

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹SUPREME COURT OF MICHIGAN.²SUPREME COURT OF PENNSYLVANIA.³

ADMIRALTY.

Jurisdiction.—A contract for the transportation of passengers by a steamship on the ocean is a maritime contract, and there is no distinction in principle between it and a contract for the like transportation of merchandise: *The Moses Taylor*, 4 Wallace.

The distinguishing and characteristic feature of a suit in admiralty, is that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is judged and sentenced accordingly: *Id.*

The provision of the ninth section of the Judiciary Act, which vests in the District Courts of the United States exclusive cognisance of civil causes of admiralty and maritime jurisdiction, is constitutional: *Id.*

ALLUVION.

Right to.—The right to alluvion depends upon the fact of contiguity of the estate to the river. Hence where accretion is made before a strip of land bordering on a river, the accretion belongs to it and not to the larger parcel behind it and from which the strip when sold was separated: *Saulet v. Shepherd*, 4 Wallace.

ATTORNEY.

As a Witness—Interest to disqualify.—The possibility that an action may be brought against an attorney for neglect of duty, is too remote and contingent to affect his competency as a witness for his client: *Braine v. Spalding*, 52 Penna.

The true test of interest in a witness is, that he will either gain or lose as the direct legal effect of the judgment, or that the record will be legal evidence for or against him in some other action: *Id.*

His liability to a like action is an interest in the *question* only, and does not exclude him. His interest from liability over, must result from an obligation to indemnify the party calling him: *Id.*

An attorney employed to collect a note is liable to his client for not using reasonable skill and diligence; but there is no obligation to indemnify: *Id.*

The indorser, at his own request, received from the attorney the note and undertook to have it put into the hands of a magistrate for collection from the drawer. *Held*, that he had waived the necessity of presentation and protest, and was estopped in a suit against himself on the note from objecting to the competency of the attorney as a witness: *Id.*

¹ From J. W. Wallace, Esq., Reporter; to appear in Vol. 4 of his Reports.

² From Hon. T. M. Cooley; to appear in 15 Michigan Reports.

³ From P. F. Smith, Esq., Reporter; to appear in 52 Penna. State Reports.

BANK.

Liability of Surety of a Teller.—A teller of a bank was a defaulter to it at the time sureties entered into a new bond for the faithful performance of his duties, &c. *Held*, if the bank fraudulently concealed that he was then a defaulter, the sureties would not be liable for a subsequent default: *Wayne v. Commercial National Bank*, 52 Penna.

But where the bank had no reason to suspect the teller, and there was no request by the surety to investigate his accounts, omission of the bank to make such investigation, would not discharge the surety: *Id.*

The teller, having authority to issue "due-bills" for the bank for a special purpose, issued them to raise money for himself; neither he nor his surety could set up a want of power in the bank to issue them: nor that the due-bills were not properly stamped: *Id.*

When the default of the principal would forfeit the bond as to him, it would forfeit it as to the surety: *Id.*

BILLS AND NOTES.

Negotiability.—A note for a sum certain, payable in Michigan with current exchange on New York, is a negotiable promissory note: *Johnson v. Frisbie*, 15 Mich.

CHECK.

Where Drawer has no Funds.—Drawing a check on a bank in which the drawer has no funds, and uttering it, is fraud; both on the person to whom it is negotiated and on the bank: *Peterson v. Union National Bank*, 52 Penna.

It is fraud in the holder of a check to present it for payment, when he knows the drawer has no funds in the bank to meet it: *Id.*

The holder of a check deposited it in the bank on which it was drawn, knowing that the drawer had no funds to meet it; it was passed to the holder's credit and charged against the drawer. *Held*, that this was not payment of the check by the bank and that the holder could not recover the amount from the bank: *Id.*

COMMON CARRIERS.

Refusal to carry Passenger back to Country from which he has been banished.—Although a common carrier of passengers by sea, as a master of a steamship, may properly refuse a passage to a person who has been forcibly expelled by the actual though violent and revolutionary authorities of a town, under threat of death if he return, and when the bringing back and landing of such passenger would in the opinion of such master tend to promote further difficulty—yet this refusal should precede the sailing of the ship. If the passenger have violated no inflexible rule of the ship in getting aboard the vessel, have paid or tendered the passage-money, and have conducted himself properly during the voyage, the master has no right, as matter of law, to stop a returning vessel, put him aboard it, and send him back to the port of departure. And if he do so, damages will be awarded against him on a proceeding in admiralty: *Pearson v. Duane*, 4 Wallace.

