RECENT CASES

CANCELLATION OF INSTRUMENTS.

A, believing that he would inherit all of the property of his childless wife under the intestate laws, in the event of his surviving her, conveyed a portion of his real estate to her for an inadequate consideration. Later she reconveyed a part of the land to him, and sold part of the remainder, giving him the proceeds. Upon the death of his wife A seeks a reconveyance of the remaining tracts from the administrator. *Held,* the entire arrangement having been evidently looked upon as satisfactory by the plaintiff and his wife at the time, it will not be disturbed upon his contention that he acted in ignorance of his rights under the law. *Powe* v. *Culver* et al., 69 Atlantic, 1050 (Conn.).

Mistake of Law: Knowledge of Facts but Mistake as to Their Effect

The decision is in accordance with the general doctrine as laid down by Pomeroy (Equity Jurisprudence, 850), that where a party is in doubt as to his antecedent or existing legal rights and enters into a transaction with the intention of compromising this doubt, the transaction will not afterwards be disturbed. *Lucy's Case,* 4 De G., M. and G. 355.

CHARITIES.

A testator, a native of Norway, bequeathed a sum to a certain congregation in his native village, upon trust, the interest to be paid "annually on the first day of December and to be distributed on the following Christmas to worthy and needy servant girls, and the widows and orphans of deceased sailors and fishermen who are not a public charge." The trust was upheld. *In re Nilson's Estate,* 116 N. W. 971 (Neb.).

Charitable Trust: Certainty of Beneficiaries

The decision represents the tendency of most American courts, which endeavor to uphold every charitable gift, either by interpretation of the testator's intent or upon the *cy pres* doctrine. It is interesting to note, however, that almost exactly similar trusts have failed for lack of certainty in some jurisdictions. Thus a gift "to the most deserving poor of the city and town of New Britain" was held incapable of enforce-

CHARITIES (Continued).

ment—*Hughes* v. *Daly*, 49 Conn. 34; and a trust "for the relief of needy poor and respectable widows" was overthrown by the Virginia court in *Gallego* v. *Atty. Gen.*, 3 Leigh (Va.) 450.

It seems clear that the Nebraska decision represents the broader and sounder economic policy.

CONTEMPT.

A newspaper article was published two days before a trial, assuming to state the evidence, reflecting upon the parties, expressing an opinion as to the right of the controversy and intimidating the witnesses. *Held,* this constituted a contempt of court, for which the defendant, the editor of the paper, might properly be summarily incarcerated. *State* v. *Powell,* 69 Atlantic, 1057 (Conn.).

Newspaper Article upon Case pending in Court: Necessity for Malice

The Court refused to consider the plea of no criminal intent. "It makes no difference," the opinion reads, "in its effect upon the public whether an article reflecting upon the Court in a cause on trial, and improperly commenting upon the evidence and disparaging the cause of one or the other of the parties and calculated to prevent a fair trial is published with criminal intent or with good intent. It brings contempt upon the Court in the public mind, and is a contempt of court in either case, just as an assault or breach of the peace committed in open court is a contempt, although committed without actual intent to bring disrespect or disgrace upon the court. The absence of improper intent is to be considered in mitigation of the offense, but not as an excuse for it."

COPYRIGHT.

A publisher printed this notice in the front of a certain edition of a book: "The price of this book at retail is $1 net. No dealer is licensed to sell it at a less price, and a sale at a less price will be treated as an infringement of the copyright."

Attempted Restriction as to Price

A dealer sold copies of the book at 89 cents retail price. *Held,* the privileges of the holder of the copyright do not extend to a limitation of the price of the book after title in

COPYRIGHT (Continued).

it has passed from the publisher to a dealer. The mere fact that the statute grants to the publisher the "sole right of vending" his books does not cover such a situation as this. The publisher exercised the right to vend the book when he sold it at a satisfactory wholesale price. *Bobbs-Merrill Co.* v. *Strauss,* U. S. Sup. Ct. Adv. Sheets, July 1, 1908, p. 722.

It has been held that an owner may protect his book under a copyright to the extent of selling by subscription only, because in such case he has parted with the possession, but not with the title. *Henry Bill Pub. Co.* v. *Smythe,* 27 Fed. 914.

The Supreme Court in the *Bobbs-Merrill* case treated the question as *de novo,* and based its decision upon a fair interpretation of the legislative intent in the passage of the copyright statutes.

HUSBAND AND WIFE.

Alienation of Husband's Affections

A boy and girl, both of the age of 18, secretly married, but did not live together. Shortly afterwards the boy's parents discovered the marriage, and by a course of persuasion and entreaty induced him to abandon his wife entirely, even the frequent visits being discontinued. In an action by the wife against the husband's parents for alienation of his affections, *held,* a recovery is proper, despite the fact that neither of the parties to the marriage contract had attained majority, and also that the marriage had never been physically consummated. *Cochran* v. *Cochran,* 111 N. Y. Sup. 588.

The Court said the parents had a perfect right to prevent the marriage of their son, but when it had once taken place, since he had a perfect legal right to marry, his wife was entitled to his love and companionship, and any action on the part of defendants tending to deprive her of this right renders them liable in damages. And the mere fact that the wife was willing to waive one of her rights under the marriage relation should not prevent her maintaining all her other privileges, and recovering when they are taken away from her.

The Court further held that a verdict of $7,500 was not so grossly excessive under the circumstances as to warrant it being set aside by an appellate tribunal.

