

## PROGRESS OF THE LAW.

AS MARKED BY DECISIONS SELECTED FROM THE ADVANCE  
REPORTS FOR DECEMBER.

In *The Mariposa*, [1896] P. 273, the defendants' steamship, three days out from Montreal for Liverpool, stranded on the coast of Labrador. The master landed the passengers and crew, provided them with food and accommodation, and the same day intercepted a passing steamer which, at the request of the master, conveyed the passengers to their destination. The following day a steamer, passing in the opposite direction, at the like request, took off the greater part of the crew, conveyed them to Quebec, and, on the way, telegraphed for assistance to be sent. The defendants' vessel became a total loss, materials worth only £335 being saved. The contract with the passengers provided that the defendants should not be liable "for loss or delay from the act of God . . . perils of the seas, rivers, or navigation . . . or the wrongful act of the company's servants." The owners of the passing steamers brought an action against the defendants for salvage, or, in the alternative, for remuneration for services rendered at request. The defendants tendered £200, which was refused; but Gorell Barnes, J., ruled that the tender must be upheld, as the passengers and crew were not in any danger, so that no life salvage was claimable, and as the defendants were under no obligation to forward the passengers to their destination, the master, in transshipping them, acted as the agent of the passengers, not of the defendants.

The Supreme Court of Georgia has lately decided a very interesting question, holding that while an entry in a bank-book or "pass-book" purporting to show that the owner of the book has credit in a bank for a specified balance is not conclusive or binding upon the bank, yet, when a banker issued and delivered such a book containing an entry of this kind which was *ab initio* false, and when, after this was done, a third person, who had seen the book,

Admiralty,  
Life Salvage,  
Authority of  
Master

Banks and  
Banking,  
Entry in  
Bank-book,  
Estoppel to  
Deny,  
Misrepresentation,  
Concealment

applied to the banker for information as to the genuineness and accuracy of the apparent credit, at the same time disclosing his reasons for making the inquiry, and the banker, while expressly declining to give in terms the information thus sought, did, by concealing the truth, or by other means, induce the inquirer to believe the entry in the book was true and correct, and, in consequence of that belief, to make with the owner of the book a contract by which the inquirer, though exercising due care in the premises, was defrauded and suffered a loss, the banker was, within proper limits, liable in damages to the former on account of that loss, if, under the special circumstances of the case, he was under an obligation to communicate to the inquirer the exact truth of the matter : *James v. Crosthwaite*, 25 S. E. Rep. 754.

The Supreme Court of Tennessee has recently held that under the statute of that state, which provides that loans made by a building association shall be made "in open meeting to the highest bidder," (M. & V. Code Tenn. § 1751,) loans made at a fixed premium by agreement between the borrowers and the association are usurious, if in excess of the legal rate of interest :

*McCauley v. Workingman's Bdg. & Loan Assn.*, 37 S. W. Rep. 212 ; *Post v. Mechanics' Bdg. & Loan Assn.*, 37 S. W. Rep. 216.

In the latter of these cases it was further decided that, in distributing the assets of an insolvent building association, the rights of holders of stock in a series declared through mistake to be matured, when in fact it had not matured, in respect of the assets of the corporation, is the same, in effect and as to results, as that of holders of unmatured stock who have given notice of withdrawal. They share *pro rata* with other stockholders, and are not to be regarded as creditors of the association.

Holders of certificates of full-paid stock issued by a building and loan association, calling for payments of dividends at regular intervals, are not creditors of the association, as distinguished from its other members, since such certificates are not promises to pay under the law merchant ; and in case of the insol-

**Building  
and Loan  
Associations,  
Premiums,  
Usury**

**Full paid  
Stock,  
Rights of  
Holders**

vency of the association, the holders of such certificates, are only entitled, like other members, to a share of the assets proportionate to the amount they have paid in : *Towle v. American Building & Loan Assn.*, (Circuit Court, N. D. Illinois,) 75 Fed. Rep. 938.

In a recent case before the Supreme Court of Minnesota, it appeared that the defendant company had issued to one D. a mileage ticket or book, which expressly provided that it was to be used only by D., "whose signature appears on the last page." It also provided that it was subject to the conditions named in the contract, "and made part hereof." One of these conditions was that the ticket was not transferable, and, if presented by any other than the original holder, "whose signature is hereon," the conductor would take it up, and collect full fare. The ticket was never signed by D. The plaintiff purchased it from a broker, and presented it in payment of his fare on one of the defendant's trains. The conductor took it up, and refused to return it to the plaintiff, whereupon the latter refused to pay his fare unless the conductor would return the ticket. The employes of the defendant then attempted to remove the plaintiff from the train, for which he brought suit to recover damages. The trial resulted in a verdict for the defendant, and a new trial was refused. From this the plaintiff appealed; but the order was affirmed, on the grounds (1) that the plaintiff had no right to ride on the ticket, the fact that it was not signed by the original purchaser being immaterial, since, by accepting the ticket, he accepted all the terms and conditions contained therein; (2) that he had no right to refuse to pay his fare, unless the conductor would return the ticket; (3) that even granting that the conductor had no right to take up the ticket, (the majority of the court being nevertheless of opinion that he had that right,) it was the duty of the plaintiff to pay his fare or leave the train, and then pursue his remedy against the defendant for wrongfully withholding the ticket : *Rahilly v. St. Paul & D. Ry. Co.*, 68 N. W. Rep. 853.

