## LEGAL NOTES.

THE GRANGER CASES.—LEGISLATIVE CONTROL OVER RAILROADS, ELEVATORS AND OTHER PRIVATE PROPERTY USED IN PUBLIC MANNER.

The so-called Granger cases, argued before the Supreme Court of the United States in the fall and winter of 1875–6, have just been decided; the judgments of the lower courts sustaining the legislation on the subject, being all affirmed.

*Munn et al.* v. *The People of Illinois* was on a writ of error to the Supreme Court of Illinois. The question was whether the general assembly of Illinois could, under the limitations upon the legislative power of the states imposed by the Constitution of the United States, fix by law the maximum of charges for the storage of grain in warehouses at Chicago and other places in the state having not less than one hundred thousand inhabitants, "in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved." It was claimed that such a law was repugnant—

1. To that part of sect. 8, Art. I., of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several states;"

2. To that part of sect. 9 of the same article which provides that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another," and—

3. To that part of Amendment XIV. which ordains that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The opinion of the Supreme Court was delivered by Chief Justice WAITE. Taking up the objections inversely as above stated, he showed that the police power of the states was co-extensive with the English constitutional power of Parliament, except where the Constitution of the United States imposed a limitation upon it; that statutes regulating the use, or even the price of private property, do not necessarily deprive the owner of it without due process of law; that whenever private property becomes affected with a public interest it ceases to be *juris privati* only, and becomes subject to the control of the state for the public good; that property becomes affected with a public interest whenever it is used in a manner to make it of public consequence and to affect the community at large; thus a man, though owning both banks of a river, may not establish a public ferry and take tolls without a charter (Hale, De Jure Maris), and the same principle has been applied to wharfingers, millers, innkeepers, hackney-coachmen, warehousemen and common carriers. Applying these principles to the case of elevators for the storage and shipment of grain in bulk, it was clear that they were warehouses, and as such within the power of legislative regulation and control. To the argument that the owner of property is entitled to a reasonable compensation for its use, and that what is a reasonable compensation is a judicial question, the Chief Justice answers that the established practice of common-law countries from time immemorial has been to treat it as legislative.

The first and second objections above stated are disposed of briefly. First, the business of plaintiffs in error is exclusively in the state of Illinois and therefore a matter of domestic concern and regulation in that state, although it may incidentally affect commerce; and it will be time enough to treat it as a question for the general government when a case arises which directly affects inter-state commerce. Secondly, the provision as to preference to ports of one state, &c., operates only as a limitation on the powers of Congress, and does not affect the states in the regulation of their domestic concerns.

*Chicago, Burlington and Quincy Railroad Co.* v. *Cutts, Attorney General, &c.*, on appeal from the United States Circuit Court for the District of Iowa. In this case the principles of the foregoing case of *Munn* v. *The People of Illinois* were again affirmed. The charter of the railroad company gave them, in brief, the same rights in the conduct of their business as private individuals. This, says the chief justice, is a contract by the state, but does not exempt the company, as a common carrier, from the obligation to carry for a reasonable charge; in the absence of legislation, the courts must decide what is reasonable, just as they do in controversies between individuals, but when the legislature steps in and fixes what is reasonable, that law is binding alike on corporations and individuals. And it is of no importance that the power of the state was not exercised for twenty years after the company was organized. Governmental powers are not lost by non-user. A good government never puts forth its extraordinary powers until circumstances call for them. Nor was the case affected by the fact that prior to the statute in question the company had pledged its income, as security for debts, and had leased its road to a tenant, who relied on the earnings to pay the rent. The company could neither pledge nor grant its property free from the control of the state.

*Peik et al.* v. *Chicago & North Western Railway Co. et al.*, and *Lawrence et al.* v. *Same*, on appeals from the Circuit Court of the United States for the Western District of Wisconsin. These cases presented the question of the right of the legislature of Winconsin to provide by law for a maximum of charge for fare and freight, &c., where the company's charter authorized it to demand such sums, &c., "*as it shall deem reasonable.*" The Constitution of the state however having reserved the right to alter or repeal any charter, it was conceded that this franchise to charge in its discretion could be taken away, but the right, it was claimed, still remained to charge a "reasonable compensation." This however the chief justice said was a matter of legislative regulation, as already held in the foregoing case of *Munn* v. *The People.*

*Chicago, Milwaukee and St. Paul Railroad Co.* v. *Ackley et al.*, in error to the Circuit Court of Milwaukee county, Wisconsin. The only question in this case was whether the company could recover for transportation of property more than the maximum fixed by the Act of Wisconsin of March 11th 1874, by showing that the amount claimed was no more than a reasonable compensation. The chief justice, again delivering the opinion, said the foregoing cases were decisive of this. If the company should refuse to carry at the prices named and an attempt should be made to forfeit its charter on that account, other questions might arise, but as between the company and a freighter, for goods actu-

ally carried, the limit of the statute is conclusive of the reasonableness of the compensation and is the limit of recovery.

PUBLIC HIGHWAY.—PURPRESTURE.—RIGHT OF STATE OVER STREAM ABOVE TIDE.—PROCEEDINGS BY A STATE FOR PROTECTION OF PUBLIC INTERESTS DO NOT NEED A PRIVATE RELATOR.—*Vanatta, Attorney-General,* v. *The Delaware and Bound Brook Railroad Company,* Court of Errors and Appeals of New Jersey (December 1876).

The attorney-general filed an information in the Court of Chancery for the purpose of restraining the Delaware and Bound Brook Railroad Company from completing a bridge which it was constructing over the river Delaware, and of abating the piers and abutments which it had already erected, upon the ground that the bridge, piers and abutments were, and would be, a purpresture and public nuisance. Upon a rule to show cause why the prayer in the information should not be granted, the defendant filed its answer, and, at the hearing, the chancellor discharged the rule and dismissed the information. (See 12 C. E. Green 1.) From this order the attorney-general appealed. The Court of Errors and Appeals, however, affirmed the decree, holding:—

1. The attorney-general has the right, when the property of the sovereign or the interests of the public are directly concerned, to institute suit for their protection, by an information at law or in equity, without a relator.

2. When Pennsylvania has authorized one of its railroad corporations to bridge the Delaware so as to connect with any New Jersey road, and New Jersey has authorized one of its railroad companies to bridge the Delaware so as to connect with any Pennsylvania road, the states have exercised concurrent jurisdiction, under the treaty of 1783, in such manner as to give mutual consent to the erection of a bridge by the New Jersey and Pennsylvania companies, jointly, each from its own bank to the centre of the stream. This mutual consent is not affected by the fact that one state passed its act some years before the other.

CONFEDERATE STATES.—JURISDICTION OF COURTS OF, DURING REBELLION.—*Ketchum* v. *The Mobile and Ohio Railroad Co.*, Circuit Court of the United States, for the Southern District of Alabama (February 1877).

The bill of the complainant Ketchum set forth the following facts: On the 1st day of November 1853, the Mobile and Ohio Railroad Company, a body corporate organized under the laws of Alabama, executed its deed of trust, conveying to Morris Ketchum and John J. Palmer, then of New York, and William R. Hallett, then of Mobile, and to the survivors and successors of them, in fee simple, all its railroad, &c., in trust to secure six thousand bonds, each for the sum of two hundred and twenty-five pounds sterling. The said Ketchum, Palmer and Hallett accepted the trust and became the mortgagees of the said property in trust for the holders of the bonds. Palmer and Hallett afterwards died, leaving Ketchum the sole surviving trustee of the first mortgage of the Mobile and Ohio Railroad. About the 5th day of December 1861, and nearly nine months after the state of Alabama had adopted an ordinance of secession from the United States, and after the commencement of armed hostilities, the directors of the Mobile and Ohio Railroad Company applied to a Court of Chancery then sitting in

the Confederate states, so called, and within the territory of the state of Alabama, for an order declaring his removal from the trusteeship of the said mortgage.

The complainant further, in his bill, alleged that he was informed that "on the 7th day of April 1862, an order or decree was granted by said court to remove him from said trust on the sole ground that he was a citizen of New York and an alien enemy of the Confederate states."

He further alleged that he never heard of the attempt to remove him until after the termination of armed hostilities between the Confederate States and state of Alabama, and the United States in the year 1865. The bill concluded with a prayer, that the property conveyed in the deed of trust might be sold for the benefit of the bondholders; that a receiver be appointed to take charge of and administer the property until a sale could be made; and for general relief. To this bill was interposed a plea in bar by the Mobile & Ohio Railroad Company, setting up the proceedings and decree of the Court of Chancery of the state of Alabama, by which Ketchum was removed from the trust and William B. Duncan and Andrew F. Elliott were appointed such trustees. To the bill also William B. Duncan interposed a demurrer, that the bill showed that Ketchum had knowledge of his removal, and the appointment of new trustees; and showed no compliance with the laws which gave the court jurisdiction to review, nor any attempt to have the decree reopened within the time named by several statutes on the subject. The court overruled the plea, and the demurrer, holding that whatever jurisdiction might be accorded to a court of one of the Confederate States of America during the war of the rebellion, such as was the Chancery Court of Alabama sitting in Mobile, as between citizens of Alabama, or as between citizens of the Confederate States, such a court could acquire no jurisdiction of citizens of the United States residing, and being at the time, in the states adhering to the government of the United States.

