NOVEL CASES IN THE COURTS

The opinion of the Supreme Court of Mississippi in a suit in which a sixty-year-old defendant was directed to pay damages for breach of promise of marriage says:

"It would, perhaps, be useless to offer suggestion or counsel to a man of the age of appellant, or to lay down any proposition that would carry caution to the mind of people of his age and class, especially when it comes from his junior in years, if not in wisdom. Yet it might be proper to remind others of his type that he who would trip the light fantastic toe with the Terpsichorean maid must contribute coin to the man who extracts mystic music from the violin strings, or, in other words, that pleasure must be paid for with the coin of the realm.

"Beware of the grass widow when her eyes beam love. She hypnotizes the reason, and the soul escapes the prison bars of discretion and 'you float airily on golden clouds to rosy lands of pleasure and joy.' Temporary bliss reigns supreme in the palace of love; but in the end it creates mournful memories, heartache, remorse of conscience, and a burning desire to 'blot out the past.'"

An excellent opinion on the degree or extent of mental capacity that is necessary to render a testator competent to make a will has been handed down by the Supreme Court of Oregon in Sturtevants' Estate, which contains the following:

"The result of the best-considered cases on the subject seems to put the quantum of understanding requisite to the valid execution of a will upon the basis of knowing and comprehending the transaction, or, in popular phrase, that the testator should, at the time of executing the will, know and understand what he was about. It is sufficient if the testator knew what he was doing and to whom he was giving his property, and it is conceded in most of the cases that a man may be capable of making a will and yet incapable of making a contract or managing his estate."

In Routt v. Brotherhood of Railroad Trainmen, 165 Northwestern Reporter, 141, the Supreme Court of Nebraska held that where a member of the defendant brotherhood became color blind to such extent as to be no longer able to continue in train service, and was discharged on account of such defect, it constituted permanent loss of sight of both eyes, within the meaning of a benefit contract. Judges Letton, Cornish, and Rose dissented therefrom.

In Kane v. Brotherhood of Railroad Trainmen, 168 Northwestern Reporter, 598, the same question comes before the court again, where it overrules its former holding. The opinion refers to a decision of a somewhat similar nature, entitled Holcomb v. Grand Lodge B. R. T., 171 Kentucky, 843, 188 Southwestern, 885, L. R. A. 1917B, 107, and to a decision of the Court of Appeals of Ohio in support of its new holding that plaintiff's sight cannot be considered as totally lost when he is still able to use his eyes for other purposes, though so affected as to debar him from the particular occupation of railroading. Rehearing is granted in the Routt case, and the former judgment reversed by memorandum opinion immediately following the Kane case.

The Supreme Court of Missouri is not impressed with laws which give unusual powers to the police, as is shown by its opinion in City of St. Louis v. Allen. The defendant, a chauffeur who one day took the wife of his employer to the city in an automobile, was prosecuted for violation of an ordinance which recited that "drivers must at all times comply with any direction by the voice or hand of any member of the police force as to stopping, starting or departing from any place." He was arrested for standing in front of an office building where a sign read, "Do not stand between these posts." When ordered by a policeman to move on he refused and stated that he would wait until his employer's wife returned. The conviction was reversed by the Supreme Court, which indicates in its opinion that in this case the city authorities may have been morally right and the defendant in the wrong, but says: "The ordinance here involved puts the citizen in the arbitrary power of the officer, regardless of the circumstances of the case. Its invalidity is so glaring that the respondent has not cited any authority to uphold it. In Bessonies v. City of Indianapolis, 71 Ind. 189, and in City of Elkhart v. Murray, 165 Ind. 304, 75 N. E. 593, 1 L. R. A. (N. S.) 940, 112 Am. St. Rep. 228 6 Ann. Cas. 748, it was held that such ordinances are violative of the constitutional provision which guarantees the equal protection of the laws. It was there said that what the Legislature cannot do it cannot authorize a municipal corporation to do. In our opinion the ordinance in question is subject to the objection that it may deprive persons of the equal protection of the laws, and that, though the city may have a most meritorious case, it cannot be based on that invalid ordinance."

A committee of twelve hop pickers, representing some 2,500 men, women, and children of different nationalities, presented written demands to their employers for a higher rate for their work and for improvements in the sanitary conditions of the premises and in the conditions under which they were living and working. The general manager of the business, in the presence of the committee, discharged the spokesman, ordered him off the premises, and struck him across the face with a pair of gloves in such a way that the committee understood the act was intended as an affront to themselves and their spokesman. A meeting of employes was held on the premises, where it was resolved to insist on the demands, and open expressions and demonstrations of opposition and hostility against the employers were made. One Manwell was employed to accompany the general manager and the Sheriff to the meeting, and, while engaged in such service, was shot and instantly killed by one of the employes. An action by his surviving wife and children for $150,000 for such death was brought against his employers for negligence in employing him for such dangerous service. A judgment for defendants, on demurrer to the complaint was affirmed by the Supreme court of California in Manwell v. Durst Bros 174 Pacific Reporter, 881, in an opinion by Chief Justice Angellotti, who held that no liability attached where there was no showing of responsibility for existence of a mob, and no omission to disclose to decedent the actual conditions.

That a railroad detective, when entering his employment, was not informed that former employes had been shot by third parties, did not prevent the assumption of risk of such injury on the ground that it was not obvious.—Yazoo & M. V. R. Co. v. Hullum, Miss., 80 So. 645.

The facts in the case of Kunz v. Allen et al., 172 Pacific Reporter, 532, were that, while plaintiff was in the dry goods store of defendants for the purpose of making purchases, the defendant, without her knowledge, caused moving picture films to be taken of her, and afterward used them to advertise their business by public exhibition in a moving picture theatre in the neighborhood where she lived. The petition alleged that she thereby became the common talk of the people in the community, it being understood and believed among the people generally that she had for hire permitted her picture to be taken and used as a public advertisement. The Supreme Court of Kansas held that this constituted a violation of plaintiff's right of privacy, and entitled her to recover without proof of special damage.

A condition in a will providing that a bequest to the testator's widow be equally divided among testator's children in the event that the widow should marry during the minority of either of the children is not void as a restraint upon marriage.—Bryan vs. Harper, N. C., 98 S. E. 822.

If a party by contract creates an absolute or unconditional obligation, the performance of which rests on himself, he is bound to make it good or to answer in damages, notwithstanding any act of God or inevitable accident, because he might have provided for such contingencies by his contract.—Prather v. Latshaw, Ind., 122 N. E. 721.