**Carriers,  
Tickets,  
Conditions,  
Transfer,  
Payment of  
Fares**

According to a decision of the Court of Appeal of England, a beneficial society, whose funds are raised by means of the subscriptions, fines and forfeitures of its members, in order to provide annuities for the widows of its deceased members, without distinction, is a mutual insurance society, and not a charity: *Cunnack v. Edwards*, [1896] 2 Ch. 679, reversing [1895] 1 Ch. 489, 1895; but in the opinion of Kekewich, J., of the Chancery Division, such a society, whose object is to provide for the relief of members, their widows and children, if "in distressed circumstances," and whose funds are in part raised by voluntary donations and bequests from outsiders, is within the definition of a charity, as laid down in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A. C. 531, 1891; *In re Buck*, [1896] 2 Ch. 727.

The Court of Appeals of New York, in *Rathbone v. Wirth*, 45 N. E. Rep. 15, has affirmed the decision of the Appellate Division of the Supreme Court in *Rathbone v. Wirth*, 40 N. Y. Suppl. 535, 1896, (see 35 AM. L. REG. N. S. 642.) that the Act of New York of 1896, c. 427, is unconstitutional. That act created a board of four police commissioners for the city of Albany, to be elected by the common council, and provided that not more than two of them should belong to the same political party; that for the purpose of such election, the members of the council attending the meeting should constitute a quorum; that each member of the council should be entitled to vote for not more than two commissioners; that if a vacancy should occur in the board of police commissioners, it should be filled by appointment by the mayor, on the written recommendation of a majority of the members of the common council belonging to the same political party as the commissioner whose office should become vacant, and that no person should be eligible to the office of police commissioner unless he was a member of the political party having the highest or next highest representation in the common council.

Charity,  
Beneficial  
Society

Constitutional  
Law,  
Election of  
Officers,  
Minority  
Representa-  
tion

In a recent case before the Circuit Court for the District of Indiana, Baker, Dist. J., very clearly and succinctly stated the principles upon which the imposition of the penalty for contempt rests, as follows: "Constructive contempts may be distributed into two general classes, namely: First, those wherein the contemptuous acts primarily affect public rights or the due administration of public justice; and, second, those which primarily affect private rights, and only remotely and incidentally affect public rights or public justice. When the contempt consists in the failure or refusal of the party to do or refrain from doing something which he is ordered to do or refrain from doing for the benefit or advantage of the opposite party, the proceeding is not criminal, but is civil, and remedial in its nature. And in this sort of contempt the intention with which the act was committed is immaterial, except in fixing the proper measure of punishment. The injury suffered by the complaining party is neither increased nor diminished, nor in any wise affected, by the state of mind towards the court of the party doing the forbidden act. The breach of the injunction consists in doing or failing to do the thing commanded, and not in the intention with which the act was done." He, therefore, held that as the defendant had been enjoined, at the suit of a water company, from allowing any deleterious substance to escape from its factory, into a river, the fact that it negligently permitted a reservoir, built by it on the bank of the river, to break and discharge its contents into it, was a contempt punishable by fine, or by fine and imprisonment, though there was no wilful purpose to violate the injunction: *Indianapolis Water Co. v. American Strawboard Co.*, 75 Fed. Rep. 972.

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According to a recent decision of Vaughan Williams, J., of the Chancery Division of the High Court of Justice of England, when one person is an officer of two corporations, his personal knowledge is not necessarily the knowledge of both the corporations. The knowledge which he has acquired as officer of one:

**Corporations,  
Common  
Officers,  
Imputation of  
Knowledge**

corporation will not be imputed to the other unless he has some duty imposed on him to communicate his knowledge to the corporation sought to be affected by the notice, and some duty imposed on him by that company to receive the notice; and if the common officer has been guilty of fraud, or even of irregularity, the court will not draw the inference that he has fulfilled these duties: *In re Hampshire Land Co.*, [1896] 2 Ch. 743.

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The Supreme Court of the United States has lately held that it has no jurisdiction of a writ of error from the decision of the Circuit Court of Appeals, affirming the judgment of a circuit court rendered in a suit to recover damages for infringement of a copyright, when the plaintiff claims no right under the copyright laws of the United States, but maintains the action wholly upon the right given by the common law: *Press Pub. Co. v. Monroe*, 17 Sup. Ct. Rep. 40.

