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Attorney and Client, Contingent Fee, Claim by State

When the legislature has empowered the governor or other officers of the state, on its behalf, to appoint an agent to prosecute a claim, and to fix his compensation, *to be paid out of any amount received therefrom*, the officers named can make a contract authorizing a person to prosecute the said claim, and providing that his compensation shall be a certain per cent. of the amount collected by him, to be paid out of the proceeds thereof; and such a contract will not be void, as against public policy, because it makes the payment of compensation contingent on success: for the legislature, by the wording of the statute, expressly authorized the making of such a contract: *Davis* v. *Commonwealth*, (Supreme Judicial Court of Massachusetts,) 41 N. E. Rep. 292.

Bicyclers, Riding on Sidewalks, Liability to Prosecution

The Supreme Court of Pennsylvania has recently rendered a very peculiar decision in regard to the use of bicycles, holding, in *Commonwealth* v. *Forrest*, 32 Atl. Rep. 652, (1) That under the act of Pennsylvania of 1889, May 7; P. L. 110, § 3, which makes it a penal offence for any person to wilfully "ride or drive any horse or other animal," on a sidewalk, and that of 1889, April 23; P. L. 44, § 1, which provides that bicyclers shall be subject to the same restrictions as are prescribed by law in the case of persons using carriages drawn by horses, one who

rides a bicycle on a sidewalk is subject to the punishment prescribed for a violation of the former act; (2) That in a prosecution for riding a bicycle on a sidewalk it is no defence that the informer contributed nothing to the original construction of the sidewalk, or did not aid in keeping it in repair; nor that the sidewalk was on land appropriated by a turnpike company, when the latter consented to such use of its land; nor that the company consented to defendant's riding on the sidewalk, when the sidewalk was constructed and used as such along the public highway; nor that defendant and others using similar vehicles regularly rode on the sidewalk without complaint.

It is difficult to discover in the opinion of the court any sufficient grounds for such a decision. It rests entirely upon the supposed parity of the subject-matter of the two acts; but this is a pure assumption. In the first place, the act of April 23 makes bicyclers subject only to the *restrictions* imposed on horsemen,—not to their *liabilities*. These two things are by no means the same; granting that a penal liability implies a restriction, a mere prohibition does not imply a penal liability; and it is the restriction, not the liability, to which the bicycler is made subject. This is very cleverly dodged by the court, as follows: "The first-named act [May 7] imposed a penalty upon the driver of a horse who should wilfully drive him upon any sidewalk in any township within the commonwealth. The last-named act [April 23] subjected the bicycle rider to the same restriction as the driver of the horse. The driver of the carriage and the bicycle have the same rights and are subject to the same restrictions and penalties." Observe how neatly the court reads into the act the words which the legislature did not put there, and which, in view of their importance, and the nature of the subject, they must be held to have omitted intentionally! There could not be a clearer case of judicial legislation.

In the second place, the act of April 23 subjects the bicycler only to such restrictions as are imposed by law,—that is, to existing restrictions, not future ones. Again, if the legislature had intended to subject the riders of bicycles to future as well

as existing restrictions, it would have been very easy to have done so by making the act read "are *or shall be* prescribed by law." This would have avoided all question. But they did not do so; and not having done so, the court cannot, except in a clear case, do it for them.

Now, in regard to these two objections, it must be borne in mind that whatever their intrinsic weight may be, it is multiplied by the cardinal axiom of statutory construction, that a penal statute is to be construed strictly. The spirit of such a statute is not to be loosely held, at the pleasure of the court, to include cases not expressed. It was entirely within the power of the legislature to make the act of April 23 include future as well as existing restrictions, and to make the bicycler subject to liabilities as well as restrictions; but it did not do so: and no court has power to do for the legislature what it fails to do for itself. Such a decision as that in this case is a gross abuse of the judicial powers.

But there is another aspect of the case which is very delicately dealt with by the court. It seems to have felt that after all it was perilous to attempt to read the act of May 7 into the act of April 23; and it therefore expatiates at length on the fact that the bicycler is within the spirit of the act of May 7. This is the demonstration of the latter proposition. "It will scarcely be disputed that a bicycler is within the spirit of the act. It is wholly improbable the legislature intended to exempt him. The sidewalk is for foot travelers, men, women and children. A very few years of observation and experience in the new mode of traveling by bicycle has resulted in the conclusion that this vehicle is fully as dangerous to those walking on the same road as the carriage drawn by a horse. A carriage, with rider, weighing together two to three hundred pounds, propelled with the speed of a trolley car on a sidewalk, is full of peril to the life and limb of the foot traveler. No bicycler, with due regard to the safety and rights of his fellows, should demand the use, in common with foot travelers, of a walk, with such a vehicle; *and the intention of the legislature to debar him from such use is manifest, not only from the terms of the two acts, when*

read together, but also from the reason and spirit that prompted their passage."

The moral reflections that precede this last paragraph are most excellent; but they neither lead to the conclusion italicized, nor do they offer any warrant for supplying an intention that the legislature *did not manifest.* The fact is, as a careful examination of the act of May 7 will show, that the foot traveler is not only not mentioned, but was the very last thing in the mind of the legislature. The land-owner is empowered by the first two sections to build a sidewalk along his land at his own expense, using therefor the public highway, instead of his own land; and the drivers of horses or carriages are liable to penalty for driving thereon, because of the injury they may do the sidewalk, and the consequent expense of repair to the land-owner, not because of the danger to foot travelers. The language of the act shows this clearly. "If any person or persons shall wilfully and maliciously ride or drive any horse or any other animal, upon or into any board-walk or sidewalk or footway laid, erected or being on and along the side of any road or highway in any township of this Commonwealth, or shall *otherwise* wilfully break, injure, or destroy the same," etc. The word "otherwise" is the key to the construction of the act. It shows that the intention of the legislature was to protect the sidewalk, not the foot traveler thereon, and since it cannot be seriously argued that a bicycle can do damage to a sidewalk, bicyclers are therefore not within the spirit of the act. It is to be hoped that the next case of the kind will find the court in a better frame of mind. Meanwhile, Mr. Forrest has had to suffer.

Carriers, Passengers, Pullman Sleeper, Transfer of Ticket

Judge RITCHIE, of the Superior Court of Baltimore, has just decided a most interesting case of first impression, the report of which we would like to print in full, if space permitted. In it he holds that the purchaser of a section in a Pullman sleeping car for a given trip has the right on leaving the train before he reaches his destination, to transfer the use of his section to another first-class passenger, for the rest of the trip for which it was sold.

On grounds of public policy alone, an express contract entered into between the mayor and council of a city and one who is at the time a councilman of that city, for the performance of services for the city, will not be enforced, even though there be no penal statute prohibiting the execution of such a contract. While it remains executory, such a contract, though not absolutely void, may be avoided by the city at will; but when it was entered into in good faith, was for the doing of lawful and necessary work for the city, and has, without objection, been fully executed, the city receiving and retaining the benefit thereof, a recovery may be had on a *quantum meruit* for what the services were reasonably worth: *City of Concordia* v. *Hagaman*, (Court of Appeals of Kansas), 41 Pac. Rep. 132.

City Officers, Contract with City

So, in *Capron* v. *Hitchcock*, 98 Cal. 427; S. C., 33 Pac. Rep. 431, under a statutory provision that no officer of a city "shall be interested in any contract to which the city is a party, and any contract contrary to the provisions hereof shall be void," a contract by a city with one of its school directors for street work was held void.

It is not necessary, however, that the interest of the officer should be direct, in order to vitiate the contract. It will in general be sufficient to avoid it, if the officer have only an indirect interest therein, such as arises from being a member of a firm or corporation with which the contract is made, or the like: *State* v. *Consumers' Water Co.*, (N. J.) 28 Atl. Rep. 578. Such a contract, however, may be ratified by a subsequent resolution of councils, passed after the officer has ceased to be such; for the ratification is equivalent to a new contract: *Fort Wayne* v. *Lake Shore & Mich. South. Ry. Co.*, 132 Ind. 558; S. C., 32 N. E. Rep. 215.