However, where a person who had been thus banished from a place got on board a vessel going back to it, determined to defy the authorities there and take his chance of life, and the captain, who had not

known the history of the case until after the vessel was at sea—on meeting a return steamer, of a line to which his own vessel belonged—stopped his own and sent the man aboard the returning one, to be taken to the port where he embarked—such captain, not acting in any malice, but acting from a humane motive, and from a belief that the passenger, if landed at the port where his own vessel was going, would be hanged—in such a case, the apprehended danger mitigates the act, and the damages must be small. Accordingly, in such a case, this court, on appeal from a decree which had given four thousand dollars damages, modified it by allowing but fifty dollars, with directions, moreover, that each party should pay his own costs on the appeal: *Id.*

CONSTITUTIONAL LAW.—See *Legal Tender Acts—Municipal Corporation.*

Obligation of Contract.—Where a statute has authorized a municipal corporation to issue bonds, and to exercise the power of local taxation in order to pay them, and persons have bought and paid value for bonds issued accordingly, the power of taxation thus given is a contract within the meaning of the Constitution, and cannot be withdrawn until the contract is satisfied. The state and the corporation in such a case are equally bound: *Von Hoffman v. City of Quincy*, 4 Wallace.

A subsequently passed statute which repeals or restricts the power of taxation so previously given, is, in so far as it affects bonds bought and held under the circumstances mentioned, a nullity; and it is the duty of the corporation to impose and collect the taxes in all respects as if the second statute had not been passed: *Id.*

Certificates of discharge granted under insolvent laws passed by a state cannot be pleaded in bar of an action brought by a citizen of another state in the courts of the United States, or of any other state than that where the discharge was obtained, unless it appear that the plaintiff proved his debt against the defendant's estate in insolvency, or in some manner became a party to the proceedings: *Baldwin v. Hale*, 1 Wallace 223, 3 Am. Law Reg. 462, and *Baldwin v. Bank of Newbury*, 1 Wallace 234, affirmed, *Gilman v. Lockwood*, 4 Wallace.

The President.—The President of the United States cannot be restrained by injunction from carrying into effect an Act of Congress alleged to be unconstitutional, nor will a bill having such a purpose be allowed to be filed: *State of Mississippi v. Johnson, President*, 4 Wallace.

It makes no difference whether such incumbent of the presidential office be described in the bill as President, or simply as a citizen of a state: *Id.*

Jury Trial.—The Constitution preserves the right of trial by jury, but provides that it shall be waived in civil cases, unless demanded in such manner as shall be provided by law. Under this provision, it is not competent for the legislature to provide that cases which were triable by jury when the Constitution was adopted may be brought and determined in chancery, unless provision is also made by which defendant, at his option, can have trial by jury: *Tabor v. Cook*, 15 Mich.

CONTRACTOR.

Liability of Principal for Negligence.—Where work done on a pub-

lie highway necessarily constitutes an obstruction or defect in the highway which renders it dangerous as a way for travel and transportation unless properly guarded or shut out from public use, in such case a principal for whom the work was done cannot defeat the just claim of a municipal corporation which has had to pay damages, or of a private party who has suffered injury, by proving that the work which constituted the obstruction or defect was done by an independent contractor: *Chicago City v. Robbins*, 2 Black 418, 2 Am. Law Reg. 529, affirmed, *Robbins v. Chicago*, 4 Wallace.

CORPORATION.

Transfer of Stock.—A purchaser of stock upon its transfer to him is protected in his purchase although there was no right to make the transfer: *Bayard v. Farmers' and Mechanics' Bank*, 52 Penna.

