

Contee, 4 H. & J. 351, a case argued by the present venerable Chief Justice of the United States, the same doctrine was held, and reaffirmed in *Barger vs. Collins*, 7 H. & J. 213. So in New Hampshire: *Currie vs. Hodgdon*, 3 N. H. 82; *Thompson vs. Emery*, 7 Foster 269. And in Vermont, *Moar vs. Wright*, 1 Verm. 57; *Bucklin vs. Ward*, 7 Id. 195. Such also is the law in Maine: *Smith vs. Berry*, 6 Shepley 122, and *Nonni vs. Hall*, Id. 332.

In New York, the same rule prevailed prior to the code which directs that suits shall be in the names of the real parties in interest: *Compton vs. Jones*, 4 Cowen 13; *DeForest vs. Frary*, 6 Id. 151; *Dubois vs. Doubleday*, 9 Wend. 317; *Jessel vs. Williamsburg Insurance Co.*, 3 Hill 88. In the revision of Swift's Digest, Vol. 1, p. 438, the law in Connecticut is thus stated: "The assignment of a chose in action will be a good consideration for the promise of the debtor to pay to the assignee, who may maintain an action in his own name on such promise." Which is also the settled law of Tennessee: *Mount Olivet Cemetery Co. vs. Shubert*, 2 Head 116.

This rule, so reasonable in itself, and so consonant to our ideas of justice, decides the present case, for the only real question before us was whether the additional count disclosed a sufficient cause of action. There is nothing in the other assignment of error.

Judgment affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW YORK.¹

Admissions and Declarations of a Grantor—Deed upon Condition—Forfeiture of Condition—Performance.—The admissions of a grantor in a deed, against his own interest and tending to establish a sufficient consideration for the deed, he being an original party to the record and identified in interest with the plaintiffs, are admissible in evidence against the plaintiffs, as part of the *res gestæ*: *Spaulding vs. Hallenbeck*.

¹ From the Hon. O. L. Barbour; to appear in the 39th volume of his Reports.

In an action by the heirs of a grantor, against the grantee, to recover possession of the land, for a breach of the condition upon which it was conveyed, the declarations of the grantor, showing a performance of the condition, are admissible: *Id.*

Where a deed was upon the express condition that the grantee should keep, maintain, and support the grantors, and that if he failed to do so the conveyance should be void and the premises revert back to the grantors: *Held*, that the condition involved a forfeiture of the premises, upon a failure of the grantee to perform, and was intended as a security in the nature of a penalty for its performance. That it was a condition subsequent, and upon a failure to fulfil, the grantors had a right to re-enter upon the premises: *Id.*

In such a case it is proper for the judge to leave it to the jury to determine whether the grantee intended, in good faith, to perform, and had substantially performed, the condition of the deed; and that a substantial compliance with the contract would save the forfeiture: *Id.*

Action for Damages by one in possession under a Contract to purchase—Evidence—Measure of Damages—Opinions of Witnesses.—One in possession of land under a contract to purchase, and entitled to a conveyance upon making the payments stipulated, is virtually the owner, and may maintain an action to recover damages for injuries to his interest in the property: *Honsee vs. Hammond.*

In such an action the plaintiff may prove the value of the premises and the cost of the buildings erected thereon, and the difference in the annual value of the property prior to, and since, the injury alleged, within the rule laid down by the authorities respecting opinions of witnesses: *Id.*

The difference in the value of the property, at the two periods, is the proper rule of damages: *Id.*

Where the owners of a tannery situated upon a stream threw tan-bark and other materials into the stream, thereby clogging the same and causing damage to the mills of the plaintiff situated lower down the stream: *Held*, that an action would lie for the injury, even though the damage was done by the defendants without any intent to injure, and in the usual manner in which water is used in tanneries: *Id.*

Assignments for the benefit of Creditors.—Section 2 of the Act of 1860, requiring an assignor, within twenty days after the date of an assignment,

to make and deliver to the county Judge an inventory of his debts and assets, and section 3, requiring the assignee, within days after such date, to give a bond for the faithful performance of his duties, are *directory* merely; and an omission to execute and deliver the assignment, and to file the bond, within the times specified, will not render the assignment inoperative and void: *Julian* vs. *Rathbone*.

If an assignment is valid when made, and vests the title in the assignee, neither the omission of the assignor to deliver an inventory, nor any omission of duty by the assignee, in the execution of the trust, will reach back and render the assignment invalid: *Id.*

Actions for Tort—Waiver of Tort—Amendment.—Where, in an action for a *tort* in wrongfully taking and converting personal property, there is an entire failure of proof that the taking was wrongful or tortious, or that there was any fraudulent intent, the plaintiff should be nonsuited. He cannot, at the close of the case, waive the *tort* and recover as upon a contract: *Ransom* vs. *Wetmore*.

An amendment which will change the form and nature of the action from *tort* to *assumpsit*, cannot be asked for after the whole case is finished: *Id.*

Charge to Jury as to effect of Verdict.—In an action for assault and battery, the Judge charged the jury as to the effect of their verdict on the question of costs, in case they should find for the plaintiff, and refused to charge them that in arriving at the amount of the verdict they would give the plaintiff, they had nothing to do with the question of costs, or whether or not their verdict would entitle him to full costs: *Held*, correct: *Waffle* vs. *Dillenbeck*.

Jurisdiction as to Foreign Corporations—Assignment by Corporation—Agreement in restraint of Trade—Principal and Agent—Rights of Officers of a Corporation.—No power can be exercised by the Supreme Court, over a foreign corporation, in proceedings commenced by a stockholder, to wind up its affairs: *Murray* vs. *Vunderbilt*.

