ABSTRACTS OF RECENT DECISIONS.

ASSESSMENTS—SPECIAL—DUE PROCESS OF LAW—Where the charter and ordinance establishing a taxing district for assessment for a public improvement are palpably arbitrary and a plain abuse of legislative discretion, they will be unconstitutional as taking property without due process of law. *Gast Realty Co. vs. Scheider Granite Co.*, 240 U. S. 55. (For further facts in this case and a note on "Special Benefit Assessments as Due Process of Law," see p. 310 of this issue.)

BANKRUPTCY—LIEN—LANDLORD'S LIEN—Under the New Jersey Landlord and Tenant Act, (3 Comp. St. 1910, p. 3066) the landlord is given a lien on chattels lying upon the premises, for accrued rent. It is necessary for the landlord under such statutes, to perfect his lien by distress warrant, but he failed to do so in this case, before the bankruptcy of the tenant intervened. He, however, set up his claim for rent as a preferred claim, by virtue of his incomplete lien. Held, that he was entitled to a priority to the extent of the value of the chattels lying on the demised premises, subject, however, to payment of that proportion of the total expenses which the value of the chattels bore to the value of the gross estate. *In Re Braus*, 233 Fed. 835. For a discussion of the general theory of landlord's liens in bankruptcy see note on page 305 of this issue.

BANKRUPTCY—PROPERTY PASSING TO TRUSTEE—TRANSFERABLE INTERESTS—REMAINDERS—By a decree of a state court a fund was placed in trust for the support of A, the principal to be used if necessary, the remainder should there be any at her death, to be divided among her children. During the life of A, while the principal of the fund was still intact, one of her children became bankrupt. *Held*, that the bankrupt's interest was a vested remainder, (on which point Sanborn, C. J., dissented), passed to his trustee, and that since the state court had disposed of the trust there was no interference with property in *custodia legis*. *Pollack vs. Meyer Bros. Drug Company*, 233 Fed. 861, C. C. A.-8. Other interests transferable, but not subject to seizure on execution have been held to pass to the trustee: Stock exchange seats, *Page vs. Edmunds*, 187 U. S. 596, liquor licenses, *Fisher vs. Cushman*, 103 Fed. 860, 51 L. R. A. 292; Life Insurance, with right to change beneficiary, *In Re Orear*, 178 Fed. 632, 30 L. R. A. (N. S.) 990, but the interest referred to in the principal case seems more in the nature of a possibility.

CARRIERS—SAFETY APPLIANCES—INTERSTATE ELECTRIC RAILWAYS—Passenger cars operated on an interurban interstate electric railway must be equipped with hand holders or grab irons and automatic couplers as required by act of March 2nd, 1893, (Chap. 196, 27 Stat. at L. 531, Comp. Stat. 1913 par. 8605). The fact that the cars are operated over city streets for a short distance does not bring them within the exception of the Act as amended March 2, 1903. (Chap. 976, 32 Stat. at L. 943. Comp. Stat. 1913 par. 8613), which exempts from the operation of the act "trains, cars, and locomotives * * * which are used upon street railways. *Spokane & Suland Empire R. Co. vs. United States*, U. S. Adv. Ops. 1915, page 668; No. 136, decided June 5, 1916.

COMMERCE—INTERSTATE—FREIGHT—CHARGE—SET OFF—The Railroad sued for freight money for goods transported in interstate commerce. The shipper sought to set off claims for damages to the goods sustained while in transit. Held, that the set off could not be pleaded since the courts cannot examine the good faith of the carrier's defenses to such claims, to prevent rebates, *Chicago etc., R. R. vs. Stein Co.*, 233 Fed. 716.

COUNTIES—ROAD BONDS—USE OF PROCEEDS—Where the act, under the authority of which county road bonds are issued, declares that the proceeds of the sale of such road bonds shall be used "for public road purposes" this language precludes the right to use such proceeds for the improvements of streets and alleys of incorporated towns and cities in such county. A tax levied upon the in-

habitants of such incorporated towns and cities to pay the bonds and interest thereon is not subject to the constitutional objection of denying, "the equal protection of the laws," even though the proceeds of the sale of the bonds is to be used for the above purpose of improving the roads outside such incorporated towns and cities. *State ex rel. vs. Gordon*, 188 S. W. 160.

CRIMINAL LAW—VALIDITY OF SEARCH—CONSTITUTIONAL PROVISION—Where a defendant is arrested at his place of business and his private books and papers there seized by the officers making the arrest, which officers were acting unlawfully as they were not armed with a warrant either of arrest or of search and seizure and were therefore acting in direct violation of the United States Constitution (Amendment IV), such defendant cannot be convicted of a crime upon proof procured from such books and papers. The seizure being invalid and illegal, it would be contrary to the Constitution of the United States (Amendment V.), to convict a person upon proof obtained thereby, for it is there provided that no person "shall be compelled in any criminal case to be a witness against himself." A conviction based upon evidence so obtained must therefore be reversed. *Flagg vs. United States*, 233 Fed. 481. See note on page 301 of this issue.

DEEDS—CONSTRUCTION—CLAUSES—Where the granting clause of a deed conveys a fee, but the *habendum* clause provides for a defeasance by reason of the failure of the grantees to fulfill certain stipulated conditions, the old rule, giving the granting clause of deeds supremacy in case of such a conflict, will not hold and the deed will be construed in the light of the real intention of the parties. Thus a deed by an aged man, conditioned as consideration upon the support of himself by the grantees (in the habendum clause), was defeated by a failure by the grantees to support, and no affirmative action was necessary to deprive the grantees of interest. *Martin et al. vs. Adams et al.*, 188 S. W. 318.