Banks and other corporations are trustees for the property and title of each owner of their stock. Having in their keeping the primary evidence of title, they are held to proper care and diligence in its preservation, and may demand evidence of authority to transfer: *Id.*

Although generally the legal title is sufficient evidence of a right to transfer, yet if a transfer would be a wrong to an equitable owner, the corporation make themselves parties to the wrong if they permit it to be done, knowing such equitable right: *Id.*

Letters of administration are always sufficient evidence of authority to transfer, because a sale and transfer of stock is in the line of the duty of administrators, whose primary duty is to dispose of the property, to pay the debts of the intestate, and distribute the residue: *Id.*

A trustee of an insolvent debtor stands on the same footing, and generally an executor, even if the stock may have been bequeathed specifically, the transfer agent having no means of knowing whether it will be necessary to pay debts: *Id.*

The powers of an executor or administrator differ from those of an ordinary trustee, the duty of the latter being not administration, but custody and management: *Id.*

A transfer agent before permitting the transfer of stock, appearing on the face of the certificate to be held in trust, has a right,—especially if the *cestui que trust* is named,—to require the exhibition of the authority to transfer beyond the certificate: *Id.*

Expulsion of a Member.—The articles, conditions, and objects of an association incorporated by the Supreme Court are their charter, and have the same force and effect as if specifically granted by special Act of Assembly; the charter cannot be questioned collaterally: *Society for the Visitation of the Sick, &c., v. Commonwealth ex rel. Meyer*, 52 Penna.

In such charter, where the power of expulsion is conferred and a member in accordance with its requirements has signed the articles, he is bound by them, and the fitness of the objects, &c., is not a subject of judicial inquiry: *Id.*

When such member has been regularly tried and expelled, the sentence of the society, acting judicially, cannot be inquired into collaterally, nor can the merits of his expulsion be re-examined: *Id.*

In an association one of whose objects was to provide assistance for sick members;—to feign sickness or draw relief after recovery is sub-

versive of the fundamental objects of the association, an act which tends to its destruction, and is within the power of expulsion by the association: *Id.*

A return to a *mandamus* must set forth distinctly and certainly—not argumentatively, inferentially, or evasively—all the facts essential to the conviction, both as to the cause and mode of proceeding: *Id.*

A return to a *mandamus* that the relator was, according to the constitution and by-laws of the association, “tried and convicted of the charges,” is not sufficient, without showing that the association took proofs which they deemed to be sufficient evidence: *Id.*

A trial for an offence against the laws of such association is not an ecclesiastical trial concerning matters of conscience, but an ordinary secular affair. *Quære*, how far such trials on Sunday comport with our legislation and institutions: *Id.*

Jews are bound to observe the civil regulations made for the keeping of the Christian Sabbath: *Id.*

Lien on Stock for Debt due the Corporation.—At common law there is no lien against stock for debts in favor of the corporation issuing the stock: *Steamship Dock Co. v. Heron's Admr.*, 52 Penna.

When such lien exists it is by statutory authority, either expressed in the act of incorporation, or in by-laws made by authority of the act: *Id.*

A stockholder whose estate was insolvent, died indebted to a corporation; after his death the directors passed a resolution prohibiting the transfer of stock by any one indebted to the company: his administratrix afterwards sold the stock, the purchaser having no notice of the by-law: *Held*, that the company was bound to permit a transfer of the stock: *Id.*

CRIMINAL LAW.

Accomplice, Admissions by.—Where one party receives from another stolen wool, knowing it to be stolen, and afterwards sells it, the fair presumption will be that it was to be sold for the joint benefit of the two, and that the joint undertaking continued until the sale. The declarations of one, intermediate the receiving and the sale, will therefore be evidence against the other: *People v. Pitcher*, 15 Mich.

Common Scold.—A common scold is indictable as a common nuisance: *Commonwealth v. Mohn*, 52 Penna.

The 178th section of the revised Penal Code, which provides that every felony, misdemeanor and offence whatever not specially provided for by the act, may and shall be punished as heretofore; saves the common-law offence of “common scold:” *Id.*

An indictment charging that the defendant “intending the morals * * of citizens of this Commonwealth to debauch and corrupt, openly and publicly * * in the public highways, wicked, scandalous, and infamous words did utter in the hearing of the citizens of the Commonwealth, and to their manifest corruption and subversion, and to the common nuisance,” &c., sufficiently describes the offence: *Id.*

COUNTY.