The opinion of BRUCE, J., is published in full in the Mobile Daily Tribune of February 11th 1877.

ARBITRATION.—SUBMISSION OF COUNTY COURT TO.—RIGHT TO LITIGATE AS A PARTY INVOLVES RIGHT TO SUBMIT TO ARBITRATION.—*Remington* v. *Harrison County Court*, Court of Appeals of Kentucky. (January Term 1876.)

In this action it was alleged that the appellee, having determined to have a bridge constructed over Main Licking river, at Claysville, in Harrison county, levied a tax of fifteen cents on each one hundred dollars' worth of taxable property for the year 1872, for the purpose of paying the cost of said bridge, and appointed commissioners to attend to the erection of the bridge, and ordered the sheriff to pay the funds to them when collected, they being authorized to contract for the erection of said bridge; that on the 16th of September 1872, they contracted with appellant, B. F. Remington, to build the bridge according to the plan and specifications adopted by said commissioners, for which they, acting for the county, agreed to pay said Remington $14,480, to be paid as the work progressed on monthly estimates, the whole to be completed by the 1st of September 1873. On the — day of September 1874, Remington completed the bridge, having furnished a large amount of

timber, iron, and stone-work, for *extra* work on said bridge, authorized and directed by said commissioners, acting for said county court; and thereupon demanded from them the amount due and unpaid on his contract, and also for extra work; that they declined to pay him on the alleged grounds that the bridge had not been erected according to the contract, and that the work was defective in several important particulars, and was not worth the sum already paid. This disagreement prevented a settlement of the matters between the parties, and at the October Term 1874, of the county court of said county, the county judge and a majority of all the justices of said county being present, agreed to arbitrate the matters of difference between them, and thereupon the agreement entered into by the parties was placed on the records of said court; arbitrators were chosen by said Remington and the said Harrison county court, who having met and heard all the evidence adduced by the parties and the arguments of counsel, made an award in favor of Remington. A demand for payment of the sum awarded was made of said commissioners of said court and of their treasurer, and payment was refused; payment was then demanded of said county court, composed of the county judge and a majority of all the justices of said county, and payment was refused by said court.

The above facts were set forth in a petition to the court, to which a demurrer was filed, and after argument sustained by the court, from which decision the plaintiffs below appealed.

The Court of Appeals reversing the judgment: *Held*, that the county court had statutory authority to contract for the building the bridge, and in that *capacity* acted ministerially and as a quasi corporation; and that a county court as such, may sue and be sued, and of consequence may be a party to a controversy which might be the subject of a suit or action, and is therefore authorized to submit the matter to arbitration.

CRIMINAL LAW.—INDICTMENT.—VENIRES TO GRAND JURY MUST BE SEALED AND CANNOT BE CURED BY SUBSEQUENT LEGISLATION.—PLEAS IN ABATEMENT IN CRIMINAL CASES.—*The State* v. *Flemming*, in the Supreme Judicial Court of Maine (February 1877), was a case in which the grand jury returned an indictment for a violation of the liquor law. It was afterwards discovered that the venire in this case, as well as venires in several other similar cases, had been issued without the seal of the court upon it; and it was claimed that this defect was fatal to the validity of the indictments. On application the legislature passed an act declaring the indictments valid.

The court *held*: 1. That an indictment found by a grand jury drawn by virtue of *venires* not having the seal of the court upon them, is illegal and void; and that the defect is one which cannot be cured by amendment or by special act of the legislature.

2. That in a criminal case a plea in abatement is sufficient, if it is free from duplicity, and states a valid ground of defence to an indictment in language sufficiently clear not to be misunderstood; that the strictest technical accuracy, such as is sometimes required in purely dilatory pleas in civil suits will not be exacted.

MANDAMUS.—ELECTIONS.—CORRECTION OF TOWN RECORDS.—GOVERNMENT OF TOWN MEETINGS.—*Hill* v. *Goodwin*, Superior Court

of New Hampshire. (Adjourned Term, March 1876.) This was a petition for a writ of mandamus filed by ten of the inhabitants and legal voters of the town of Macon, complaining that the defendant, who was town clerk of said town, omitted to record the proceedings of the annual meeting, held in the afternoon of March 9th 1875, and that the record, as made by him of the proceedings in the forenoon was incorrect, and praying that he be commanded to amend his record to correspond with the facts. The answer of the defendant admitted that he omitted to record certain proceedings that took place in the afternoon, for the reason that the adjournment in the forenoon was illegal, the motion to adjourn having been twice voted on, without any intervening motion, and therefore that no legal meeting was held in the afternoon; and by reason of certain other irregularities alleged to have taken place. The court issued a peremptory mandamus, holding:—

1. It is the duty of a town-clerk to record the votes as publicly declared by the moderator. His duty in this respect is purely ministerial.