The pet measures of the labor unions seem lately to have met with scant favor at the hands of the courts; and it seems to speak ill for the intelligence and honesty of the former bodies that such should be the case. Judge WHITE, of the Superior Court of Buffalo, in *Peo.* v. *Warren*, 34 N. Y. Suppl. 942, has recently declared

Constitutional Law, Employment of Aliens

void the statute of New York of 1870, c. 385, § 2, as amended by the act of 1894, c. 622, which makes it a crime for a contractor with a municipal corporation for the construction of public works to employ an alien as a laborer on such works. This he holds to be in violation of the constitution of New York, Art. 1, § 1, which provides that no citizen shall be deprived of any of his rights or privileges unless by the law of the land or the judgment of his peers, of Art. 1, § 6, which enacts that no person shall be deprived of liberty or property without due process of law, and of the Fourteenth Amendment to the Constitution of the United States, which forbids any state to make a law which shall abridge the privilege or immunities of citizens of the United States, or to deprive any person of liberty or property without due process of law; and also violates the third article of the treaty between the United States and Italy, which secures to resident Italians in the United States the same rights and privileges as are secured to our own citizens.

Further, the Supreme Court of Georgia has recently declared unconstitutional the act of that state of 1891, Oct. 1; P. L. 188, which required railroad, express and telegraph companies to give to their discharged employes or agents the causes of their removal or discharge, when discharged or removed, under penalty for non-compliance. The grounds upon which the decision rests are these: (1) Liberty of speech and of writing is secured by the constitution, and the correlative liberty of silence, not less important nor less sacred, is incident thereto; (2) Statements or communications, oral or written, wanted for private information, cannot be coerced by mere legislative mandate at the will of one of the parties and against the will of the other; (3) Compulsory private discovery, even from corporations, enforced not by suit or action, but by the terror of a statute, is not allowable when rights are already under the guardianship of due process of law; (4) That granting that the state may compel a discovery of matters in which it has an interest, the public, whether as many or one, whether as a multitude or as a sovereignty, has no interest to be protected or

Compelling Disclosure of Reasons for Discharge of Employes

promoted by a correspondence between discharged agents or employes and their late employers, designed not for public but for private information, as to the reasons for discharges, and as to the import and authorship of all complaints or communications which produced or suggested them; (5) That a statute which attempts to make it the duty of a corporation to engage in correspondence of this sort with its discharged agents and employes, and which subjects them in each case to a heavy forfeiture, under the name of damages, for failing or refusing to do so, is violative of the general private right of silence enjoyed by all persons, natural or artificial, from time immemorial, and is therefore utterly void: *Wallace* v. *Ga., C. & N. Ry. Co.*, 22 S. E. Rep. 579.

In *Crall* v. *Toledo & Ohio Central Ry. Co.*, 7 Ohio Cir. Ct. 132, it was decided that under the statutes of Ohio, requiring railway companies to furnish in writing, on demand of a discharged employe, the reasons for his discharge, but not declaring a refusal to do so unlawful, an employe could not maintain an action for the penalty prescribed for an *offence* against the act. The question of constitutionality was not raised, and, in view of the above decision, that could not easily have been done.

Limited, Vote at Elections

The Supreme Court of Pennsylvania, which is nothing if not original, has just held that the legislature has the power to pass a law limiting the number of candidates for office for which a voter can cast his ballot, when there are several to be elected to the same office at the same time. In order to support its decision, it has had recourse to a new principle of constitutional construction, which had escaped the sages of the law hitherto—that of the policy of the constitution. Observe the logic of this paragraph!—"A limited voting plan was recognized and adopted in the constitution because it was deemed wise that, as to offices non-partisan in character, or which at least should be, the minority party ought to have representation, and this could only be attained by limiting voting. Does the expression of this thing necessarily exclude other things not expressed?

As the same reasons for the plan exist as to like offices thereafter created, is not a necessary deduction that a like plan to that expressed should be followed? Does not the whole spirit of the constitution plainly so imply, while there is not a word indicating that such plan as to other or new courts is forbidden? In the case specified the constitution is mandatory. It says to the legislature in thus enumerating them, 'Thou shalt prescribe the limited voting plan.' In the cases not enumerated it is discretionary."

Comment on such language is needless.

