RECENT CASES.

Bond Investment Schemes—Use of mails for lottery purposes.—United States v. *McDonald, et al.*, 59 Fed. Rep. 563 (Ill.). Indictment of the defendants, officers of "The Guarantee Investment Co.," for sending its circulars through the mails. The company's sole business was to sell its bonds of $1,000 each, for about $30, part in installments. A few of the bonds bearing given numbers, were to be paid first. This numbering was decided by mechanical chance. While these were reasonably sure to be paid, it was clear in view of the disproportion of price paid to the amount nominally promised in return, that in the great bulk of the bonds, those not getting lucky numbers had no appreciable chance of payment. Held, that the scheme was virtually a lottery, the return for the money invested being almost wholly dependent upon pure chance, not upon the working of natural laws or the laws of the market.

Carriers—Limitation of Liability—Denial of Partnership.—G. C. & T. F. Ry. Co. v. *Wilson et al.*, S. W. Rep. 131 (Tex.). Where several connecting carriers are partners the stipulation of one that it will not be liable for injury to freight beyond its own line is no defense in case of such injury. Each partner is liable *in solido* for all claims against the partnership, and it is settled law that carriers cannot contract for exemption from liability for their own negligence.

Checks—Action by Holder—Defenses—Evidence—Admissions—Appeal—Harmless Error.—Simmons Hardware Co. v. *The Bank of Greenwood*, 19 S. E. 592 (S. C.). The holder of a check can sue the bank not paying the same for the amount specified therein if the drawer had funds in the bank, sufficient to pay it when presented, though it was not accepted or certified to as good by the bank. The theory is that when a bank receives the money of a depositor, and places the amount to the credit of such depositor on his deposit account, the implied contract on the part of the bank is that it will pay all checks drawn by the depositor in such amounts and to such persons as may be mentioned in such checks, as long as there remains to the credit of the depositor, on such account, an amount sufficient to pay such checks.

Common Carrier — Insanity — Remote Cause.—Haile's Curator v. *Texas & P. R. R. Co.*, 60 Fed. Rep. 557. Where a person in a debilitated physical condition became insane from the shock and excitement of a railroad accident caused by the negligence of the company, it was held, that insanity, being a mental disease, could not have been anticipated or reasonably foreseen so as to make it the natural and proximate result of their negligence.

Conspiracy—Injury to Business — Remedies — Damage — Injunction. — Jackson et al. v. *Stanfield et al.*, 36 N. E. Rep. 345 (Ind.). "The Retail Lumber Dealers' Association of Indiana," by its by-laws gave an active member a claim against a wholesale dealer for selling to a person not a "regular dealer" in such member's community, provided for a hearing of the claim by a committee, and required members to refuse to patronize a wholesale dealer who ignored the committee's decision. The plaintiff, who was not a "regular dealer," underbid the defendant on a contract, but the wholesale dealer refused to sell to him, and he was obliged to abandon the contract, because the defendant, an active member of the association, had previously enforced a claim against a wholesale dealer who had sold to the plaintiff, and expressed an intention of continuing to enforce such claims. The court held that the defendant was liable for the amount the plaintiff lost by abandoning his contract, and would be perpetually enjoined from making a claim under the by-laws of the association against any person who sold to the plaintiff.

Contracts—Restraint of Trade — Monopoly—Corporations — Organization in Another State.— Oakdale Manufacturing Co. et al. v. *Garst*, 28 Atl. Rep. 975 (R. I.). A contract by which three or four companies in New England engage in the manufacture of oleomargarine, consolidate as a corporation, partly for the purpose of stopping the sharp competition between them, and agree that none of them shall engage separately in the business for five years, is not invalid as constituting a monopoly. The test of the reasonableness of the restrictive covenant is the test of validity in contracts of this kind. The test is to be applied according to the circumstances of the contract, and is not to be arbitrarily limited by boundaries of time and space. The rule, now generally received, has been recognized in this State that contracts in restraint of trade are not necessarily void, by reason of universality of time, nor of space; but they depend upon the reasonableness of the restrictions under the conditions of each case.

Corporations—Withdrawal of Subscription.—Hudson Real Estate Co. v. *Tower et al.*, 36 N. E. Rep. 680 (Mass.). The defendants subscribed under seal for stock in a corporation. Afterwards the articles of incorporation were executed and officers elected. Before the incorporation was complete, the defendants orally informed the president that if a certain change in the policy of the corporation was made, they would no longer be associates, and would not pay their subscriptions. The change however was made, and the court held that the evidence was sufficient to show a withdrawal of the subscriptions. Also that a subscription for stock in a corporation may be withdrawn before the incorporation, although the associates have incurred obligations on the strength of the subscription.

Habeas Corpus—Appeal.—In re King, 36 N. E. Rep. 685 (Mass.). Where an insane person has been brought into court on habeas corpus, on the petition of a mere stranger, and a guardian *ad litem* has been appointed for such person, the petitioner cannot appeal from the decision of the court.