2. A writ of mandamus will issue to compel a town-clerk to record the proceedings of a town meeting, as publicly declared by the moderator; also, to correct his record to conform to such declaration.

3. The moderator has the power to prescribe rules for the government of the meeting over which he presides, subject to be altered by the town. The rules of parliamentary law (so called) are not in force for the government of town-meetings, except so far as prescribed by the moderator, subject to alteration by the town.

Taxation.—New Corporation.—Obligation of Contracts.—*State* v. *Maine Central Railroad Co.*, Supreme Court of Maine (February 1877).—This was an action of debt to recover of the defendant corporation a tax duty assessed upon its "corporate franchise" in accordance with the provisions of c. 258 of the Laws of 1874, and c. 115 of the Laws of 1876 of Maine.

The defendant corporation was composed of what were originally five several railroad corporations. It was the result of two consolidations. The validity of the tax was denied on the ground that some or all of the corporations, by whose union under a new organization the defendant corporation existed, were by their several charters made liable only to a special and conditional taxation, and that the state had restricted its general right of taxation to the limited taxation authorized in said charters —that these several charters constituted contracts with the state—and that the act under which the tax in controversy was assessed, was in violation of those contracts—by impairing their obligation, and was therefore in contravention of the Constitution of the United States.

The court held, *inter alia*—

1. That when a new corporation is formed out of two or more previously existing corporations, and by the act creating it is "to have the powers, privileges and immunities possessed by each of the corporations whose union constitutes such new corporation," the new corporation will have the privileges, powers and immunities which they all (*i. e.* every one of them all) had, and it will not have those special powers, privileges and immunities which some had and some did not have.

2. That, when two or more corporations with a special immunity from

general taxation, the amount of such taxation being dependent upon certain precedent acts to be done by such corporation thus to be exempted, and those corporations are incorporated into a new corporation, which is unable and is not required to do or perform the acts, which must precede such special taxation, the new corporation thus created cannot claim the special immunity belonging to the corporations out of which it is composed.

3. That corporations formed by the action of the mortgagees of insolvent corporations and those formed by the consolidation of pre-existing corporations are *new* corporations, both by the rules of the common law and by the express terms of the statutes under and from which they derive their corporate existence; that as such new corporation, they are subject to the general law of 1831, c. 503, which has been continued in force to the present time, and consequently they are liable to taxation. The opinion, by Chief Justice APPLETON, is published in the Bangor Daily Whig, for February 7th 1877.

ATTACHMENT.—SALARY OF PUBLIC OFFICE NOT LIABLE.—*Remney et al.* v. *Gedney*, in the New York Marine Court. (June Term 1876.)

An order was issued against Andrew H. Green, Esq., as Controller of the City and County of New York, under section 294 of the Code, and was designed to reach the defendant's salary.

The court held, that the salary of a public officer, while in the hands of the disbursing officer of the general or municipal government, in his official capacity, in common with other money to be applied by him towards the payment of judicial and other official salaries according to law, can neither be arrested, attached, seized nor taken under attachments, judgments, executions or supplementary proceedings founded thereon or taken in aid thereof.

PATENT.—INFORMATION MUST BE AT SUIT OF UNITED STATES.—*The Attorney-General* v. *The Rumford Chemical Works et al.*, Circuit Court of the United States, for the District of Rhode Island. (May 1876.)

This was an information by "George H. Williams, as he is atttorney-general of the United States of America," at the relation of George V. Hecker, of the city of New York, against the Rumford Chemical Works, a corporation duly organized under the laws of the state of Rhode Island, and a citizen of said state and domiciled therein, and against George F. Wilson, a citizen of the state of Rhode Island, as president of said corporation and its general manager. The information, after a statement of facts, concluded with a prayer that a patent which had been reissued to the corporation defendant be declared void, and that the Rumford Chemical Works be enjoined from prosecuting any suit at law or in equity, for alleged infringements of the same. The defendants demurred to the information on the grounds, *inter alia*, that the informant had no lawful authority to file the information, and that the information was not (as it should have been) in the name or in behalf of the United States.

The court *held*, that the power, conferred by sect. 359 of the Revised Statutes of the United States on the attorney-general, to, in person, conduct and argue any case in any court of the United States in which the