Criminal Law, Attainder, Parricide, Inheritance

The Supreme Court of Pennsylvania has recently ruled, that since the constitution of that state, Art. I, § 18, declares that no person shall be attainted of felony, and §19 provides that no attainder shall work corruption of blood, nor forfeiture of estate, except during the life of the offender, and since the statute of descent and distribution enacts that on the death of a person his estate shall vest in his children, in the absence of a will, a son who murders his father in order to get immediate possession of his share of the father's estate becomes vested with that share, in the absence of a will: *In re Carpenter's Estate*, 32 Atl. Rep. 637. WILLIAMS, J., dissented from this ruling, saying tersely, "The son could not, by his own felony, acquire the property of his father, and be protected by the law in the possession of the fruits of his crime."

The decision of the majority seems to be in accord with the consensus of opinion. The only exception is in New York, where, in *Riggs* v. *Palmer*, 115 N. Y. 506; S. C., 22 N. E. Rep. 188, it was held that when a beneficiary under a will, in order that he might prevent revocation of the provision in his favor, and obtain the speedy enjoyment and possession of the property, wilfully murdered the testator, he was, by reason of his crime, deprived of any interest in the estate left by his victim, and therefore was not entitled to the property either as donee under the will or as heir or next of kin, supporting this conclusion by the never before heard of proposition, that *all laws*, as well as contracts, may be controlled in their

operation and effect by these general fundamental maxims of the common law, viz.: No one shall be permitted to profit by his own fraud, to take advantage of his own wrong, to found any claim upon his own iniquity, or to acquire property by his own crime. But the court prudently omitted to cite any authority for such a doctrine, except some broad rules of statutory construction which had no proper application to. the case in hand. The decision is thus caustically criticised in *Deem* v. *Millikin*, 6 Ohio Cir. Ct. 357: "It must be admitted that the most careful examination of *Riggs* v. *Palmer* fails to discover any clearly stated and clearly applicable principle justifying the decision. The spirit of fearless inquiry was exorcised early in the opinion, when every one contemplating a conclusion different from that reached by the majority was warned that if he should persevere, it would be disparagingly said of him '*qui haeret in litera haeret in cortice.*'"

Accordingly, it has been held in England that a wife who has murdered her husband is entitled to her share of his estate; *Cleaver* v. *Mutual Reserve Fund Life Assn.*, [1892] 1 Q.B. 147; in North Carolina, that a widow convicted as accessory before the fact to her husband's murder is entitled to dower in his lands: *Owens* v. *Owens*, 100 N. C. 240; S. C., 6 S. E. Rep. 794; in Ohio, that a child who murders his parent can inherit his estate: *Deem* v. *Millikin*, 6 Ohio Cir. Ct. 357; and in Nebraska, that a father who murders his daughter inherits from her: *Shellenberger* v. *Ransom*, 41 Neb. 631; S. C., 59 N. W. Rep. 935, reversing 31 Neb. 61; S. C., 47 N. W. Rep. 700. In the last case cited, the court was misled by a failure to closely criticise the case of *Riggs* v. *Palmer*, on which it rested its decision, and it very freely acknowledges that fact, and points out the fundamental error of *Riggs* v. *Palmer*, in the opinion on rehearing, in 41 Neb. 631; S. C., 59 N. W. Rep. 935.

It is true that the beneficiary in a life insurance policy cannot recover, if he has feloniously caused the death of the assured, nor can his assignee do so: *New York Mutual Life Ins. Co.* v. *Armstrong*, 117 U. S. 591; S. C., 6 Sup. Ct. Rep. 877; but this is because the right in such a case is founded

upon contract, not upon law. This very point was admitted by the Court of Appeal in *Cleaver* v. *Mutual Reserve Fund Life Assn.*, [1892] 1 Q. B. 147, while at the same time it held that as the wife could not take by reason of her crime, the insurance money became part of the estate of the insured, and went to her as his legal representative.

Deed, Title to Vest after Death of Grantor, Effect

An instrument given by a father to his children, in form an absolute deed, and executed as such, but not attested as a will is required to be, which contains the following clause, "provided always, and it is expressly understood and agreed, that this conveyance is not to take effect till after my death, and that, at my death, the title to the foregoing lands is to vest immediately in my said children," will be construed as a deed reserving a life estate to the grantor, if it was delivered when executed, and the grantor lived on the land with the grantees until his death, without attempting to make any other disposition of the land: *Abney* v. *Moore*, (Supreme Court of Alabama,) 18 So. Rep. 60.

There is a full annotation on this subject in 1 AM. L. REG. & REV. (N. S.) 140.