Organization of New.—A new county cannot be created and organized

with a single town, and there cannot be a board of supervisors with a single member only: *People v. Maynard*, 15 Mich.

DAMAGES.

Failure to deliver Specific Articles.—On failure to deliver specific articles contracted for, the damages are generally the difference between the contract price and the market price at the time for delivery: *White v. Tompkins*, 52 Penna.

When the contract is to pay a sum of money in specified articles, the damages on failure are the interest of the money: *Id.*

When the contract is to pay, for a thing purchased, a fixed sum of money in specific articles, the vendee has the option to pay in money or the articles: *Id.*

A vendee contracted to buy land for a price fixed, "it being expressly agreed that the said payments are to be made in * * axes." *Held*, that the vendee might elect to pay in money: *held*, also, that the measure of damages on failure of vendee was the interest of the money, not the profit which the vendor might have made on the axes: *Id.*

EQUITY.

Laches.—A party who claims that a decree in equity, obtained against him when an infant, was fraudulent, but who takes no proceedings to set it aside for six years after coming of age, until the complainant in the decree, a principal witness, and the solicitor who acted as guardian *ad litem* for him, are all dead, will be held to have lost all equity by his laches: *Campan v. Van Dyke*, 15 Mich.

Specific Performance.—Specific performance will not be decreed of a land contract which is unfair in its provisions: *Chambers v. Livermore*, 15 Mich.

Nor of one which the vendee has taken no steps towards performing until, after being long in default, the value of the land had greatly increased: *Smith v. Lawrence*, 15 Mich.

FORMER JUDGMENT.

A decree dismissing a bill for matters not involving merits, is no bar to a subsequent suit: *Hughes v. United States*, 4 Wallace.

FRAUD.—See *Check*.

HUSBAND AND WIFE.

Wife as a Creditor of Husband.—It is necessary that a wife should prove her right as a creditor of her husband with clearness. On this point there should be no doubt: *Hause v. Gilger, Admr.*, 52 Penna.

Where there is a balancing question as to whether the money alleged to have been lent by the wife to her husband came from her means or his, it is not error in the court to take the question from the jury: *Id.*

Capacity of Married Woman to make Contracts.—A married woman has no capacity to contract for the sale of her land or to convey it, except in the precise statutory mode: *Glidden v. Strupler*, 52 Penna.

At law *femes covert* have no capacity to make contracts. Their contracts are nullities, and in this respect equity follows the law: *Id.*

In this state a married woman's power to convey is derived from the Act of 1770, and in regard to powers in their nature statutable, equity follows the law, however meritorious the consideration: *Id.*

Equity will not aid defects which are of the essence of the power, nor supply any circumstance for want of which the legislature has declared the instrument void: *Id.*

The contract of a married woman being void, it cannot be ratified unless by deed in the mode prescribed by the statute: *Id.*

Positive acts of encouragement which might operate to estop one *sui juris*, will not affect one under legal disability: and a wife can do or forbear to do no act to affect her property, unless settled to her separate use: *Id.*

A married woman by agreement, signed only by herself and without an acknowledgment, contracted to sell land: she received one year's interest and a small part of the purchase-money. The purchaser took possession and made improvements with her knowledge and encouragement. *Held*, that neither the principle of estoppel nor compensation would prevent her recovering the land: *Id.*

Contract by Married Woman.—A married woman living with her husband, and carrying on business as a boarding-house keeper, with his assent, and receiving the proceeds of the business, may bind herself by purchases of furniture for the business: *Tillman v. Shackleton*, 15 Mich.

Divorce—Consent.—Decrees will not be made by consent in divorce cases; not even a decree affirming a decree of divorce made in the court below and which has been appealed from: *Robinson v. Robinson*, 15 Mich.

Wife as Witness for Husband.—The statute which makes husband and wife competent witnesses for each other, but does not allow the opposite party to call them except by consent, only confers a privilege which the party can assert or not at his option. Where a husband was on trial for larceny, and the facts constituting the defence, if true, must have been within the knowledge of the wife, who was not called, it was *held* to be error in the court to charge the jury that they might draw unfavorable inferences against the husband from his failure to call the wife as a witness: *Knowles v. People*, 15 Mich.

INTEREST.

A party suing, not on a note, but on the consideration for which the note was given—and using the note as evidence rather than as the foundation of the claim—may have lawful interest on the sum due him, although by note given on a settlement the party sued may have promised to pay unlawful interest, and such as the law of the state where the note was given visits with a forfeiture of all interest whatever: *Newell v. Nixon*, 4 Wallace.

JEWES.—See *Corporation*.

LEGAL TENDER ACTS.

Congress has constitutional power to issue treasury notes of the United States and make them lawful money and a legal tender for the payment of debts: *Shollenberger v. Brinton* 52 Penna.

The Act of Congress, of February 25th 1862, authorizing the issue of such notes, is constitutional: *Id.*

The principal sum which redeems a ground-rent, is a debt within the meaning of the act: *Id.*

A ground-rent, payable in “* * * dollars, lawful silver money of the United States of America,” is redeemable by such notes: *Id.*

So the half-yearly instalment of a ground-rent, payable in “* * dollars, lawful silver money of the United States, each dollar weighing 16 pwt. 6 gr. at least:” *Mervine v. Sailor*, 52 Penna.

So a ground-rent payable in “lawful money:” *Davis v. Burton*, 52 Penna.

So a ground-rent payable in “lawful money of the United States:” *Kroener v. Colhoun*, 52 Penna.

So a certificate of deposit of “gold, payable * * * in like funds with interest:” *Sandford v. Hays*, 52 Penna.

So a note for a sum of money marked in margin “\$14,145 specie,” which by bankers’ rules meant in gold or silver coin: *Graham v. Marshall*, 52 Penna.

So a note for “* * * dollars in gold:” *Laughlin v. Harvey*, 52 Penna.

Where the errors assigned are not sustained by a majority of the Supreme Court, the judgment of the court below is affirmed: *Id.*

The condition of a bond for payment in gold coins of the United States of a particular fineness, “notwithstanding any law which may now or shall hereafter make anything else a tender in payment of debt.” *Held*, not payable in greenbacks: *Dutton v. Paillaret*, 52 Penna.

MALICIOUS PROSECUTION.

Probable cause.—Where one accused of crime has been discharged by the examining magistrate, the burden of showing probable cause is thrown on the prosecutor in an action against him for malicious prosecution: *Smith v. Ege*, 52 Penna.

Probable cause does not depend on the actual state of the case, but upon the honest and reasonable belief of the party prosecuting: *Id.*

Probable cause is a reasonable ground for belief of guilt, without regard to what induces the belief if it be reasonably sufficient: *Id.*

Floating rumors are not an adequate foundation for such belief, but representations of others, especially of those who have had opportunities for knowledge, or who have made an investigation, are: *Id.*

A murder having been committed, the defendant employed detectives, who discovered facts, tending to show the guilt of the family of which the accused was one; the facts were reported to the defendant and his counsel, who advised a prosecution. *Held*, that he had reasonable ground for belief, and that probable cause had been shown: *Id.*

There is always a presumption in favor of the decisions of the courts below. The plaintiff in error therefore must furnish to the Supreme Court the means of determining with certainty, and in such a case as an action for malicious prosecution, the whole evidence duly certified must be given: *Id.*

MUNICIPAL CORPORATION.—See *Contractor*.

Right to Jury Trial.—Municipal corporations being creatures of

legislation, have no constitutional guaranty of trial by jury, and such trial may be denied to them: *Borough of Dunmore's Appeal*, 52 Penna.

Public Purpose—Borrowing Money.—A provision in the charter of a city corporation authorizing it to borrow money for any public purpose, whenever, in the opinion of the City Council, it shall be expedient to exercise it, is a valid power. *Rogers v. Burlington*, 3 Wallace 654, affirmed: *Mitchell v. Burlington*, 4 Wallace.

Money borrowed by such a corporation to construct a plank-road, if the road leads from, extends to, or passes through the limits of the corporation, is borrowed for a public purpose within the meaning of the provision: *Id.*

Havemeyer v. Iowa County, 3 Wallace 294, and *Gelpcke v. City of Dubuque*, 1 Wallace 175, affirmed, and the doctrine reasserted, that if municipal bonds, when made, were valid by the constitution and laws of a state as then expounded; by the highest judicial authority whose duty it was to interpret them, no subsequent judicial exposition of an opposite kind will make them invalid: *Id.*

Liability for Defective Walks.—A municipal corporation is not liable to an individual injured in passing along a walk, in consequence of a defect therein, unless the city authorities had notice of the defect, or it was of a character likely to attract attention: *Dewey v. Detroit*, 15 Mich.

NEGLIGENCE.—See *Contractor*.

NOTICE.

Possession of Land as Notice of Equities.—Possession of land by a grantor is not notice of equities in him as against his own conveyance. The presumption will be that he holds in subordination to the title of the grantee. And the same presumption will obtain if his title has been transferred by legal proceedings: *Dawson v. Danbury Bank*, 15 Mich.

PARTITION.

What Title passes by.—The effect of a decree in partition in the Orphans' Court is to divide what descends to the heirs, not to transfer the title from the decedent to his heir: *Dresher et al. v. Allentown Water Co. et al.*, 52 Penna.

Partition operates only upon the parties to it, who are the heirs: the creditors are no parties: *Id.*

The adjudication is no more than that he to whom the land is adjudged shall hold it in severalty, and assures to him nothing but the title of his co-heirs: *Id.*

The jurisdiction of the Orphans' Court over the settlement of a decedent's estate, cannot be ousted or diminished by partition: *Id.*

Therefore, if after the land of a decedent has been adjudged to one of the heirs, it is afterwards sold by order of the Orphans' Court for the payment of the decedent's debts, the title of the purchaser will prevail against that of the heir: *Id.*

POST-OFFICES.

Power of Postmaster-General.—By the legislation of Congress the Postmaster-General has the power to "establish post-offices" as well

where the commissions of the office amount to or exceed \$1000 as where they do not: *Ware v. United States*, 4 Wallace.

Unless there is some provision in the Acts of Congress restraining its exercise, the power to establish post-offices, as interpreted by usage coeval with the creation of the Post-Office Department and recognised in Congressional legislation, infers a power to discontinue them. And deputy postmasters occupy their offices, subject to the contingency that such offices may be so discontinued: *Id.*

Possessing thus the power to discontinue post-offices, the Postmaster-General may exercise the power, notwithstanding that the deputy postmasters have been appointed by the President, by and with the advice and consent of the Senate, and under a statute which enacts that the appointee shall hold his office for the term of four years unless sooner removed by the President: *Id.*

If he do exercise it, the office of deputy postmaster is, in such cases, gone. There is no longer a deputy postmaster at that place: *Id.*

QUO WARRANTO.

Venue.—A proceeding by *quo warranto* in the Supreme Court, to try the right to a county office, is local in character, and must be sent for trial to the county where the duties are to be exercised, unless cause for changing venue is shown: *People v. Cicotte*, 15 Mich.

RAILROAD.

Tickets—Stopping off a Train.—A passenger who obtains through tickets over two lines—the tickets being issued on a connected sheet, and to be separated when one is used—is not obliged to use both on one continuous journey, but on arriving at the end of one line, has a right to stop off, and to use the remaining ticket at his convenience afterwards: *Brooke v. Grand Trunk Railway Co.*, 15 Mich.

SHIPPING.

Contracts by Shipmaster.—The master of a ship navigating the river St. Clair has no authority on behalf of the owner to make a season contract for keeping up lights along the channel for convenience in passing in the night, when the owner is at hand and may be consulted: *Strong v. Saunders*, 15 Mich.

STAMP ACT.

State Writs.—The Act of Congress, requiring legal process to be stamped, cannot constitutionally apply to the process issued by state courts: *Fifield v. Close*, 15 Mich.

SUNDAY.—See *Corporation*.

SURETY.—See *Bank*.

WITNESS.

False Testimony—Corroboration.—It is not error in a court to charge the jury that, notwithstanding a witness may have knowingly sworn falsely in one particular, they may still believe him in other matters in respect to which he is corroborated by other testimony: *Knowles v. People*, 15 Mich.