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The Supreme Court of Kansas has partly overruled the dictum in *State v. Hall*, 40 Kans. 338, to the effect that the rule against the trial of an offender for another crime than that for which he has been extradited is applied "in cases of separate jurisdictions, whether the separate jurisdictions are cities, counties, districts, states, or foreign countries," holding that a district court of the county where a felony has been committed has jurisdiction to try the alleged offender, when duly bound over in regular process, though he was originally arrested in another county without warrant and forcibly brought into the county where the crime was committed: *State v. May*, 46 Pac. Rep. 709.

This dictum is correct only as to the case of a regular extradition from a foreign country. In all other cases of surrender, and in all cases of kidnapping or illegal arrest, after the court once gets possession of the accused, it can try him for all the crimes in the calendar: See 35 AM. L. REG. N. S. 782.

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The Supreme Court of Tennessee recently passed upon a

very interesting question of law, arising out of a series of transactions which, as the court says, "are certainly unique in character." One Robertson, the owner of certain real estate, executed a deed of it to a fictitious person, and then drew a deed of trust to secure bonds, signed it by that fictitious name, procured a certificate of acknowledgment, had it recorded, and delivered it to the grantee. The property was held under the deed of trust by the grantee; but the purchaser at the sale, one of the creditors of the owner of the land, becoming aware of the irregularity of the transaction, filed a bill charging that the deed was ineffectual to convey title, because there was no such grantee, and that the deed of trust was ineffectual to convey title to the trustee, because it was a forgery. The first contention was upheld, on the ground that a deed to a fictitious person is void, and leaves the title in the grantor; but the second was rejected, and it was held that the title passed, and that the sale under the trust was valid: *Wiehl v. Robertson*, 37 S. W. Rep. 274.

The peculiar political situation that developed this fall has given birth to a number of election decisions involving not only new, but very odd and interesting points. Some of the most extraordinary of these are to be found in a recent decision by the Supreme Court of Michigan, *Baker v. Board of Election Commissioners of Wayne County*, 68 N. W. Rep. 752. The ballot law of that state, (Laws Mich. 1895, No. 271, § 11,) provides that the state committee of any political party shall adopt a vignette to be painted at the top of the column of the ballot assigned to that party as a distinctive heading thereto. The city charter of Detroit, as amended by the Laws of 1895, No. 468, provides that no vignette shall be painted on any ballot; that the mode of conducting state and county elections shall be in the manner provided for the election of city officers; that the provisions of that act shall govern when applicable, notwithstanding the provisions of the general law, unless the latter shall in terms be declared applicable to city elections;

Deed  
To Fictitious  
Person,  
Validity

Elections,  
Preparation of  
Ballot

and that it shall be the duty of the election commissioners of the city to print the ballots for use in the said city in the manner described in the act for the election of city officers. It was contended that this act prevented the use of the vignette on the ballots in the city of Detroit, but it was held that the provision that no vignette should be used applied only to the ballots used for the election of city officers, and not to those used for the state, county and congressional officers.

The ballot act of 1895 also provides, (§ 14.) that, in arranging the ballots, it shall be the duty of the election commissioners of each county to place the ticket of the party having the greatest number of votes within the county at the last preceding election first in the ballot, the other tickets to follow in the regular order of their numerical strength at that election. This provision was held mandatory, and under it, the second place on the ticket belonged to the Democratic party. But it happened that the regularly called Democratic state convention met on the same day and in the same city as the People's party and the Union Silver party. The three conventions entered into an arrangement by which they met as one body, and nominated a fusion ticket, which it was agreed should be called the "Democratic People's Union Silver Ticket," and they also adopted a new and distinctive vignette. In this joint convention, the People's party and the Union Silver party were together accorded the same number of votes as the Democratic party. The chairman of the Democratic state central committee applied for a mandamus to compel the election commissioners to place the ticket so nominated second on the ballot, in the place belonging to the Democratic party; but this was refused, on the ground that that ticket was not the Democratic ticket.

After the nomination of this fusion ticket, a mass meeting composed wholly of Democrats was held, at which presidential electors and candidates for state officers were placed in nomination as a Democratic ticket. This mass meeting was not called or held under the auspices of any previous state organi-

zation ; and the ticket nominated thereat was also refused the second place on the ballot, on the ground that it could not be considered the regular Democratic ticket.

The Supreme Court of Montana has also had before it some very interesting election cases. In one of these, a candidate for district judge was nominated by a certificate signed and filed by the electors of the Silver Republican party in the counties composing the district. The certificate of nomination was filed under the direction of the state and county central committees of the district, and it was sought to place the nominee's name on the official ballot under the head of the Silver Republican party. The relator sued out a writ of injunction to restrain the clerk from so doing, and this writ was made permanent, on the authority of *State v. Rotwitt*, (Mont.) 46 Pac. Rep. 370, 35 AM. L. REG. N. S. 779, the court holding (1) That the direction of the central committees did not make the nomination a party action, so as to take it out of the rule that a nomination of a regular existing party cannot be made by a certificate of electors ; and (2) That such a nominee could not be placed on the ballot as an independent candidate, since it was apparent that the electors who signed the certificate of nomination intended to nominate him as a Silver Republican, and it would not be presumed that they would have signed a certificate to nominate him as an independent candidate : *State v. Reek*, 46 Pac. Rep. 438 *State v. Rotwitt* was also followed in *State v. Tooker*, (Mont.) 46 Pac. Rep. 530.

The same court, following the rule already announced in several states : *People v. District Court*, 18 Colo. 26, 1892 ; *Rival Conventions Shields v. Jacobs*, 88 Mich. 164, 1891 ; *State v. Allen*, (Neb.) 62 N. W. Rep. 35, 1894 ; *Phelps v. Piper*, (Neb.) 67 N. W. Rep. 755, 1896 ; has decided that it is not the duty of the courts to determine which of two rival conventions, held by opposing factions of the same political party, and each composed of delegates regularly elected to a convention called by the constituted authorities of the party, is entitled to represent the party, by enjoining the county

clerk from placing the names of the nominees of either convention on the official ballot: *State v. Johnson*, 46 Pac. Rep. 440. It also refused to decide which of two rival conventions, each claiming to be the only regular one of the party, was such in fact, on the ground that the relator had delayed so long that the court could not decide the question before the time when, by law, the official ballot must be printed: *State v. Reek*, 46 Pac. Rep. 442.

This court further holds that a certificate filed with the county clerk, purporting to certify to the nomination of the persons named therein by the county central committee of a party, no convention of which had ever delegated such power to a committee, does not entitle the alleged candidates to a place on the official ballot: *State v. Tooker*, 46 Pac. Rep. 530; and has passed upon two important cases involving the validity of a nominating convention. In the first of these, *State v. Tooker, supra*, a suit to enjoin the county clerk from placing on the official ballot the names of certain persons as candidates of the Silver Republican party, under authority of a certificate of nomination purporting to come from a county convention of said party, it appeared that the alleged candidates were nominated at a meeting participated in by less than fifty members of the "Silver Republican Club," which had some four hundred members; that most of the persons nominated at this meeting were not Silver Republicans, but men who had already been nominated by various other parties; that no primaries were held, no delegates chosen, no call for a convention made, nor any notice thereof given, other than information of the club's proceedings, published in a daily paper as news items, and a statement on a banner that the club met every Wednesday night; and that the chairman who presided at the meeting and signed the certificate of nomination did not know till after it was filed that the meeting was a convention, but supposed it was merely a meeting of the club. Under these circumstances, it was held that the meeting was not a party convention, within § 1310 of the Political Code of Montana, defining a convention as "an organized assemblage of electors or delegates representing a political party or prin-

·ciple," and authorizing such a convention to nominate candidates for public office; and that the names on the certificate were consequently not entitled to a place on the official ballot.

In the other case, *State v. Johnson*, 46 Pac. Rep. 533, electors who had assembled by personal invitation, and who represented but one-fourth of the precincts in one county, organized as a political party by the election of a chairman and secretary, and the appointment of committees. The assembly then proceeded as a county convention, and nominated a county ticket. The county convention adjourned *sine die*, and the same electors immediately proceeded to hold a state convention. No call for a state convention was ever given; no delegates to the state convention were ever elected by any county convention; no credentials as such were ever given; no notice was attempted to be published of a state gathering of the new party; and no delegates other than those who first assembled, and who sat as a county convention, took part in the proceedings. Upon these facts it was held there had been neither a county nor a state convention with authority to nominate candidates, and the latter were refused a place on the official ballot.

The Supreme Court of California holds that when the last day on which a certificate of nomination can be filed falls on a Sunday or legal holiday, it must, in order to be in time, be filed the day before: *Griffin v. Dingley*, 46 Pac. Rep. 457.

According to the Supreme Court of Kansas, after the hearing and decision of objections to a nomination certificate filed by the proper authority, the further duties of the secretary of state are ministerial only. He has no right to challenge, and the courts have no authority to consider, the motives that may have actuated the nominating convention, and he should certify any proper and requisite matter duly appearing on the nomination certificate: *Breidenthal v. Edwards*, 46 Pac. Rep. 469.

It was decided in the same case, that a vice-presidential candidate, whose name, together with that of his associate

**Withdrawal of Candidate** presidential candidate, has been certified by authority of a state convention of his party as an addition to the party appellation, and who has not declined the national nomination, nor withdrawn as a candidate in the state, has no right to forbid such use of his name on the electoral ticket nominated by his party in the state, under the section of the ballot law which provides that "any person whose name has been presented as a candidate may cause his name to be withdrawn from nomination by his request in writing," etc.

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The Supreme Judicial Court of Massachusetts has recently held, in accordance with the universal current of decision, (unaffected by the objurgations of well-meaning **Injunctions, Conspiracy to Injure Business, Patrolling** but impractical theorists,) that a continuing injury to property or business may be enjoined, though it be also punishable as a crime; and that consequently the maintenance of a patrol of two men in front of the plaintiff's premises, in furtherance of a conspiracy to prevent, whether by threats and intimidation, or by persuasion and social pressure, any workmen from entering into, or continuing in his employment, will be enjoined, though such workmen are not under contract to work for the plaintiff: *Vegetahn v. Guntner*, 44 N. E. Rep. 1077. Field, C. J., and Holmes, J., dissented.

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When a life insurance policy is assigned, payable to the assignee, "as interest may appear," in consideration of his real promise to support the assignor, and to receive from the proceeds of the policy such sums as he might advance for that purpose, the assignor may maintain a bill to redeem the policy, on the failure of the assignee to comply with his agreement, and on repayment of the sums advanced, though the policy has meanwhile been assigned to a third person without qualification: *Bohleber v. Waelden*, (Court of Appeals of New York,) 44 N. E. Rep. 1041, reversing 30 N. Y. Suppl. 312.

The House of Lords has recently decided, affirming *Ebbetts v. Conquest*, [1895] 2 Ch. 377, 1895, that when a lease contains covenants to keep the demised premises in repair and to deliver them up in good repair, and a sub-lease is granted containing similar covenants, with notice to the sub-lessee of the original lease, and the lessee brings suit against the sub-lessee for breach of his covenant to keep in repair, it is proper, in assessing the damages, to take into account the liability of the lessee upon the covenants in the original lease: *Conquest v. Booth*, [1896] A. C. 490.

A prosecuting attorney is a judicial officer, and therefore not liable in an action for libel for reading in court an indictment in which he has maliciously included as a co-defendant one against whom no evidence was produced before the grand jury, and against whom no bill was in fact found: *Griffith v. Slinkard*, (Supreme Court of Indiana,) 44 N. E. Rep. 1001.

In the case last cited, it was further held, that, since the rule which protects judicial officers from liability for malicious acts done in the discharge of their judicial functions extends also to quasi-judicial officers, the members of a grand jury which has negligently or maliciously returned an indictment against a person without evidence of probable cause are not liable to that person in an action for malicious prosecution; and a prosecuting attorney is not liable in such an action, on the ground that he maliciously included in an indictment as a co-defendant a person against whom no evidence was produced before the grand jury and against whom no bill was in fact found: *Griffith v. Slinkard*, (Supreme Court of Indiana,) 44 N. E. Rep. 1001.

In an action for malicious prosecution it is no defence that the defendant submitted the case to the prosecuting attorney

**Advice of Prosecuting Attorney** and acted on his advice, when it appears that all the facts bearing on the question of probable cause were not submitted to him: *Koster v. Seney*, (Supreme Court of Iowa,) 68 N. W. Rep. 824; *Peterson v. Reisdorph*, (Supreme Court of Nebraska,) 68 N. W. Rep. 943.

In *Earle v. Warren Ax & Tool Co.*, (Supreme Judicial Court of Massachusetts,) 44 N. E. Rep. 1056, a contract of employ-

**Master and Servant, Contract of Hiring, Salary** ment as a salesman for one year, subject to termination before its expiration, provided that the employe should receive a certain salary per month, based on an estimated total value of sales to be made by him, and subject to increase or diminution if the gross amount of his sales during the year exceeded or fell below the estimate. The employer terminated the contract at the end of eight months; but in view of the fact that efforts to sell usually in the early part of the year would not prove productive until late in the year, it was held that he was not entitled to make any deduction from the agreed salary because the sales made during the eight months did not amount to two-thirds of the total estimated for the year.

The Supreme Court of Utah lately held that the law of that state, (Laws Utah, 1896, p. 219,) imposing a fine upon any one

**Eight-hour Law, Constitutionality** who employs another to work in a mine more than eight hours a day, is not a contravention of the Federal Constitution, not being a deprivation of liberty without due process of law, nor denying to any one the equal protection of the laws: *Holden v. Hardy*, 46 Pac. Rep. 756.

The Supreme Judicial Court of Massachusetts has recently decided, that a workman on a building, who fell and was

**Negligence, Temporary and Transitory Danger** injured as a result of stepping on a joist that had just been sawed nearly through by another workman, who had left it for a moment, could not recover from his employer for the injury, since "it would be impracticable to require employers to warn their men of every such transitory risk, when the only thing the men do not know is the precise time when the danger will exist: *McCann v. Kennedy*, 44 N. E. Rep. 1055.