Elections, Ballots, Marking

The uncertainty as to the validity of irregularly marked ballots under the Australian Ballot system still continues. The Supreme Court of California is the latest to pass upon this question. In *Tebbe* v. *Smith*, 41 Pac. Rep. 454, that court, while holding that the provisions as to the marking of ballots are in general mandatory, yet concludes that under the laws of that state, which provide (1) That there shall be a margin on the ballot one-half inch wide, at the right hand of the names, so that the voter may clearly indicate, in a manner afterwards provided, the candidate for whom he votes, and that the clerk shall have printed in it, "To vote for a person, stamp a cross (x) in the square at the right of the name;" (Pol. Code Cal. § 1197;) (2) That the voter shall prepare his ballot by making a cross after the name of the person for whom he intends to vote;

(Pol. Code Cal. § 1205;) (3) That any ballot not made as provided in the act shall be void, and shall not be counted; (Pol. Code Cal. § 1211;) and (4) That no voter shall place any mark upon his ballot by which it may be afterwards identified as the one voted by him; (Pol. Code Cal. § 1215;)—that though the statute impliedly requires the printing of a square for the cross-mark at the right of the name of each candidate, yet as it does not expressly so provide, that requirement cannot be considered as making it mandatory on the voter to mark in the square; and therefore ballots with crosses placed opposite the candidate's name, but without the square, should be counted as votes for the candidate opposite whose name the mark is placed; but a ballot with the letter "J" written in pencil in the blank space left for the insertion of the name for an office is void, and should not be counted.

In the same election, there appeared on all the ballots cast, written on the blank space under the office of justice of the peace, "G. G. Brown, ——— Republican." The evidence showed that the writing was all done by the same person, but did not show who did the writing, nor whether it was on the tickets when they were put in the voters' hands, and that there was but one person in the precinct lawfully assisted in marking his ballot; and it was accordingly held that these ballots, except the one of the voter lawfully assisted, were not made as provided by the ballot act, and should therefore be rejected, under § 1211 of the Political Code.

Names Written in same Hand-writing

It was also decided in this case, that under Pol. Code Cal. §§ 1160, 1162, which provide that the polls shall be opened at sunrise, and be kept open till 5 P. M., and that a ballot box must not be removed from the polls, in the presence of bystanders, the votes cast at a precinct where the polls were not opened until 10 A. M., and the ballot box was taken by the election officers with them to dinner, are void, and should not be counted.

Time of Opening Polls, Removal of Ballot Box

However, in *Moyer* v. *Van de Vanter*, 41 Pac. Rep. 60, the Supreme Court of Washington has decided that the statute of that state, (Gen. Stat. Wash. § 391,) which provides that

any ballot not indorsed by the official stamp and the initials of an inspector or a judge of election shall not be counted, is in conflict with the provisions of the constitution, (Const. Wash. Art. 6, §§ 1 & 6,) which declare that all persons possessing the requisite qualifications shall be entitled to vote at all elections, and that all elections shall be by ballot.

The cases on the subject of ballot marking will be found in 1 AM. L. REG. & REV. (N. S.) 748; 2 AM. L. REG. & REV. (N. S.) 85, 155, 222, 491, 556.

Citizenship by Birth

The Supreme Court of New Jersey, in *Benny* v. *O'Brien*, 32 Atl. Rep. 698, has recently been obliged to reaffirm the rule of citizenship which prevailed at common law, and was enacted by the Fourteenth Amendment to the Constitution of the United States, that all persons born in the United States of parents domiciled here are citizens of the United States and of the state wherein they reside, with the exception of children born of persons resident here in the diplomatic service of foreign governments.

In *Lynch* v. *Clarke*, 1 Sandf. Ch. (N. Y.) 583, a child, born in New York of alien parents, during their temporary sojourn in that city, who returned with them the same year to their native country, and thereafter always resided there, was held to be a citizen of the United States, following the rule of the common law, that all persons, born within the king's allegiance, become subjects, whatever the situation of their parents.

