* That the fact that afterwards in an action thereon, the latter note was declared to have been made without consideration does not affect the consideration for the note in suit, and plaintiff should recover: Bean *v.* Proseus, Supreme Court of California, September 12, 1892, PATTERSON, J. (31 Pac. Rep., 49).—*J. A. McC.*

RAILWAY COMPANIES—CONNECTING LINES—INTERSTATE COMMERCE ACT.—Section 3 of the Interstate Commerce Act prohibiting any common carrier from making or giving "any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatever," etc., does not compel any railroad company to receive freight from a connecting line and transport the same in the cars in which it is tendered, and to pay the usual car mileage on such cars. In the absence of a contract between connecting lines there is no obligation to transport freight in the cars in which it is tendered if the freight is not of such a character that it will be injured by transfer and if the company to which the freight is tendered has cars of its own ready for such service. But if the connecting line transports the freight in the cars in which it is tendered, the usual mileage for the use of such cars must be paid. Neither does said section compel a railway company receiving freight from a connecting line to advance or assume the payment of the charges due thereon for the transportation from the point of origin to the connecting line: Oregon Short Line & U. N. Rwy Co. *v.* Northern Pacific Rwy Co., Circuit Court of the United States, District of Oregon, June 13, 1892, FIELD, J., DEADY, J., dissenting (51 Fed. Rep., 465).

WILLS—CONSTRUCTION—BEQUESTS CHARGED ON LAND.—A testator, after making sundry pecuniary bequests, gave to a son and daughter "all the balance or residue of his estate, real and personal." After payment of the debts and costs of administration there was not sufficient left to pay the bequests. Upon a petition filed by the administrator for the sale of certain real estate to make assets, *held:* That in the absence of specific devises of real estate the testator, by including his real estate in the residuary clause along with his personal estate intended to treat them as a common fund, thereby charging his whole estate with the payment of the legacies; and it was therefore the duty of the administrator to sell the real estate for that purpose: American Cannel Coal Co. *v.* Clemens, *et al.*, Supreme Court of Indiana, September 13, 1892, per OLDS, J. (31 N. E. Rep., 786).—*H. N. S.*