INSURANCE.

An insurance company insured the owner of an automobile against liability for damages resulting from possible accidents. In an action by the plaintiff against the insured for injuries resulting from being struck by the automobile the insurance company undertook the defence. *Held,* this did not amount to champerty or maintenance. Admitting the propriety of the insurance, it follows that the company has a right to undertake the defence of the cause. *Gould* v. *Brock,* et al., 69 Atlantic 1122 (Pa.).

Champerty and Maintenance: Indemnity Insurance

In discussing the legality of such indemnity insurance, the Court said: "There was a time when all insurance, and especially of life, was looked upon with suspicion and disfavor, but it was only because regarded as a species of wagering contract. That time has long gone by. And, with the intelligent study of political economy, bringing into recognition the fact that even the most apparently disconnected and sporadic occurrences are subject to at least an approximate law of averages, the insurance against loss from any such occurrence has been recognized as a legitimate subject of protection to the individual by a guaranty of indemnity from some party undertaking to distribute and divide the loss among a number of others for a premium giving them a prospect of profit."

MASTER AND SERVANT.

A legislative enactment prohibited the employment of children under 14 years of age in certain classes of factories, and provided a fine for its violation, treating such violation as a misdemeanor. In an action by a boy under the prescribed age against his employer for personal injuries caused while working in a factory to which the statute applied, the Supreme Court of Pennsylvania *held,* that the civil proceeding was not barred by the criminal liability, the one being intended to recover compensation as a fair return for losses sustained, while the other is merely a method of enforcing compliance with the statute. *Stehle* et al. v. *Jaeger Automatic Machine Co.,* 69 Atlantic, 1116.

Statute Imposing Fine for Negligence: Civil Action Retained

The same rule, that the remedies are concurrent, was laid down in *Narramore* v. *Railway Co.,* 96 Fed. 298, and in *Rail-*

MASTER AND SERVANT (Continued).

road Company v. *Lambright,* (Ohio) 29 Weekly Law Bul. 359, though there is a conflict among jurisdictions upon the subject, some courts holding that the statutory penalty is exclusive.

The rule laid down by the Pennsylvania court would seem to be the better one, since the right to the civil action, where injury actually results, would have existed in the absence of the statute, the provisions of which merely prevent the plea by the employer of contributory negligence or of assumption of risk.

NUISANCE.

Regulation of Jail: Private Nuisance

The commissioners of a county erected a jail adjoining plaintiff's house, some of the windows of which looked out onto plaintiff's property. These windows were continually kept open, and the prisoners, some of whom were insane persons, looked out onto plaintiff's yard and into her windows, and so conducted themselves as to constitute a nuisance. *Held,* though the jail was a public necessity, and hence could not be abated for the benefit of a private individual, yet relief may be granted by compelling the commissioners to order closed the windows causing the annoyance. *Pritchett* v. *Board of Commissioners,* 85 N. E. 32 (Ind.).

The Court based its decision wholly on the ground that the plaintiff's right of privacy had been invaded—a right to which she was entitled by principles of natural law.

POLICE POWER.

Schools and School Districts: Health Ordinance

A city ordinance of Chicago provided that no child should be admitted or retained in a school within the city who had not been vaccinated within seven years next preceding the application for admission or retention. *Held,* the ordinance is unconstitutional, as not being a reasonable exercise of the police power, intended to preserve the health of the community. *People* v. *Board of Education of Chicago,* 84 N. E. 1046 (Ill.).

The Court distinctly refused to pass upon the question as to whether or not the Legislature of the State could have properly passed such a measure, basing its decision on the ground that the authority of the city to pass this ordinance did not fall

POLICE POWER (Continued).

within the jurisdiction over public health conferred upon it by the Legislature.

Aside from the limitations here found, of a conferred authority, it would scarcely seem an unreasonable exercise of the police power to make vaccination a condition precedent to entering a school, especially during a smallpox epidemic, and the Court so held in *Matter of Walters*, 84 Hun, (N. Y.) 457.

The Illinois decision is an interesting one, in the light of the recent attacks upon the efficacy of vaccination, for aside from the point on which the decision hinges, the Court indulges in a number of expressions upon the reasonableness of the regulation which are far from disclosing great faith in vaccination.

RIGHT TO PRIVACY.

The Legislature of New York passed a statute in 1903 prohibiting the use of any one's picture without his consent for purposes of advertising or trade. The plaintiff brought an action to restrain the use of his portrait by the defendant for advertising purposes, and the defendant alleged that the statute relied upon was unconstitutional. *Held*, there is nothing in the act in violation of any constitutional right. *Wyatt* v. *James McCreery Co.*, 111 N. Y. Supp. 86.

Advertising With Plaintiff's Picture

The common law right of an individual to restrain such use of his portrait was denied by the New York Court of Appeals in *Roberson* v. *Rochester Folding Box Co.*, 171 N. Y. 538, in the opinion in which case it was suggested by Chief Justice Parker that the Legislature pass the act here in question, and it was subsequently done. The Court, in upholding its constitutionality, says: "There certainly can be no inherent right in every individual to use without restraint the portrait or photograph of another without regard to the wishes of the person whose portrait or photograph is used. The remedy given to the person whose rights are thus infringed is for the Legislature, but it seems to me that the existence of the right cannot be doubted nor the power of the Legislature to authorize the courts to interfere by an injunction to prevent an abuse of that right be successfully questioned."