

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF KANSAS.¹COURT OF CHANCERY OF NEW JERSEY.²

¹From W. C. Webb, Esq., Reporter; to appear in 10 Kans. reports.

²From C. E. Green Esq., Reporter to appear in Vol. 8 of his reports.

AGENT.

Admission—Effect of War on agency.—An admission by one that he is the agent of another, is good evidence of that fact as against the agent: *Fisher v. Krutz & Campbell*, 10 Kans.

Where by contract, F, a citizen of this State, became the agent of S, in Virginia, in 1857, and the agency continued: *Held*, that the fact that the principal was a rebel, and within the Confederate lines in 1863, did not of itself put an end to such agency: *Id.*

CONTRACT.

Against law.—A contract between B, and J, that B will prosecute and collect a claim for J, against the United States, for twenty per cent. of the amount thereof, is in contravention of the first section of the Act of Congress to prevent frauds upon the treasury of the United States (10 U. S. Stat. at Large 170), and therefore void: *Jones v. Blackledge*, 10 Kans.

EXECUTOR AND ADMINISTRATOR.

No relief can be had even in equity, by the next of kin against the sureties on an administrator's bond: *Dorsheimer v. Rorback and others*, 8 C. E. Green.

Such sureties are, however, proper, though not necessary parties in a suit in equity against the administrators for a distributive share: *Id.*

A general demurrer will not lie where the demurrant is a proper party though no relief can be had against him: *Id.*

Where a party who cannot read is sought to be bound by writing under seal, it must appear that he had it read to him or knew its contents. Where such a paper for want of such due execution is invalid and void, it will not protect administrators who have paid moneys, relying on it, that they paid the moneys in good faith: *Id.*

The next of kin may maintain a suit in equity for his distributive share, and although the courts of law and the orphans' court have jurisdiction in such case where there has been a decree of distribution, yet the suit will be maintained by this court; and where there has been no decree of distribution, the remedy must be in equity: *Id.*

Ordinarily, a legatee or next of kin must sue the executor or administrator only for the legacy or distributive share; he cannot join with him the debtors to the estate, or other persons. But where there is collusion between the executor and the debtor or person

having the property in his hands, or where the executor is insolvent, the debtor may be made a party, and recovery be had against him: *Id.*

HUSBAND AND WIFE.

Dower.—A married woman having released her dower by joining in a conveyance made by her husband to B, cannot demand her dower against A, who became seized of the lands by a title superior to that of B. The dower once extinguished cannot be revived: *Frey v. Boylan and Wife*, 8 C. E. Green.

Married Women's Power to Contract—Estoppel.—In this State a married woman may contract and be contracted with, concerning her separate real or personal property; sell, convey and encumber the same, and sue and be sued with reference thereto, in the same manner to the same extent, with like effect, and as freely as any other person may in regard to his or her real or personal property: *Knaggs v. Mastin*, 10 Kans.

A married woman and her husband, with a full knowledge of all the facts, signed and acknowledged a blank deed of conveyance, and authorized the father of said married woman to fill up the blanks in the same, so as to make the deed purport to convey to a third person the following property, which the father had just previously sold to said third person, to wit: The property on which the daughter and her husband then resided, and consisting of a house and lot which had been deeded to the daughter just six days prior thereto by the father, without any consideration therefor, and under a parol promise from the daughter that she would convey it back when her father should desire to sell the same, and also an eighty-acre tract of land, purchased by the husband with his own funds, but deeded to his wife. After said first mentioned deed was filled up it was delivered to said third person, who was named therein as a grantee, who received the same "without any knowledge that it had been executed in blank," and paid the father therefor \$6,090. The father afterward paid to his daughter and her husband \$3,200 for the eighty-acre tract of land, which they received in full payment therefor, knowing at the time for what it was received. But he paid nothing to his daughter or to her husband for the house and lot. For two and a half years said married woman and her husband recognized said third person as the owner of said property, he being all the time ignorant of the irregularity in the execution of the deed therefor; at the end of which time they commenced an action against him to set aside said deed, because of the irregularity in its execution: *Held*, that both the plaintiffs are estopped from claiming that said deed should be set aside on account of said irregularity in its execution: *Id.*

INJUNCTION.