In *In re Look Tin Sing*, 10 Sawy. 353; S. C., 21 Fed. Rep. 905, Justice FIELD held that a person born within the United States, of Chinese parents residing therein, and not engaged in any diplomatic or official capacity under the Emperor of China, is a citizen of the United States. The same was decided in *Ex parte Chin King*, 35 Fed. Rep. 354; *In re Yung Sing Hee*, 36 Fed. Rep. 437; *In re Wy Shing*, 36 Fed. Rep. 553; *Gee Fook Sing* v. *United States*, 49 Fed. Rep. 146. But this rule does not apply to the citizens of independent political communities existing within the borders of a larger state, even though the latter exercises a protectorate over them; and therefore a child born of Indian, or of Indian and alien parents,

is not a citizen of the United States, though born within its territory: *Elk* v. *Wilkins*, 112 U. S. 94; S. C., 5 Sup. Ct. Rep. 41; *McKay* v. *Williams*, 2 Sawy. 118.

In *Denver Consolidated Electric Co.* v. *Simpson*, 41 Pac. Rep. 499, the Supreme Court of Colorado has very clearly defined the responsibility of a company which maintains electric wires in a public highway. Like other persons using instrumentalities which may become dangerous to others if misused, they are only bound to exercise that reasonable care which a reasonably prudent person would exercise under similar circumstances; but, as the business is attended with great peril to the public, the care to be exercised is commensurate with the increased danger. Accordingly, evidence that the wire of an electric light company, so highly charged with electricity as to be dangerous to persons coming in contact with it, is detached from its fastenings and hangs down in an alley, so as to endanger public travel, it is *prima facie* evidence of negligence on the part of the company; and if degrees of negligence are not recognized, an instruction that the company is bound to use the highest degree of care in the maintenance and construction of its wires is not a prejudicial error.

Electric Wires, Negligence

It was also decided in the same case, that the fact that a complaint for injury caused by coming in contact with a wire belonging to an electric light company contains allegations assuming that the defendant company is an absolute insurer of the public against injury by its wires will not render it bad on that ground, when it also alleges that the location and defective condition of the wire in question was due to negligence of the defendant in the building of its line and keeping it in repair.

Pleading, Surplusage

The Supreme Court of Vermont has lately held, that when the water of a stream running through a farm is taken by a village for its waterworks, the owner is entitled not only to damages for being deprived of the water for farm purposes, but also to damages for being deprived of the opportunity to sell water rights to prospective purchasers of village

Eminent Domain, Appropriation of Water, Damages to Riparian Owner

lots plotted out for sale in a part of the farm: *Bridgeman* v. *Village of Hardwick*, 32 Atl. Rep. 502.

Gambling Contract, Wager, Recovery, Stock Gambling

In *Strachan* v. *Universal Stock Exchange, Ltd.*, [1891] 2 Q. B. 329, an action brought to recover back securities deposited as margin for differences which might arise on gambling transactions in stocks and shares, the Court of Appeal of England has recently held, that the Gaming Act of that country of 1845, which enacts that "no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or other valuable thing . . . . which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made," applies only to money or valuable things deposited as the stake to abide the event of a wager, and does not apply to money or valuable things deposited as security for the observance by the loser of the terms of the wagering contract; and that the authority to retain the securities may be revoked and the securities recovered back at any time before the holders have appropriated them to their own use.

Labor Unions, Conspiracy

In a recent case, *State* v. *Dyer*, 32 Atl. Rep. 814, the Supreme Court of Vermont has laid down several valuable rules with regard to the prosecution of members of a labor union for conspiracy to drive a mechanic out of his employment. The reason of their action was that the mechanic would not join a union. The information for conspiracy charged that its purpose was to prevent the mechanic "from obtaining work or employment or continuing in said work and employment" with a certain corporation, "or in any other shops or works;" and this was held not to be bad, as charging offences in the alternative, since the information also alleged that the mechanic was an employe of the corporation when the conspiracy originated.

There was evidence that all the persons charged were members of the union; that the mechanic was compelled by them, as members of the union, to quit his employment; that one of the accused was secretary, and recorded the minutes of an

executive meeting at which a report of the mechanic's case was made, and at that meeting was appointed as one of a committee to investigate the trouble, and subsequently acted as such; and it was accordingly held that the secretary was a conspirator.

On the trial of this case, conversations between certain of the conspirators and one with whom the mechanic, after being driven from his employment, had engaged to work, taking place a week after the mechanic had been driven from his first employment, which connected the alleged conspirators with the conspiracy, and in which the employer stated that he canceled his agreement to employ the mechanic when he heard that he had been compelled by the union to leave his first employment, and gave the reasons the mechanic gave for not joining the union, were held admissible in evidence, as a part of the principal act.

