ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
ENGLISH COURTS OF COMMON LAW.[2]
SUPREME COURT OF MICHIGAN.[3]
SUPREME COURT OF NEW JERSEY.[4]
SUPREME COURT OF OHIO.[5]

ACTION. See *Ferry.*

Covenant for Benefit of a third Person not party to it.—Although a deed is *inter partes*, a covenant therein made with a third person may be enforced by such third person by suit, if it clearly appears by the instrument that it was the intention to confer such right: *National Union Bank* v. *Segur*, 10 Vroom.

The mere presence, in such deed, of a covenant with a third person, will not, as has been held by many cases, be evincive, by its own force, of such intention: *Id.*

ADMIRALTY.

Salvage—Distribution—Assignment of Shares of Salvage-money previously earned.—A cause of distribution of salvage was instituted on behalf of some of the crew of a steamship against the owners of the steamship. The owners of the steamship appeared to defend the suit, and in their statement of defence alleged in effect that, subsequently to the salvage services, but before any amount had been paid in respect of such services, fourteen of the plaintiffs had by deed, in consideration of sums varying from 1*l.* to 10*s.*, paid them by the defendants, assigned to the defendants all their respective shares of salvage reward. The plaintiffs demurred to the paragraphs of the statement of defence containing these allegations. The court sustained the demurrer on the ground that the assignment was void under the Act of 17 & 18 Vict., c. 102: *The Rosario*, Law Rep. 2 P. Div.

Semble. The assignment would be void even without the statute, as inequitable: *Id.*

Collision—Damage—Collision between Vessel moored and Vessel driven from her moorings by third Vessel—Duty of Vessel lying at moorings during a gale to have chains bent and look-out on deck.—During a very violent gale, a brig adrift in the Tyne drove down on a steamer which was lying properly moored to mooring buoys placed there by the harbor authorities. On the brig striking the steamer the ring of one of the buoys was carried away, and the steamer got adrift, and drove down the

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1876. The cases will probably be reported in 4 or 5 Otto.

[2] Selected from late numbers of the Law Reports.

[3] From Hoyt Post, Esq., Reporter; cases decided at January Term 1877; the volume in which they will be reported cannot yet be indicated.

[4] From G. D. W. Vroom, Esq., Reporter; to appear in vol. 10 of his Reports.

[5] From E. L. De Witt, Esq., Reporter; to appear in 29 Ohio State Reports.

river, and ultimately came in contact with and did damage to a barque, whose owners instituted a cause of damage against the steamer in the county court of Northumberland, to recover for the damage done to their vessel by the steamer. At the hearing it was proved that the chain cables of the steamer had been unbent at the time she got adrift, and that no look-out had previously been kept on deck, though it was known that the weather was getting worse. *Held*, on appeal, affirming the decision of the court below, that the defence of inevitable accident, set up by the owners of the steamer, was not sustained, and that the steamer was alone to blame for the collision: *The Pladda*, Law Rep. 2 P. Div.

Arbitration.

Award—Bill to correct—Validity of Award—Res adjudicata.—Macomber and Beam were partners, and having agreed to arbitrate their partnership difficulties, deposited notes for $1200 each with the arbitrators, who on their award being made, were to deliver to the one who should be found creditor of the other the note of the latter endorsed down to the amount of the balance awarded. The award was in Macomber's favor, and Beam's note was delivered to him. Afterwards Beam brought suit in chancery to have the award corrected on the ground of mistake, and he was allowed a credit, to be deducted from the note, for an item which by accident and mistake was not brought to the attention of the arbitrators. (See *Beam* v. *Macomber*, 33 Mich.) The action in this case was brought on said promissory note. On the trial, Beam sought to show that the award was not valid, and it was held that the decree in the chancery suit precluded him from this defence. He relied on the ground that no point was made in the chancery suit upon the validity of the award, and that, in the absence of such an issue, it remained undisposed of and open to litigation at law. *Held*, that the bill was based on the alleged existence of a valid award, and was inconsistent with anything else; that, if no valid award existed, there was a perfect defence at law, because the note in such case was not delivered as a binding obligation, and was not in the hands of a bonâ fide holder; that the whole controversy in the chancery cause turned on the assumption that nothing remained open except the item overlooked on the arbitration; that a party cannot get relief on one basis and then seek a new chance to litigate on the suggestion that he has a defence which he did not see fit to rely on before; and that the ruling of the court below, that Beam was concluded by the decree, was correct: *Beam* v. *Macomber*, S. C. Mich., Jan. Term 1877.

Bills and Notes.

Negotiable character of—Presumption as to.—Transferees of a negotiable instrument, such as a bill of exchange or promissory note payable subsequent to its date, hold the instrument clothed with the presumption that it was negotiated for value in the usual course of business at the time of its execution, and without notice of any equities between the prior parties to the instrument: *Collins* v. *Gilbert et al.*, S. C. U. S., Oct. Term 1876.