Practice.—Upon the argument of a rule to show cause why an injunction should not issue pursuant to the prayer of the bill in a

case where an injunction had been granted in part, the question whether the existing injunction should not be removed, cannot be considered. That can be removed only upon notice and motion to dissolve, in accordance with a rule of the court: *The Manhattan Manufacturing and Fertilizing Co. v. Van Keusen*, 8 C. E. Green.

MANDAMUS.

Entry of Verdict by the Court.—Where in the trial of a cause, a verdict is agreed upon by the jury and reduced to writing in due form, and brought into court by the jury, it is the duty of the court to receive and enter the verdict, and for a refusal so to do, the writ of mandamus is an appropriate remedy, and the only one that affords adequate relief: *State of Kansas ex rel Munkers et al. v. Watson*, 10 Kans.

MUNICIPAL CORPORATION.

Construction of Sewer—Subsequent abandonment of use.—Where a city constructs a sewer or drain, for the purpose of carrying off surface water, it is not bound to construct such a sewer or drain as will be sufficient to carry off all the surface water, in all cases and under all circumstances: *Atchison v. Challis et al.*, 10 Kans.

After a city has constructed a sewer or drain, for the purpose of carrying off surface water, it may in its discretion, wholly abandon or discontinue the same, and never make any further use of it; and where the city does not leave individuals in any worse condition by such abandonment or discontinuance than they would be if such sewer or drain had never been made, the city will not be liable for any injury to individuals caused by the flow of surface water: *Id.*

NUISANCE

Abatement of—Any citizen acting either as an individual, or as a public official under the orders of local or municipal authorities, whether such orders be or be not in pursuance of special legislation or chartered provisions, may abate what the common law deemed a public nuisance. In abating it, property may be destroyed, and the owner deprived of it without trial, without notice and without compensation: *Manhattan Fertilizing Co. v. Van Keusen*, 8 C. E. Green.

Such destruction for the public safety or health is not a taking of private property for public use, without compensation or due process of the law in the sense of the Constitution: *Id.*

PRACTICE.

Service of Process.—Service of a summons on a railway company by the sheriff leaving a copy thereof with J. H. W., at the depot of the company in the county, he being in charge of the depot and ticket agent of the company, and the railway company

having designated no person in said county upon whom summons should be served, is good without specifying in express terms that the road of the company runs into that county, or that the company transacts its business therein: *The M. K. & T. R. W. Co. v. Crowe*, 10 Kans.

Statements made by a judge out of court, previous to the commencement of a term that certain cases will not be tried at the ensuing term, are not judicial determinations, and a party relying upon such statements does so at his own peril: *Id.*

RELIGIOUS DISPUTES.

When civil courts will interfere.—The courts will not interfere to compel an individual to attend worship at any place, to remain connected with any church organization nor to receive any one as his pastor: *Feisel v. Munzenmeer et al.*, 10 Kans.

But where property is conveyed to a church society, to be used in a certain manner and subject to a certain trust, courts of equity will, on the application of any party interested, compel the execution of that trust, and restrain any diversion from such use: *Id.*

TRUST.

Deed—Consideration founded in Fraud—Executory and executed contracts—Conveyances—Infant.—A declaration of trust though not executed at the same time and place with the deed whose purposes it declares, being dated on the same day, and being the consideration of the deed, must be considered as part of the same transaction, and they must be considered together: *Ownes v. Ownes and others*, 8 C. E. Green.

A court of equity will not enforce an executory contract when the consideration is founded on fraud, or is *malum in se* or *malum prohibitum*. It would not create a trust in such case: *Id.*

But when the trust is declared by a writing executed and delivered, and the estate is vested in the complainant, and the object of the suit is to compel a naked trustee to convey the property held in trust to the *cestui que* trust, it will not bar the relief sought, that the conveyance to the trustee was made for the purpose of delaying and defrauding the complainant's creditors: *Id.*

If instead of a declaration of trust, the instrument executed had been a mere contract to reconvey the property, or if the bill had been filed to establish a trust, either as a resulting trust or a parol agreement, then the defense that the conveyance had been made to delay and defraud creditors would bar the relief: *Id.*

Courts of equity have recognized and established this distinction between conveyances and executory contracts. When the title is vested, they never avoid it for want of consideration; and, on the other hand, they never enforce an executory contract without consideration. They treat it as nullity: *Id.*

A conveyance or declaration of trust by an infant, by a deed actually delivered, is voidable but not void. But the infant, after coming of age, may by his acts confirm the voidable deed: *Id.*