Negligence, Stop, Look and Listen, Passenger in Vehicle

It is a corollary of the doctrine that the concurrent negligence of a driver is not to be imputed to a passenger who has no control or authority over him, that the passenger is also not to be held chargeable with personal negligence for a failure to stop, look and listen when approaching a railway crossing; for he cannot compel the driver to stop, and is under no obligation to jump out of the vehicle. Accordingly, it has been lately decided by the Supreme Court of Minnesota, that when the plaintiff was riding at the invitation of the owner, in a wagon owned and driven by another, having no control over the driver or his management of the team, not standing to the driver in the relation of master to servant, or principal to agent, and not being engaged in a common enterprise with him, and there being no evidence that the plaintiff knew that the driver was incompetent or was not keeping a proper lookout for trains at the crossing, the former could not be charged with either imputed or personal negligence as matter of law, but that the question was one of fact for the jury, although it appeared that if the plaintiff had exercised the degree of vigilance in "looking and listening" required of one in control and management

of a team, he would have discovered the approaching train in time to have avoided injury: *Howe* v. *Minneapolis, St. P. & S. S. M. Ry. Co.*, 64 N. W. Rep. 102.

A similar conclusion was reached in *O'Toole* v. *Pittsburgh & Lake Erie R. R. Co.*, 158 Pa. 99; S. C., 27 Atl. Rep. 737, where the court held that a passenger in a street car approaching a grade crossing of a railroad is under no obligation to look out and listen for approaching locomotives, or to jump off the car in apprehension of a possible collision. These cases are in apparent conflict with those which hold that the passenger is chargeable with negligence if he remains in the vehicle with knowledge of impending danger: *Brickell* v. *N. Y. Cent. & Hudson R. R. R. Co.*, 120 N. Y. 290; S. C., 24 N. E. Rep. 449; *Dean* v. *Pennsylvania R. R. Co.*, 129 Pa. 514; S. C., 18 Atl. Rep. 718. But the fact is that in both the cases cited the decision is made to cover more ground than the circumstances would warrant. In the New York case, the plaintiff and the driver were on the same seat of a top buggy, the top of which was raised, which prevented them from seeing anything except in front, and there was a snowstorm in progress at the time. These facts made the danger of collision greater, and therefore imposed on the plaintiff the duty of at least cautioning the driver to be careful. There was no evidence that he did this, and he was accordingly held not to have freed himself from the suspicion of negligence. Similarly, in the Pennsylvania case, the plaintiff knew that he was approaching the crossing at a fast trot, (in other words, that the driver was acting negligently,) and yet took no precautions himself. But there was no effectual precaution he could have taken, except to remonstrate with the driver. Here, then, lies the distinction. If the passenger looks for a train, when approaching a crossing, or requests the driver to go carefully, he has done all he can do, and cannot be charged with personal negligence. If he neglects to do so, he is so chargeable. Now, in the Howe case, the evidence showed that the plaintiff did look and saw nothing; so that the case is different in that respect from the two last cited from New York and Pennsylvania, and there is therefore no conflict between them.

Taxation, Exemption, Hospital Farms

According to a recent decision of the Supreme Court of Pennsylvania, farms purchased and permanently used by a hospital for hospital purposes, as part of the hospital plant, and as an open air sanitarium, in actual operation for such purposes, are exempt from taxation as a part of the hospital property, though separated from the main hospital, used for hospital purposes only during the summer months, and operated incidentally for profit in order to reduce expenses: *Contributors to Pennsylvania Hospital* v. *Delaware Co.*, 32 Atl. Rep. 456.

Devise, Will, Issue Living, Child en ventre sa Mere

Judge CHITTY, of the Chancery Division of England, has lately held, that a child *en ventre sa mère* is to be considered as living so as to vest in the parent on the death of the life tenant a devise made by a testator to A. for life, and on her death to the parent of the child, "for her absolute use and benefit in case she has issue living at the death" of A., "but in case she has no issue then living," then over, when the parent was *enceinte* at the time of A.'s death: *In re Burrows*, [1895] 2 Ch. 497.