Inconsistent Charges—Presumption as to Effect.—People v. *Berlin*, 36 Pac. Rep. 199 (Col.). Where in a judge's charge to a jury, portions are conflicting, the jury is presumed to have followed the portion which was erroneous.

Insurance—Oral Modification of Policy.—Laclede Fire Brick Manufacturing Co. v. *Hartford Steam Boiler Insurance Co.*, 60 Fed. Rep. 351 (Mo.). A corporation, having an insurance policy on seven boilers, subsequently put in two more boilers. These latter, being inspected by the Insurance Company's Inspector, were declared by him to be included in the insurance, if only seven boilers were used at once. One of the new boilers exploded. Held, that the statement of the inspector did not modify the policy.

Lease—Construction—Removal of Property.—Davidson v. *Crump Mfg. Co.*, 58 N. W. Rep. 475 (Mich.). The expression "at the end of this term" being the time stipulated in a lease when a tenant must remove his buildings, was held to be a clause of protection of the defendant's rights of removal, entitling the defendant ingress and egress for a reasonable time in which to remove his property.

Literary Property—Lectures—Incorrect Publication—Injunction.—Drummond v. *Altemus*, 60 Fed. Rep. 338 (Penn.). Complainant

permitted a certain journal to publish reports of some of his lectures. Defendant copied the published reports, partially and incorrectly, and sold the copy in book form, as the whole series of lectures presented in the author's language. Held, that a temporary injunction could be granted, independently of the copyright law.

Master and Servant—Negligence of Master—Charity.—Union Pacific Railway Co. v. *Artist*, 60 Fed. Rep. 365 (Wyoming). An employé of a railroad corporation, being injured in the service, was treated in a hospital maintained by the company for the free treatment of its employés, and was injured by the careless treatment of the physicians or attendants of the hospital. Held, that the corporation, having exercised ordinary care in selecting the hospital attendants, was not responsible for injuries resulting from their negligence, the hospital being maintained for charitable purposes.

Railroad Companies—Negligence—Fences—Injury to Employé—Contributory Negligence.—Atchison T. & S. F. Railway Co. v. *Reesman*, 60 Fed. Rep. 370. A brakeman of a ditching train was injured by the derailment of the train through running over a steer which strayed onto the line through a defective fence. The plaintiff was riding, with the conductor's consent, on the platform of the caboose, in violation of the company's rule requiring him to be on the top of the caboose to signal danger to the engineer. Held, that the company could not set up the negligence of a fellow servant of the plaintiff in repairing fence as a defense, the duty of keeping the fences in repair being one imposed by statute on the defendants themselves. Also, that there was contributory negligence on the part of the plaintiff in not riding on the top of the caboose to signal danger, as required by the company's rule, and that the conductor's consent to the violation did not exonerate the plaintiff.

Sleeping Car Companies—Loss of Baggage—Presumptions.—Stevenson v. *Pullman Car Co.*, S. W. Rep. 112 (Texas). Sleeping car companies will not be exempt from liability to use reasonable care to protect passengers from thieves, even though statement of such exemption be printed on backs of the ticket and posted in the car. When the theft occurs in Mexico and there is an absence of proof of the law of Mexico on the subject, the law of Texas will be presumed to apply.

Suit Against State — Jurisdiction — Cross Bill.—Pt. Royal & A. R. R. Co. v. *State of South Carolina*, 60 Fed. Rep. 552. A State as a sovereign authority cannot be sued without her own consent; but when a State voluntarily comes into court, her standing before the court is that of an individual and a cross bill against her will be sustained, if it contains matter relevant to the original bill.

Telegraph Companies — Mental Suffering — Damages.— In *Western Union Telegraph Co.* v. *Proctor*, 25 S. W. Rep. 811 (Texas), it was held, contrary to many modern decisions, that mental suffering is a proper element of damage for delay of a telegraph company in delivering a telegram. In this case a message was sent by a father to prevent the marriage of an infant daughter. The delivery of the telegram was delayed and the marriage took place. It was held that the father could recover for loss of service until the daughter had reached the age of eighteen; also for mental distress caused by the unsuitable marriage.

U. S. Marshals — Deputies — Action for Compensation.— Powell v. *United States*, 60 Fed. Rep. 687 (Ala.). In an action by a deputy marshal for compensation for services rendered, it was shown that as the marshal, alone, was the salaried officer of the government, and the deputy received pay merely through fees, there was no privity existing between the deputy marshal and the government. The conclusion was that the deputy marshal was not an officer of the United States and, not being a party to a contract, could not maintain his suit.

Writ of Error—Final Judgment—Attachment.—Hamner v. *Scott*, 60 Fed. Rep. 343. Plaintiff sued defendant on promissory notes, and sued out an attachment in court below, which attachment was quashed on motion of defendant, the principal action still pending. Held, on appeal, that a writ of error will not lie to review an order quashing an attachment, as it is not a final decision. *Standley* v. *Roberts*, 59 Fed. Rep. 836, distinguished as a case in which there was a final decree on all the issues, while in this case the main action is pending and undetermined in the lower court.