But, for the purpose of preserving the property of such corporation, for the benefit of creditors or stockholders, a Court of Equity has ample power to take charge of it, and to appoint a receiver: *Id.*

An appearance of a corporation, by officers of the Court, will be valid, and give jurisdiction, whether the service of process upon the officers be good or not; provided the corporation is still in existence: *Id.*

Where the president and secretary of a corporation executed an assignment of its property, and attached the seal of the company thereto, without any specific authority from the company to do so: *Held*, that it was not a proper execution of the instrument; and that the want of authority on the part of the officers could not be cured by any proof of execution, made before the commissioner: *Id.*

An agreement was made between the Pacific Mail Steamship Company and the Accessory Transit Company, by which the former company was to pay to the latter a certain sum per trip, or per month, so long as the boats of the Pacific Company should run without opposition: *Held*, that in an action brought by the Transit Company against the Pacific Company, although the contract was immoral and in restraint of trade and commerce, and the Court would not enforce it against the delinquent party, or, if the money had been paid, enable the party paying to recover it back, but would leave the parties as the law found them, both being *in pari delicto*, yet that the rule did not apply to an action by one of the principals in such a contract, against the agent who had received money thereon: *Id.*

Money having been paid voluntarily, to an agent, for his principal, by a party who could not have been compelled to make such payment, it becomes the property of the principal, in the agent's hands, for which he should account. He has no right to refuse payment to his principal because the latter had not a legal claim to the money paid: *Id.*

An agent has no right to dispute the title of his principal to moneys received by him for the use of the principal. Nor can he resist an action for the amount so received, on the ground that the money was paid on an illegal contract between the original parties: *Id.*

After a corporation has virtually ceased to exist, and for all purposes of business, and for promoting the objects of the charter, all its powers have been taken away, its property all expended, and the company is insolvent, it is not improper for the president of the company to enter into arrangements on his own behalf, for carrying on and continuing for his own benefit the business formerly conducted by the company, under an agreement not imposing any duty or obligation upon the corporation, or involving any use of its property: *Id.*

Where the president of a corporation held a mortgage upon vessels of the corporation, given to secure him for advances, and for bonds of the company held by him, and was authorized by the company to sell the

vessels, as its agent, sold the same at private sale, to his son, taking his note for the purchase-money, he still keeping the control and management of the vessels and rendering no account to the purchaser for the use of them: *Held*, that such a transaction could not be upheld; and the sale was ordered to be set aside, and the agent directed to account to the company for the proceeds of the vessels, when sold by him: *Id.*

SUPREME COURT OF MASSACHUSETTS.¹

Savings Bank—Tax on account of Depositors.—The Legislature have power to impose upon savings banks an annual tax on account of their depositors, founded upon the amount of their deposits, to be assessed one half on the average amount of deposits for the six months preceding the first day of May, and the other half on the average amount for the six months preceding the first day of November; and if a statute imposing such taxes is passed in April, a tax may be levied under it founded upon the average amount of deposits for the six months preceding the first day of May of the same year: *Com. vs. The People's Savings Bank.*

Sale of Property—Action for Deceit—Evidence.—In an action of *tort* for deceit in the sale of property, other representations, made by the defendant at the time of making those set forth in the declaration, and respecting the same subject-matter, are admissible in evidence, for the purpose of enabling the jury to judge more accurately of the meaning of the words relied upon to sustain the action: *Pedrick vs. Porter.*

An action of *tort* for deceit in the sale of property does not lie for false and fraudulent representations concerning profits that may be made from it in the future: *Id.*

Libel—Justification—Evidence of contents of Document destroyed by Witness.—A letter to a woman, containing libellous matter concerning her suitor, cannot be justified on the ground that the writer was her friend and former pastor, and that the letter was written at the request of her parents, who assented to all its contents: “*The Count Joannes*” vs. *Bennett.*

One who has voluntarily and deliberately destroyed a written document, cannot be permitted to testify to its contents in a suit brought by himself

¹ From Charles Allen, Esq., Reporter; to appear in volume 5 of his Reports.

and founded upon it, without first introducing evidence to rebut the suspicion of fraud arising from his act: *Id.*

Criminal Case—Authority of Judge to discharge Jury—Verdict after discharge.—The judge before whom a criminal case is tried has discretionary power to discharge the jury from their deliberations on the verdict at such hour as he sees fit. And if he has given orders to the officer to discharge them at a certain hour in the night, if they have not then agreed, and the officer at that hour ascertains that they have not agreed, and accordingly informs them that they are discharged, they have no authority to agree upon a verdict afterwards; and a verdict afterwards agreed upon will be set aside: *Comm'th. vs. Townsend.*

Agreement—Prevention of Performance by one Party.—No action lies on an agreement, promising to pay for tuition for a specified time, if during the whole of that time the promissor was prevented by illness from attending and receiving the tuition: *Stewart vs. Loring.*

Fouling of a Well by escape of Gas—Action by unlicensed Keeper of Livery Stable—Damages.—An unlicensed keeper of a livery stable cannot recover damages for an injury to his business caused by the escape of gas through the ground and into the water of a well upon his premises; but may recover for the nuisance to his real estate: *Sherman vs. Fall River Iron Works Co.*

The fact that other causes have contributed to render the water of a well impure and unfit for use is no bar to an action to recover damages for an injury to the water caused by the escape of gas into it; but it may be shown to affect the amount of damages: *Id.*

Smuggling—Action by Customs Officer for Reward for Discovery.—An officer of the customs of the United States, who finds smuggled goods, while assisting the inspectors who have charge of a vessel, in examining the passengers and their luggage, although not in discharge of a specific duty assigned to him, cannot maintain an action to recover a reward offered by the owners of the vessel to any person giving information to their agent or officers of any goods smuggled or concealed, or intended to be smuggled therefrom: *Davies vs. Burns and others.*