thus placed in the position of declaring on one cause of action and attempting to recover on another, as this special contract was inconsistent with the common law liability of defendant."

CONTRACTS IN RESTRAINT OF TRADE—CONSTITUTIONAL LAW.

East Jersey Water Co. v. City of Newark, et al. (New Jersey Chancery, July, 1924) 125 Atl. 578.

Complainant and Respondent, among others, entered into a contract whereby complainant should construct and turn over to respondent a system of waterworks, and restricting the territory in which water could be sold. After taking over the Newark system, that city having an excess supply, sold water to two outlying towns neither of which was within the territory specified, and both of which could otherwise have been served by complainant.

The argument arose on a motion to strike out the bills of complaint.

Held, by the court that the territorial restriction in the contract was void as being in restraint of trade since it was conceived with a necessity of life, to wit, water. Since the water delivered by the city in violation of the territorial restriction is definitely ascertainable in gallons at a specified rate, there is no grounds for equity jurisdiction, and the complainant has an adequate remedy at law.

Although there was a prior suit involving the same question, the doctrine of res adjudicata does not apply, the parties not being identical in the two cases.

As to the only constitutional point, it was held that where a contract in its inception was void as being in restraint of trade, the provision as to the impairment thereof has no application.

CRIMINAL LAW—WRIT OF PROHIBITION.

State ex rel. Meininger v. Breuer, Circuit Judge. (Supreme Court of Missouri, July, 1924) 264 S. W. 1.

Relator had been convicted of embezzlement, sentenced, and had appealed. While his case was pending on appeal, the circuit court had taken steps to try relator on indictments for felony which had been found before the conviction for embezzlment. He thereupon began this proceeding in prohibition, and the issue arises whether the circuit court has jurisdiction to try the relator for the other offenses during pendency of his appeal. Relator relies on Sec. 3697 Rev. Stat. 1919.

The court holds that the circuit court has jurisdiction of the prosecution in question notwithstanding pendency of appeal on another cause, and that cumulative sentences may be imposed without any statutory authority for so doing. One convicted and sentenced may be tried for another crime as against the contention that he is civilly dead. Writ denied and motion for rehearing overruled.

GRADE CROSSING INJURIES—CARE REQUIRED OF AUTOMOBILE DRIVER IN PERIL.

Norton vs. Davis, 265 S. W. 107. (Mo. App. 1924).

Plaintiff while driving in an automobile was struck by a train of defendant where its tracks cross a public road, the engineer sounding no alarm. Plaintiff's view of the tracks was obscured until she reached a point only about eleven feet from the right of way. The evidence shows the plaintiff to have been running the car at about fifteen miles an hour, that after the brakes were applied the car was stopped within twelve feet but that she had driven twenty-seven feet after first discovery of the train, due to her confusion and fright occasioned by the defendant's failure to sound an alarm. The issue of contributory negligence was decided in favor of the plaintiff by the jury.

The evidence was held not to show the plaintiff's failure to look for the train close to the crossing. The failure of one who has looked and listened for a train, to keep a foot on the brake, was held not negligent in itself. If confusion resulted in an automobile driver from the railroad's negligence, if there was a reasonable apprehension of peril, if the danger appeared so imminent as to preclude deliberation, the driver was not contributorily negligent. This is true even though the automobile could have beeen stopped before reaching the track, and the peril was not actual. It was not necessary for plaintiff to allege due care because that was a matter of defense. Judgment for plaintiff affirmed.

INJUNCTION TO RESTRAIN CONTINUANCE OF A NUISANCE.

Elliott Nursery Co. v. Du Quesne Light Co. (Supreme Court of Pa., July, 1924) 126 Atlantic 345.

Plaintiff operates an extensive nursery adjacent to a tract on which defendant's electric power plant is located. The nursery existed for some