ABSTRACTS OF RECENT DECISIONS

BANKS AND BANKING—CRIMINAL LAW—EMBEZZLEMENT.

A receiver was appointed by the comptroller of the currency to take over the affairs of a national bank. While in that office, he was indicted for embezzlement under a Federal penal law (R. S. Sec. 5109) which provides that officers and agents of a national bank who commit the offenses of embezzlement and making false entries shall be punished by imprisonments, etc. It was contended for the Government that this receiver was an agent within the act. *Held* that such receiver was not an "officer" or "agent" within the meaning of the act of Congress. *United States v. Weitzel,* U. S. Adv. Ops. 1917, page 428.

CARRIERS—INJURIES TO PASSENGER—NEGLIGENCE.

The plaintiff was a passenger on one of defendants' cars which was run into by a team of frightened horses. The tongue of the wagon to which they were hitched broke through a window near plaintiff and and seriously injured her. The motorman in charge of the car upon seeing the team stopped the car crosswise of the street at the intersection in such a position that the team could not pass. The defendant based its defense upon the sudden peril which confronted the operator of its car, and argued that under those circumstances, it was liable only for failure to exercise ordinary care. *Held,* that the question was a proper one for the jury as to whether or not the defendant had exercised sufficient care to protect its passengers. And that where two causes concur in producing an injury, the party at fault for one of such causes will be held liable if the injury would not have occurred in the absence of such fault. (*Ind.*) *Ft. Wayne & Traction Co. et al. v. Parish,* 119 N. E. 488.

COMMERCE—FOREIGN CORPORATIONS—STATE REGULATION.

A New York corporation engaged in the construction of automatic signal devices upon railway lines, contracted to install its system upon a railway operating in the state of Virginia. That state levied a foreign corporation tax against the New York company, upon the ground that in the construction of the signal system, permanent structures were erected upon the railway property through the uses of labor, and that the work called for by the contract with the railway company constituted the doing of a local business within the state. *Held,* that

the tax was good, and that such tax did not unlawfully burden interstate commerce where the statute of the state did not vary in proportion to the capital stock and where it provided a fixed maximum. *Ry. Signal Co. v. Virginia,* U. S. Adv. Ops. 1917, page 432.

DUE PROCESS—PARENT AND CHILD—RIGHTS OF PARENT.

A wife left her husband in Tennessee, taking with her their two-year-old baby girl, and went to Alabama, where she brought suit for and obtained a divorce through service by publication. After the decree was obtained by the wife, the husband brought suit for the possession of the child in the courts of Tennessee upon the theory that the proceedings in Alabama giving the mother custody of the baby girl were void, in that they deprived him of property (the child and the parent's right in such person) without due process of law. *Held,* that a parent has no property in a child; and that by taking the child with her to Alabama the mother gave the Alabama court jurisdiction over it. *(Tenn.) Kenner v. Kenner,* 202 S. W. 723.

INSURANCE—ACTION BY ADMINISTRATOR—PRESUMPTION OF DEATH.

On January 29, 1907, the Western and Southern Life Insurance Co. issued a policy to James P. Weisner for $1,000, payable to Carrie Weisner, his wife. He abandoned her in 1908, left the state, and was never heard from. The wife obtained divorce in 1909, but continued to pay the yearly premiums on the policy up to March 29, 1915. The wife had recovered only the amount paid in premiums and interest, because she had no insurable interest. Here the administrator sues for the benefit of the estate. *Held,* Weisner's death presumed by his absence of seven years, but such presumption arises at the end of the period and does not relate back to the time of his disappearance. Weisner paid no premiums, and his divorced wife could not keep the contract alive; so it had lapsed and nothing was due the estate. *(Ky) Western and Southern Life Ins. Co. v. Nagel,* 203 S. W. 192.

INSURANCE—BENEFICIARY—"MEMBER OF FAMILY"—DEPENDENT.

The deceased was insured in a fraternal company, whose by-laws provided that any member of a family, or one dependent upon the insured could be a beneficiary. The deceased had a policy of $1,000. She left surviving her two brothers as her only heirs at law and next of kin. A young woman had lived with the deceased for several years, not paying board, and partly dependent upon deceased. *Held,* that she was the beneficiary under the by-laws. *(Ill.) Women's Catholic Order of Foresters v. Heffernan et al.,* 119 N. E. 426.

INCREASED RATES—INTERSTATE COMMERCE COMMISSION—MANDAMUS.

The railway erroneously printed an increased rate in its tariff of July, 1906. The relator shipped at the former rate until February, then the increased rate was charged until April, when the old rate was restored. The relator had paid overcharges amounting to $595. He notified the Interstate Commerce Commission, and they wrote that if the railway would admit the error, they would authorize a repayment. The railway refused to do this unless the relator would pay the advanced rate on all shipments made since the tariff was published. This overcharge of $1,395 was paid in 1911. Then the railway admitted the error to the Commission. The Commission refused the prayer for an order permitting the railway to refund the entire amount, advancing the point that it had no jurisdiction of the latter payments, because the statute under which the Commission acted provided that all actions for damages for refund must be filed within two years after the cause of action accrues. The relator petitioned the Supreme Court of the District of Columbia for mandamus; it was denied and he appealed to the Court of Appeals, where the ruling was affirmed on the ground that it was a discretionary power of the Commission. *Held,* not discretionary but jurisdictional. The statute meant from time of actual payment, and not from date of shipment as construed by the Commission, and it had jurisdiction and must try the case on its merits. *U. S. ex rel. Louisville Cement Co. v. I. C. C.,* U. S. Adv. Ops. 1917-18, page 496.

SEPARATE OR SINGLE CONTRACTS—SPLITTING CAUSES.—ACTIONS FOR PORATIONS.

The Public Service Commission of Rochester was about to authorize the street railway to increase its fare. The Constitution provided that one-half the owners in value and the local authorities along the street-occupied railways must consent to the construction and operation. This consent had been obtained by fixing a maximum fare. *Held,* that the commission had no authority to grant a raise, no jurisdiction, therefore prohibition will lie. *(N. Y.) Quimby, et al. v. Public Service Commission,* 119 N. E. 433.

SEPARATE OR SINGLE CONTRACTS—SPLITTING CAUSES.—ACTIONS FOR RENT.

A hotel was leased for the year 1910 by certain persons who executed twelve notes for the rental thereof. At the end of the lease-hold period, the lessees executed new notes for the year 1911, over three of which latter notes some difficulty arose and payment was

refused. The lessees remained in possession under the above arrangement until some time in 1916, when possession was surrendered and an unpaid balance of $250 remained on the year 1915. Suit was brought upon the notes of 1911, and the lessees filed a bill to enjoin the defendants from prosecuting those claims, because a former suit had been prosecuted for the $250 remaining on the 1915 rental, and claimed that the transaction out of which these debts and claims arose was but one continuous contract, and that this suit on the notes made in 1911 was barred by the subsequent action and recovery. *Held,* that the leasing was by tenancy from year to year, and that each note was separate and would sustain a separate cause of action, and that a recovery upon the notes of 1915 would not operate as an estoppel against notes previously issued, due and unpaid. *(Tenn.) Matheny et al. v. Preston Hotel Co.,* 203 S. W. 327.