JURY—UNANIMOUS VERDICT—ACTION UNDER FEDERAL EMPLOYER'S LIABILITY ACT—In an action founded upon the employer's liability act of Congress of April 22nd, 1908 (Chap. 149, 35 Stat. at L. 65), as amended by act of April 5th, 1910 (Chap. 143, 36 Stat. at L. 291, Comp. Stat. 1913, par. 8662), plaintiff recovered judgment in the Circuit Court of Kentucky for the death of one M, who was killed while employed by defendant in interstate commerce. Upon writ of error to the United States Supreme Court it was held that a law of Kentucky passed pursuant to a provision of its Constitution, by the terms of which in all trials of civic actions in the circuit courts, three-fourths or more of the jurors concurring may return a verdict, does not violate the limitations of the 7th Amendment of the Federal Constitution preserving the common-law right of trial by jury. *Chesepeake & Ohio Ry. vs. Addie Kelly*, U. S. Adv. Ops. 1915, page 630, No. 321 decided June 5th, 1916. See also *Minneapolis & St. L. R. Co. vs. Bombolis*, 241 U. S., 36 Sup. Ct. Rep. 595.

MASTER AND SERVANT—FELLOW SERVANT—DELEGATION OF MASTER'S DUTY—Laws of 1897, Chap. 45, par. 4 (Bal. Wash. Code, par. 3165; Rem. & Bal. Code, par. 7381) provide that the owner or operator of every coal mine "where fire damp is generated, every working place shall be examined every morning with a safety lamp by a competent person, and a record of such examination shall be entered by the person making the same in a book." A fire boss, one of whose duties was to test for gas, is not a fellow servant of the miners. "The duty of inspection, prevention and removal of any accumulation of gas, is imposed on the coal company. The duty is personal and cannot be delegated." *Stanley Brown vs. Pacific Coast Coal Company*, U. S. Adv. Ops. 1915, page 701; No. 303, decided June 12, 1916.

PERPETUITIES—RESTRAINT ON ALIENATION—VALIDITY—WAIVER—Where a father conveys to his son, by deed of gift, what purports to be a fee simple title to a tract of land, but puts in the deed a restriction upon the right of alienation, as follows: "It being understood and agreed that the party of the second part shall not trade the same to any other person outside of the part of the first part's bodily heirs for the term of twenty years," *held*, that this is a valid restriction, leaving in the grantor a right of forfeiture for a violation of the restriction.

The grantor, however, waives this right of forfeiture if he joins in a deed thus made in violation of twenty year restriction. *Francis vs. Big Sandy Co.*, 188 S. W. 345.

PRINCIPAL AND SURETY—CONTRIBUTION—CONCLUSIVENESS OF JUDGMENT—In an action against a principal and his two sureties A and B, B set up that he was discharged by the creditor's failure to sue after request made, and the jury found for him but against A and the principal. On judgment, A paid the whole amount and sued B for one half. *Held*, that the first judgment was *res judicata* of the right of contrubution between these sureties. That since the two sureties occupied adverse positions with respect to the right of contribution, the plaintiff should have set up his right in the original action. *Lashbrooke vs. Cole*, 186 S. W. 317 (Ark.). There is a decided conflict of authority on this question, the leading cases being collected in a note to *Central Bank and Surety Surety Co. vs. U. S. F and G. Co.*, 73 W. Va. 197, 51 L. R. A. (N. S.) 797, a case holding that the original judgment is not *res judicata* as between the sureties, unless such sureties are adversely interested in the original action. A Missouri case, *Miller vs. Gillespie*, 59 Mo. 220, lends support to the Bank and Surety Co. case, by holding that where one surety pleads discharge in Bankruptcy and judgment is rendered against the other, they do not occupy a hostile position to one another.

REPLEVIN—ACTION—REAL PARTY IN INTEREST—In a replevin suit brought by an agent, who was authorized to sell the chattel, he is not the "real party in interest" within the meaning of the statute. In order to bring replevin he must show a present right to possession. *Essex vs. Fife*, 159 Pac. 1009 (Oklahoma).

STATUTES—PARTIAL INVALIDITY—EFFECT—Where certain sections of a statute are held to be clearly unconstitutional, but the constitutionality of the remaining sections is upheld, and these remaining valid sections are sufficient to show the legislative intent and sufficient means of effectuating this intent, the whole act will not be declared invalid, but the good will be separated from the bad sections and the latter stricken out leaving a valid act. *State ex rel. St. Louis Co. vs. Gordon*, 188 S. W. 160.

WILLS—TESTAMENTARY TRUSTS—ASSIGNMENT BY BENEFICIARY—Property was by will left to A, subject to a trust by the terms of which the income was for his support, the principal to be turned over to him on his attaining a certain age. It was provided that in case of his death, the gift should be defeated. After marriage and the birth of children, A was adjudged a habitual drunkard, divorced, and made an assignment of the greater part of this property to former wife. *Held*, that after his incompetency had terminated, and his wife remarried, (there being a statutory provision that alimony should in such case cease), he could not maintain an action to have such assignments set aside. *West vs. Burke*, (N. Y.) 113 N. E. 561.