It would have been equally reasonable to have held that this was a risk incident to the employment, which the workman assumed.

In his charge to the jury in the case of *U. S. v. O'Brien*, 75 Fed. Rep. 900, (Circuit Court, S. D. N. Y.,) Brown, Dist. **Neutrality Laws** J., laid down some very important principles with regard to the construction and effect of the neutrality laws of the United States. (Rev. Stat. U. S. §§ 5282, 5286.) He charged, (1) that while these laws prohibit any one from enlisting here as a soldier of any foreign power, and from hiring or retaining any other persons to enlist or to go abroad for the purpose of enlisting, they do not prohibit persons within the country, whether citizens or not, from going to a foreign country as individuals, and enlisting there; (2) That since it is lawful for individuals to go abroad to enlist, they may go in any number and in any way they see fit, either by regular lines of steamers, by chartering a vessel, or in any other manner, provided that they do not go as a military expedition, or set on foot within this country a military expedition or enterprise, to be carried on from this country, or provide or prepare the means therefor; (3) That it is no offence, under the neutrality laws, to transport persons intending to enlist in foreign military service out of this country, and land them in a foreign country, if they go merely as individuals, and not as a military expedition; but if the owner of a vessel provides and furnishes her, knowing that she is to be used to transport to a foreign country an organized body of men, who intend to act together in a concerted military service, and with arms, he is guilty of a violation of the law; (4) That is no offence against the neutrality laws to transport from this to a foreign country arms, ammunitions, and materials of war, either alone, or in the same ship with men who intend to enlist, provided they are not a part of or in aid of any military expedition or enterprise organized in this country; and mystery and secrecy in the preparation and conduct of the voyage are not conclusive of the illegality of the enterprise, but are as consistent with legality as with illegality, since

these precautions may be intended only to avoid attack and capture by the foreign power against which the arms and ammunition are to be used ; but (5) That if a military expedition or enterprise has in fact been prepared in this country, and carried by sea to a foreign shore, then all persons who planned for it or prepared for it here, or knowingly took part in the transportation of it, by furnishing the means therefor, or by conducting the vessel in which it was carried, are guilty under the laws ; and (6) That it is not necessary, to constitute a military expedition, that the men should be drilled or organized according to military tactics, as infantry, cavalry, or artillery : concert of action, combination and organization among the men to act together ; the presence of arms or weapons, which can be used for a military purpose ; and the direction or command of a superior, are all marks of such an expedition, to be considered by the jury.

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One of several sureties upon a bond conditioned that the builder shall keep the building free from all liens, does not, by the fact of such suretyship, forfeit his right to enforce a lien as a material-man against the building : *Atlantic Coast Brewing Co. v. Donnelly*, (Supreme Court of New Jersey,) 35 Atl. Rep. 647.

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A contract entered into by a public officer, (a county auditor) after the election of his successor, and but a short time before the expiration of his own term of office, for materials (election supplies) which will not be needed for use until eighteen months thereafter, is void, as against public policy : *Morrison v. Board of Comrs. of Decatur Co.*, (Appellate Court of Indiana,) 44 N. E. Rep. 1012, (on rehearing,) affirming 44 N. E. Rep. 65.

The Supreme Court of Pennsylvania has held in a recent case, that a prosecution against a public officer for being concerned in public contracts may be commenced by the court, of its own motion, by directing the grand jury to investigate the matter, and by directing the district attorney to submit an indictment, after a

**Principal and Surety, Bond against Liens, Effect**

**Public Officers, Contracts, Public Policy**

**Misdemeanor in Office, Indictment**

presentment by them; and that an indorsement by the grand jury on an indictment as founded upon "presentment" is not erroneous because not founded on their own knowledge, but on testimony heard by them: *Comm. v. Hurd*, 35 Atl. Rep. 682.

Under the revised statutes of Ohio, § 11, which provide that "when an elective office becomes vacant, and is filled by  
**Vacancy,** appointment, such appointee shall hold the office  
**Electi** till his successor is elected and qualified, and such successor shall be elected at the first proper election that is held more than thirty days after the occurrence of the vacancy," the Supreme Court has decided that when a candidate elected to an office dies before his term begins, no vacancy is thereby created in the office until the expiration of the term of the existing incumbent; and if this falls within thirty days of the next proper election, the vacancy cannot be filled by an election thereat: *State v. Dahl*, 45 N. E. Rep. 56.

The Supreme Court of Pennsylvania has succeeded in so far breaking away from the irrational "stop, look and listen" rule, as to hold that though the fact that safety  
**Railroad** gates at a railroad crossing, which should be  
**Crossings,** closed in case of danger, are standing open, does  
**Safety Gates,** not relieve a traveller of the duty of exercising care, it is to be  
**Negligence** considered in determining whether he exercised due care according to the circumstances: *Roberts v. Del. & H. Canal Co.*, 35 Atl. Rep. 723.

