The provisions of section 70a of Bankruptcy Act, 1898, do not apply to policies of life insurance which are exempt by state law from the claims of creditors, and where a semi-tontine or a paid-up policy held by a bankrupt is so exempt, it is exempt under section 6 of the Act, though it has a cash surrender value. *Holden* v. *Stratton*, Supreme Court of the United States, May 8, 1905, 14 Am. B. R., p. 94.

BANKRUPTCY ACT—SECTION 3 (4) AS AMENDED, 1903—RECEIVER "BECAUSE OF INSOLVENCY."—Section 3 (4) of the Bankruptcy Act as amended in 1903, does not make a receivership an act of bankruptcy, unless it was procured upon the application of the insolvent himself while insolvent and does not make the putting of a receiver in charge of the property of an insolvent an act of bankruptcy unless this was done because of insolvency. *Matter of Spalding*, U. S. Circuit Court of Appeals, Second Circuit, June, 1905, 14 Am. B. R., p. 129.

LIEN—TWO FUNDS—APPLICATION OF RULE.—DEBTS—DIVIDENDS—CLAIMS WITH COLLATERAL SECURITY.—The equitable rule, in substance made part of the Bankrupt Act, that a creditor having a lien on two funds must exhaust the one upon which other creditors have no lien, does not apply where it operates to the injury of the party having the double lien.

One who has been allowed to prove his claim as an unsecured creditor against a bankrupt indorser, must realize and credit the proceeds of collateral securities held by him against the principal debtor before he will be allowed to participate in the distribution of the estate of such indorser. *Gorman* v. *Wright*, U. S. Circuit Court of Appeals, Fourth Circuit, February 21, 1905, 14 Am. B. R., p. 135.

RAILROADS—FIRES—EVIDENCE—EXPERTS.—In an action against a railroad for fire alleged to have been negligently set out, a question asked of an expert, if there was any way in which fire coming from the fire box could get above the netting in the front end of the engine without going through the netting, referring to the only engines which could have set out the fire, was competent, though calling for a conclusion.

In an action against a railroad for fire alleged to have been negligently set out, evidence of qualified witness describing the character of the engines which might have set the fire as belonging to a certain class, and that the quality and equipment of such engines with regard to safety and the setting out of fire were, as a class, the best engines defendant company had, and that the features of a locomotive to be considered in connection with the setting out of fire, were the nettings, diaphragm, and plates, was relevant and material.

Evidence that an engine could not be operated without small cinders escaping from the smokestack was admissable. *Ins. Co.* v. *C. & N. W. Ry. Co.* (Iowa), 104 N. W. 361.

See on this point: *N. & W. Ry. Co.* v. *Briggs*, 103 Va. 105, 10 Va. Law Reg. 607; *C. & O. Ry. Co.* v. *Heath*, 103 Va. 64, 10 Va. Law Reg. 529; *White* v. *Ry. Co.*, 99 Va. 357; *Ry. Co.* v. *Land Co.*, 27 Fla. 1; *Ireland* v. *Ry. Co.*, 79 Mich. 163.

RAILROADS—FIRES — NEGLIGENCE — COMPLAINT — ISSUES — PROOF — INSTRUCTIONS.—Where, in an action against a railroad company for a fire alleged to have been negligently set out, the complaint stated that there was a large accumulation of combustible matter on defendant's right of way where the fire was set, and that, for a long time prior to the fire, defendant had negligently suffered such matter so to remain during the hot season, until it was ignited by sparks from a passing locomotive, which fire, through defendant's negligence, escaped and communicated to plaintiff's property, such allegation was sufficiently certain and definite, both as to the extent of the accumulation of combustible matter, etc., and also as to the time during which it had been permitted to remain on the right of way.

Under an allegation that defendant railroad company negligently permitted fire to escape from its right of way on plaintiff's premises, it was not necessary for plaintiff to show that defendant omitted to adopt prudent means to prevent the escape of fire after it had started, but it was sufficient, under such averment, to show the accumulation of combustible material on the right of way, extending up to plaintiff's property, so that the communication of fire to plaintiff's property would be the natural and probable consequence of its burning on the right of way. *Ry. Co.* v. *Wise* (Ind.), 74 N. E. 1107.

See on this point: *Kimball* v. *Bowen*, 97 Va. 477; *Tutwiler* v. *C. & O.* 95 Va. 443; *Ry. Co.* v. *Thomas*, 92 Va. 606; *Tyler* v. *Rickamore*, 87 Va. 466; *N. & W. Ry. Co.* v. *Bohannon*, 85 Va. 293; *R. & D.* v. *Medley*, 75 Va. 499; *Brighthope v. Ry. Co.*, 76 Va. 449; *Shields v. N. & C. Ry.*, 129 N. C. 1; *Black* v. *Ry. Co.*, 115 N. C. 667; *Aycock* v. *Ry. Co.*, 89 N. C. 321; *Traxler* v. *Ry. Co.*, 74 N. C. 377; *Maraude* v. *Tex.*, 184 U. S. 173; *Albrons* v. *Seattle* (Wash.). 68 P. 78; *St. Louis* v. *Leedlum* (Kans.), 66 P. 1045; *Graw* v. *Ry. Co.*, 1 N. Dak. 252; *Jones* v. *Ry. Co.*, 59 Mich. 437; *Indiana* v. *Overman*, 110 Ind. 538; *A. C. L. Ry. Co.* v. *Watkins* (Va.) 51 S. E. 172

ASSAULT WITH INTENT TO KILL—INDICTMENT—INSTRUCTIONS.—In the trial of an indictment found under W. Va. Code 1899, ch. 144, sec. 9 (substantially the same as Va. Code 1904, sec. 3671), for malicious wounding with intent to maim, disfigure, disable or kill, an instruction at the instance of the state which eliminates from the consideration of the jury the intent with which the alleged wounding was done is erroneous. *State* v. *David* (W. Va.) 51, S E. 230.

GAMING—EVIDENCE.—In the case of *Davis* v. *State* (Ga.), 51 S. E. 501, the court *held*: