all that is known of any other one science; but each succeeding man reaps, in a large measure, from the sowing of his predecessors. Judges, by their suggestions of leading principles, aid us; the writers of our text books should, and a few of them do, aid us still more. And if the time ever comes when this subject receives from the profession the attention which, either as a practical matter or a matter of science, it merits, we shall find men who will devote their lives to such discoveries and elucidations of legal principles as will leave the labors of those who follow after comparatively light.

J. P. B.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

Abstracts of Illinois Cases.[1]

Action.—Where A. agreed to deliver B. all the lumber which A. should make at his mills within a specified time, at a fixed price, of which one hundred dollars was paid at the execution of the agreement; A. failed to perform, whereupon B. sued upon the special agreement and recovered judgment; afterwards B. sued for money had and received, to recover the $100, paid on the execution of the agreement; HELD, that the former proceedings and judgment were a bar to a recovery in the second action. *Dalton et al.* vs. *Bentley.*

Agent.—Where a number of persons are intrusted with powers in matters of public concern, and all of them are regularly assembled and consulting, the majority may act and determine, if their authority is not otherwise limited and restricted. *Louk* vs. *Woods.*

In such case where a report is only signed by two of three viewers of a road, it will be presumed that the third was present and consenting, until the contrary is shown. *Id.*

Assignment.—Property, in the hands of an assignee, for the purpose of paying creditors, cannot be reached by attachment or garnishee process. *Kimball* vs. *Mulhern et al.*

Autrefois Acquit.—A person indicted for murder may be found guilty of manslaughter, and such finding amounts to an acquittal of the charge of

[1] We are indebted to the learned Reporter, E. Peck, Esq., for the early sheets of 15 Ill. whence these abstracts are taken.

murder, and the accused cannot again be put on trial for murder. *Brennan et al.* vs. *The People.*

A verdict of acquittal or conviction is a bar to a subsequent prosecution for the same offence, although no judgment has been entered upon it. *Id.*

In an indictment for murder, and a verdict found for manslaughter, if the accused seeks and obtains a new trial, he will only be tried for the offence of which he was found guilty. *Id.*

Bailment.—In an action against a common carrier to recover the value of goods not delivered; it is HELD, that the evidence of a witness, who states that he knows the goods were carefully packed, and that he saw them taken away by a drayman, and saw the bills of lading after they were signed, giving the particular facts of his knowledge, is proper for the consideration of the jury, and may be held as sufficient evidence of the fact that the goods were shipped and in good order. *Scholes et al.* vs. *Ackerland et al.*

Carriers should show a delivery in good order in pursuance of the contract in the bill of lading; something more than putting goods on shore or on a wharf, must be shown. Notice to the consignee, or some excuse for not giving it, and a reasonable time, should be given to attend and receive the goods. *Id.*

Carriers by coasting vessels, should, on landing goods, give notice to the owner, of the fact, or if to be delivered to a consignee, and he refuse to receive them, the carrier must safely secure them, or he will be liable for any loss that may occur. *Crawford et al.* vs. *Clark et al.*

Dedication.—The public is an ever-existing grantee, capable of taking dedications for public uses, and its interests are a sufficient consideration to support them. *Warren* vs. *Jacksonville.*

Parol dedications are good. *Id.*

The intention of a party, manifested by express consent, or acquiescence in the user, will govern in determining what is a dedication. *Id.*

Privies in estate will be bound by the deeds and acts of their grantors, and they cannot resume a grant after the public has entered upon its use, while the use continues. *Id.*

Easement.—No inference or conclusion will be drawn in this State against the owner of land lying unenclosed, which is travelled over, to establish an easement in favor of the public. *Warren* vs. *Jacksonville.*

Indictment.—Where several persons are jointly indicted, they cannot, as a matter of right, have separate trials; this allowance is in the discretion of the court, and cannot be assigned for error. The peremptory challenges

of the accused are not abridged or affected by a joint trial. *Maton et al.* vs. *The People.*

Marshalling Assets.—While a court of equity has undoubted authority to compel one creditor to satisfy his debt out of a particular fund to which he alone can resort, yet it will never do this to the injury of such creditor, or where that course will work injustice to the other parties. *Morrison* vs. *Kurtz.*

While the court possesses this power, it by no means follows that it will always be exercised. It is the primary duty of the court to protect all of the creditors in their just rights, and also the rights of others. *Id.*

Partnership estate should be first exhausted to pay partnership debts, before resort is had to the separate estates of the partners. And the separate creditors are entitled to be first paid out of the separate estates of the several partners. *Id.*

Master and Servant.—The principal is not liable to one servant for the carelessness of another servant, where both are engaged in his business. *Honner* vs. *Illinois Central Railroad Co.*

An action will not lie by a servant against his principal for injuries sustained by the carelessness of his fellow servants. *Id.*

The doctrine of *respondeat superior* does not extend to the case of an injury received by one servant through the carelessness of another. *Id.*

Murder.—A person may be guilty of murder although he took no part in the killing, nor assented to any arrangement having for its object the death of another, if he combined with those who committed the deed to do an unlawful act, such as to beat or rob, and death ensued in consequence of the attempt to execute the common purpose. *Brennan et al.* vs. *The People.*

If several persons conspire to do an unlawful act, and death happens in the prosecution of the common object, all are alike guilty of the homicide. The act of one is the act of all, although some are not present. *Id.*

Railroads.—A passenger was taken on the train of the Galena and Chicago Union Railroad Company, to be transported for a short distance; he was told that the passenger cars were full, and that he must ride in the baggage car; he commenced playing with his companions; obtruded into the passenger car; when that car was thrown from the track, he leaped from it, and was injured: HELD, that he could not recover for this injury. *Galena and Chicago Union Railroad Company* vs. *Yarwood.*

Ships and Shipping.—The lender of money to the master of a vessel,

to aid in making repairs, or to purchase supplies, must see that the amount advanced is reasonable and necessary. *Leddo et al.* vs. *Hughes.*

The ports of the different States, under the maritime law, are, in respect to each other, foreign. *Id.*

The maritime law has no application to flat boats, their pilots or navigators. *Id.*

The lien given under our statute for repairing, &c., may arise upon contracts expressed or implied, and the acting master or supercargo may bind the vessel; but the party making the advances must show the necessity for them, and the proper application of them. *Id.*

Tax.—A tax is not an ordinary debt; it takes precedence of all other demands; and is a charge upon the property, without reference to the matter of ownership. *Dunlap* vs. *County of Gallatin.*

The property itself may be seized and sold, although there may be prior liens or incumbrances upon it. *Id.*

The State is not bound to wait until the estate of a deceased person is administered, and then participate with other creditors in the proceeds, but may enforce payment to the exclusion of all other creditors. So of an insolvent estate in the hands of trustees. *Id.*

The remedy by distress, for the collection of taxes, is not necessarily exclusive. *Id*

Trover.—Castrating a scrub hog from running among other hogs, is not such proof of a change in property, as to be evidence of a conversion or appropriation of the hog by a party, to his own use. *Byrne* vs. *Stout.*

Warranty.—No particular form of words is necessary to establish a contract of waranty, but it must appear that the party binds himself to make good the quality of the article sold, and that this made a part of the consideration. *Adams et al.* vs. *Johnson.*

ABSTRACTS OF RECENT ENGLISH DECISIONS.

Admiraltg—Collision—Bail.—An action was entered for the sum of £250, in a cause of collision, and bail in that amount was given for damages and costs. The costs, however, subsequently raised the amount recovered, beyond £250. The Court under these circumstances of the case, the additional costs having been incurred through the fault of the claimants, decreed them to be personally liable for the amount exceeding the bail. *The Termisonata,* 19 Jurist, 479, Admiralty.

Arbitration—Action.—Quære, whether an action will lie against an

arbitrator for anything done by him while acting strictly in that capacity. *Jenkins* vs. *Bentham*, 24 L. J. Common Pleas, 94.

Contract—Wages.—To an action for money paid at the request of the defendant, it is no answer that the money was paid in discharge of claims against the defendant under wagering contracts, void by statute. *Knight* vs. *Cambers*, 24 L. J. Common Pleas, 121.

Contract of Sale.—Plaintiffs agreed to sell the defendant a quantity of hoop iron to be manufactured in Staffordshire, and delivered in January and February, at Liverpool. The iron was to be forwarded by canal boats, vessels, and carts. Iron so forwarded at the period of the year in question, necessarily suffers some deterioration by being rusted. The iron in question, which was clean and bright when put on board, arrived at Liverpool in a rusty state, and acceptance of it was refused by the defendant. *Held*, that the defendant was bound to accept the iron, if it was only so far deteriorated as it would necessarily be in its transit from Staffordshire to Liverpool; and that a direction to the jury that the defendant was entitled to have it delivered to him at Liverpool in a merchantable condition, was wrong. *Bull* vs. *Robison*, 24 L. T. Ex. 165.

Costs—Errors—Coram nobis.—A party is not entitled to the costs of recovering a judgment in error in fact. *Marshall* vs. *Jackson*, 19 Jurist, 447, Queen's Bench.

Criminal Law—False Pretence.—The defendant obtained goods from the prosecutors, by pretending that he wanted them for J. S., whom he represented as an iron-monger living at N., to whom he would trust £1000, and who went twice a year to New Orleans, to take different kinds of goods to his sons there. Upon the trial of an indictment for obtaining goods by false pretences, the jury found that all the representations were false, and that the prosecutors believing that the defendant was connected with J. S., and employed by him to obtain the goods, contracted with the defendant, and delivered the goods to him for himself, and not for J. S. Verdict of guilty, *held* right. *Reg.* vs. *Thos. Archer*, 19 Jurist 479, Court of Criminal Appeal.

Criminal Law—Neglecting to Maintain Child.—If a woman be indicted for neglecting to supply her infant bastard child with proper food, and it be alleged that she was able, and had the means of supporting it, it is not enough to show that she might have obtained the means if she had applied to the relieving officer of the Union. *Reg.* vs. *Keith*, 24 L. J. Mag. Cases, 109, Court of Criminal Appeal.