This is a very important innovation upon the earlier case of *Greenwood v. P., W. & B. R. R. Co.*, 124 Pa. 572, 1889, where Chief Justice Paxson deliberately ignored the fact that the opening of the gates constitutes an invitation to cross. In that case, he stated that "I do not understand the law to be that when a railroad company adopts safety-gates or any other appliance for the safety of the public, that the public are thereby absolved from the duty of taking care of themselves," which was not at all the question involved, but a shrewd evasion of it. The real question was, whether or not the opening of the gates was an invitation to cross, giving

the traveler the right to expect that he would be allowed to cross in safety; *i. e.*, whether or not the standard of care required of him, (for not even an absolute assurance of safety relieves the traveler from the duty of exercising care according to the circumstances,) was not affected by that circumstance. That was the very point ruled in the present case; so that it may be regarded as practically overruling the Greenwood case.

The general doctrine on this subject is, that the opening of the gates at a crossing, and keeping them open, is an invitation to the traveler to cross, which entitles him, if in a vehicle, to rely on the assurance of the company that he may cross in safety, and absolves him from the duty of exercising the amount of care required at a crossing without gates: *Stapley v. London, Brighton & South Coast Ry. Co.*, 1 L. R. Exch. 21, 1865; *N. E. Ry. Co. v. Wanless*, 7 L. R. H. L. 12, 1874; *Whelan v. N. Y., L. E. & W. Ry. Co.*, 38 Fed. Rep. 15, 1889; *Baltimore & P. R. R. Co. v. Carrington*, 3 D. C. App. 101, 1895; *C., St. L. & P. R. R. Co. v. Hutchinson*, 120 Ill. 587, 1887; *Penna. Co. v. Stegemeier*, 118 Ind. 305, 1888; *Indianapolis Union Ry. Co. v. Neubacher*, (Ind.) 43 N. E. Rep. 576, 1896; *State v. Boston & M. R. R. Co.*, 80 Me. 430, 1888; *Evans v. Lake Shore & M. S. R. R. Co.*, 88 Mich. 442, 1891; *D., L. & W. R. R. Co. v. Shelton*, 55 N. J. L. 342, 1893; *Glushing v. Sharp*, 96 N. Y. 676, 1884; *Palmer v. N. Y. Cent. & H. R. R. R. Co.*, 112 N. Y. 234, 1889; *C., C., C. & I. Ry. Co. v. Schneider*, 45 Ohio St. 678, 1888; *Wilson v. N. Y., N. H. & H. R. R. Co.*, 18 R. I. 491, 1894; and *a fortiori*, the raising of gates which have been lowered is an invitation to cross: *Conaty v. N. Y., N. H. & H. R. R. Co.*, 164 Mass. 572, 1895; *Bond v. N. Y. Cent. & H. R. R. R. Co.*, 69 Hun, (N. Y.) 476, 1893; *McGee v. Penna. R. R. Co.*, 33 W. N. C. (Pa.) 15, 1893; but a foot passenger who has an unobstructed view of the track, cannot rely absolutely upon this invitation: *Romeo v. Boston & M. R. R. Co.*, 87 Me. 540, 1895; and one who is aware of the fact that the gates are not operated during certain hours cannot rely on an open gate as an assurance of safety, if he crosses the railroad during those hours: *Weed v.*

*N. Y. Cent. & H. R. R. R. Co.*, 91 Hun, (N. Y.) 293, 1895. Of course, when the gates are down that fact constitutes a warning of danger to foot passengers, and it does not matter that the gates are always down at that spot: *Chicago, R. I. & P. Ry. Co. v. Fitzsimmons*, 40 Ill. App. 360, 1891; *Marden v. Boston & A. R. R. Co.*, 159 Mass. 393, 1893; *Cleary v. P. & R. R. R. Co.*, 140 Pa. 19, 1891; *Matthews v. P. & R. R. R. Co.*, 161 Pa. 28, 1894; *Sheehan v. P. & R. R. R. Co.*, 166 Pa. 354, 1895; and the lowering of the gates is also a warning, imposing an extraordinary duty of exercising care upon a traveler: *Duwall v. Mich. Cent. R. R. Co.*, (Mich.) 63 N. W. Rep. 437, 1895.

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A deposit of railroad bonds under a reorganization agreement, by which new bonds are to be issued, secured by a new mortgage on the property of the company, does not extinguish the bonds, so that the bonds of non-assenting holders remain as the only lien secured by the existing mortgages: *Mowry v. Farmers' Loan & Trust Co.*, (Circuit Court of Appeals, Seventh Circuit,) 76 Fed. Rep. 38.

