REVIEW OF RECENT DECISIONS

RELEASE OF ONE JOINT TORT FEASOR—COMMON LAW RULE—EFFECT OF MISSOURI STATUTE.

In the recent case of Abbott v. the City of Senath, 243 S. W. 641, (Mo.) the plaintiff was injured on January 16, 1918, while walking along one of the streets of Senath, by the falling of an awning upon him. The awning, which was constructed of wood, was part of a building owned by the Senter Commission Company, of St. Louis, but said building was at the time of the accident occupied under a lease by the Petty Store Company. The evidence tended to show that the awning was caused to fall by snow and ice which had accumulated thereon between December 7, 1917, and January 16, 1918.

Plaintiff died, from causes other than the injuries he had received, during the litigation, and the cause was revived by his administratrix.

On March 11, 1918, following his injury in January, Abbott received from the Senter Commission Company the sum of $500, and gave his receipt therefor. The receipt was in words and figures as follows:

$500.00 Senath, Missouri, March 11, 1918.

Received of Senter Commission Company, St. Louis, Missouri, five hundred dollars in full of all demands, from injury received by the falling of awning in front of their brick building, occupied by Petty Store Company, located in Senath, Missouri, on or about the 16th day of January, 1918.

C. H. Abbott.

On May 21, 1918, Abbott also received from the Petty Store Company $250, and executed to them an acquittance, which recited among other things that such sum was paid and received in settlement and compromise of his claim against that company for his injuries. After that he instituted this suit against the City of Senath to recover full compensation for his injuries.

The petition counted on the negligence of defendant city in permitting the accumulated snow and ice to remain on the awning after it knew, or by the exercise of ordinary care could have known, that the awning by reason of such accumulation had become dangerous to pedestrians passing along the street and sidewalk under it.

Held, that the written acknowledgment given by Abbott to the Senter Commission Company was not a mere receipt; it embodied what was in fact a release (Coon v. Knapp, 8 N. Y. 402, 59 Am. Dec. 502); its interpretation, like that of any other written instrument, was for the court and not for the jury. Properly construed it showed that Abbott's cause of action had been discharged

before the institution of the suit against the City of Senath. That a release given to one apparently liable was a bar to another action, although in point of fact he is not liable.

Held further, that Sec. 4223 R. S. Mo. 1919, which provides: "It shall be lawful for all persons having a claim or cause of action against two or more joint tort feasors or wrong-doers to compound, settle with and discharge any and every one of said joint tort-feasors or wrong-doers for such sum as such person or persons may see fit, and to release him or them from all further liability to such person or persons for such tort or wrong, without impairing the right of such person or persons to demand and collect the balance of said claims or cause of action from the other joint tort-feasors or wrong-doers against whom such person or persons has such claim or cause of action, and not so released," was not designed to affect and does not affect, the principle that there can be but one satisfaction for the same wrong.

STATUTES — CONSTRUCTION THEREOF — CONSTITUTIONALITY

In the recent case of Lincoln University v. Hackmann, State Auditor, 243 S. W. (Mo.) 320, the relator sued for a writ of mandamus to compel the State Auditor to honor a requisition for $4287.40, and to draw a warrant upon the State Treasurer for that sum in favor of the relator. The requisition had been given to an architect who had rendered services for Lincoln University, an institution for the higher education of negroes. Payment for these services was to be made from a fund created by a statute in laws 1921, p. 86, which statute provided for the organization of Lincoln Institute as a University, separate and distinct from the State University, and also for the appropriation of $500,000 from any "unappropriated part of the General School Funds" of the State to be used in the improvement of said Lincoln University.

In construing the statute, the Court invoked the rule that in interpretation of Acts of the Legislature, words may be substituted or rejected when necessary to effect the manifest intention of the framers thereof. State ex rel. Sheehan, 269 Mo. 421, 427, 190 S. W. 864; St. Louis v. Murta, 283 Mo. 77, 222 S. W. 430; State v. Gmelich, 208 Mo. 152, 161, 106 S. W. 618. Especially is this rule applicable where the literal meaning of the statute is absurd. or where the Court deems the provision was inserted through inadvertance. In the present case the Court held that the word "unappropriated" was inadvertantly used in the Act, for there could be no unappropriated part of the public school funds, as they had been appropriated for the public schools. The Court, therefore, rejected the word "unappropriated."

Even though the word "unappropriated" was rejected the statute was still in conflict with Section I, Article II of the Constitution, which section provides