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It is the duty of a deputy sheriff, when specific information is conveyed to him that a felon is at a particular place within his jurisdiction, to take measures for his prompt apprehension; and he cannot claim that an arrest thus effected was made in his private capacity, so as to entitle him to a reward offered by private parties for the arrest: *Witty v. Southern Pac. Co.*, (Circuit Court, S. D. California,) 76 Fed. Rep. 217.

A public officer is not entitled to a reward offered for services which lie in the line of his duty; any agreement to compensate him for doing that duty is void, as against public policy; and his performance of the services, though according to the terms of the agreement, creates no contract between him and the person who offers the reward. This rule has been applied to constables, policemen, sheriffs, deputy sheriffs, watchmen, customs officers, and overseers of the poor: *R. R.*

v. *Grafton*, 51 Ark. 504, 1889; *In re Russell*, 51 Conn. 577, 1884; *Hayden v. Souger*, 56 Ind. 42, 1877; *Mcans v. Heudershott*, 24 Iowa, 78, 1867; *Marking v. Needy*, 8 Bush, (Ky.) 22, 1871; *Riley v. Grace*, (Ky.) 33 S. W. Rep. 207, 1895; *Pool v. Boston*, 5 Cush. (Mass.) 219, 1849; *Davis v. Burnis*, 5 Allen, (Mass.) 352, 1862; *Warner v. Grace*, 14 Minn. 487, 1869; *Day v. Ins. Co.*, 16 Minn. 408, 1871; *Ex parte Gore*, 57 Miss. 251, 1879; *Kick v. Merry*, 23 Mo. 72, 1856; *Thornton v. Mo. Pac. Ry. Co.*, 42 Mo. App. 58, 1890; *Gillmore v. Lewis*, 12 Ohio, 281, 1843; *Rea v. Smith*, 2 Handy, (Ohio) 193, 1856; *Smith v. Whilldin*, 10 Pa. 39, 1848; *Stamper v. Temple*, 6 Humph. (Tenn.) 113, 1845; *Ring v. Devlin*, 68 Wis. 384, 1887. Even a private person, who is specially deputized to arrest a fugitive from justice, on his own application, is thereby brought within the reason of the rule: *Malpass v. Caldwell*, 70 N. C. 130, 1874; unless the warrant was illegal, or gave him no authority to make the arrest, in which case he can claim the reward: *Hayden v. Souger*, 56 Ind. 42, 1877.

If, however, the services are without the sphere of his official duty, so that in performing them he acts as a private citizen, a public officer can then claim the reward offered therefor: *England v. Davidson*, 11 Ad. & El. 856, 1840. Thus, an arrest without warrant for an offence not committed in the officer's view: *Kasling v. Morris*, 71 Tex. 584, 1888; *Russell v. Stewart*, 44 Vt. 170, 1872; an arrest in one state of a fugitive from another, made by an officer of either state, without process: *Morrell v. Quarles*, 35 Ala. 544, 1860; *Gregg v. Pierce*, 53 Barb. (N. Y.) 387, 1860; *Davis v. Munson*, 43 Vt. 676, 1870; except when the laws of his state require him to make the arrest: *Monroe Co. v. Bell*, (Miss.) 18 So. Rep. 121, 1895; and an arrest by an officer temporarily suspended: *Smith v. Moore*, 1 C. B. 438, 1845, will all entitle the officer to the reward. So, a municipal officer who prosecutes an offender in another county: *Bronnenberg v. Coburn*, 110 Ind. 169, 1886; and a fireman who rescues a body from a burning building: *Reif v. Paige*, 55 Wis. 496, 1882, may recover a reward offered for such services, since they are not within the scope of their official duty.

The Appellate Court of Indiana has recently held that the duty of the porter of a sleeping-car to take charge of a passenger's baggage, and to assist in removing it from the car at its destination, being, under the rules of the particular company, within the scope of his employment, he is not to be regarded as a mere gratuitous bailee; and, therefore, when the porter of a sleeping-car, in pursuance of his customary duties, took charge of a passenger's baggage, for the purpose of removing it from the car at the passenger's destination, and it was lost or stolen through the negligence of the company's employes, the company was liable therefor: *Voss v. Wagner Palace Car Co.*, 44 N. E. Rep. 1010, (on rehearing,) affirming 43 N. E. Rep. 20.

The Appellate Court of Indiana has lately ruled, that when land was conveyed to one surety by absolute deed upon a parol agreement for the security and protection of himself and his co-sureties, and the latter paid the debt of the principal, and the grantee sold the land and refused to account, a bill by the co-sureties to compel the grantee to account for their share of the indemnity was not demurrable on the ground that it sought to establish a parol trust in lands, which is void by Rev. Stat. Ind. 1894, § 3391: *Kelso v. Kelso*, 44 N. E. Rep. 1013.

This decision might have equally well been rested upon the broad principles of contribution, with which the statute was certainly never intended to interfere.

*Ardemus Stewart.*