Possession of such an instrument payable to bearer or endorsed in blank is primâ facie evidence that the holder is the proper owner and lawful possessor of the same, and nothing short of fraud, not even gross

negligence, if unattended with *mala fides*, is sufficient to overcome the effect of that evidence or to invalidate the title of the holder supported by that presumption: *Id.*

Clothed as the instrument is with those presumptions, the plaintiff is not bound to introduce any evidence to show that he gave value for the same until the other party has clearly proved that the consideration of the instrument was illegal or that it was fraudulent in its inception, or that it had been lost or stolen before it came to the possession of the holder: *Id.*

In the absence of evidence to the contrary, the presumption is that an endorsement was made at the date of the instrument or at least antecedently to its becoming due: *Id.*

Signing without reading—Estoppel.—A person possessed of the ordinary faculties and ability to read, signed and delivered a negotiable promissory note without knowing it to be such, but without reading the same, having an opportunity to do so, relying solely on the representation of the payee that the paper was an instrument other than a note. *Held*, as against a bonâ fide holder before maturity for value, such maker will not be permitted to deny the due execution of the note: *Winchell* v. *Crider*, 29 Ohio St.

Signing with Blanks—Negligence.—In an action against the maker by a bonâ fide endorsee, before due and for value, of a negotiable promissory note, the defendant is liable if guilty of negligence in the execution thereof, although he did not intend to sign a note, and was induced through fraudulent representations as to its character, to believe that the instrument executed was one of a different purport: *Ross* v. *Doland*, 29 Ohio St.

A person who negligently signs and delivers to another a printed form of a negotiable promissory note containing blanks, without knowing it to be such, is estopped as against a subsequent bonâ fide holder for value and before due, from denying authority in the person to whom it was delivered to fill the blanks: *Id.*

CHARTERPARTY. See *Shipping.*

COLLISION. See *Admiralty.*

CONSTITUTIONAL LAW.

Act of State laying Duty on Tonnage void.—In 1862, the legislature of New York passed an act defining and regulating the powers, duties and compensation of the captain and harbor-masters of the port of New York; amended April 17th 1865. The 6th sect. declared: "The following fees shall be collected under this act and no others. All ships or vessels of the United States of one hundred tons burthen or more, except lighters, tugs, barges and canal boats, sound and river steamboats employed on regular lines, and all ships or vessels that are permitted by the laws of the United States to enter on the same terms as vessels of the United States, which shall enter the port of New York, or load or unload, or make fast to any wharf therein, shall pay one and one half of one cent per ton, to be computed from the tonnage expressed in the registers of enrolments of such ships or vessels respectively; and all other foreign ships which shall arrive at and enter the same port, and

load or unload, or make fast to any wharf therein, shall pay three cents per ton, to be computed on the tonnage expressed in the registers or documents on board." *Held*, that the state, in passing this law imposing a tonnage duty exercised a power expressly prohibited to it by the Constitution of the United States, and that in that particular the law was therefore void: *Inman Steamship Co.* v. *Tinker*, S. C. U. S., Oct. Term 1876.

Eminent Domain—Railroads—Lands once appropriated to Public uses—Second appropriation.—While railroads, in one sense, are for the use and accommodation of the public, and to this extent may be considered as used for public purposes, it is fallacious to assume therefrom that the property by them acquired, having been taken for a public purpose, may be used and appropriated by any other corporation for a similar purpose, without making compensation therefor, or that property public for one purpose shall be public for all; the public may have the right to use property that is appropriated for certain purposes, and yet individuals or private corporations have rights therein at the same time, and these separate private rights are entitled to protection, and can only be divested when held by a corporation, in the same manner and under the same laws as individual rights may be: *The Grand Rapids, Newaygo & Lake Shore Railroad Co.* v. *The Grand Rapids and Indiana Railroad Co.*, S. C. Mich., Jan. Term 1877.

The franchises or property of one railroad may be taken for the construction of another in all cases where the property of an individual might be upon making compensation therefor: *Id.*

Judicial Power—Limitation of Jurisdiction of Supreme Court.—When an inferior tribunal fails to pursue the provisions of a legislative grant and to keep within it, the right of this court to review the erroneous proceedings attaches, and it is beyond the power of the lawmaker to arrest the employment of the appropriate writ for that purpose. A legislative act prohibiting a writ of certiorari in such case is unconstitutional and void: *Traphagen* v. *Township of West Hoboken*, 10 Vroom.

A reasonable time may be limited within which the writ in such case shall be sued out: *Id.*

Quære. Whether it is within the range of judicial inquiry to determine what is a reasonable time? *Id.*

Where the provision of the law under which an assessment is made is unconstitutional, the right of the legislature to limit a time within which a certiorari shall issue to review it, doubted: *Id.*

CONTRACT.

Sale of Logs—Agreement to deliver Notes—Construction.—Moore sued Boyden & Akely for an alleged failure to deliver certain notes, which, as he claimed, they were bound to deliver as part payment for logs furnished them; and he recovered judgment for $1262.68. The contract between the parties was made on October 16th 1874, and was in substance as follows: Moore agreed to sell and deliver to Boyden & Akely, afloat in Flat river, in time for the main drive in the spring of 1875, all the merchantable pine logs that could be cut from the timber then standing on two hundred acres of land described, at the price of $7 per thousand for all logs cut in a specified lot, and $6 per thousand for the rest. Pay-

ments in cash were to be made, of $500 on December 1st 1874; $500 on January 15th 1875, and $200 on May 1st 1875. The balance was to be paid in three equal payments, in two, four and six months from and after May 1st 1875. The purchasers were to give their bank notes for these payments at any time when requested. The logs were to be scaled by a scaler named. The cash payments were duly made and the purchasers had paid to Moore $13,595.87 before suit was brought. This suit was commenced May 18th 1875. The logs for which payment was demanded had not all been put afloat before suit brought, but the court below held this to be unnecessary, and ruled that plaintiff was entitled to demand pay by notes for all logs cut upon the land, as soon as the amounts were ascertained. *Held*, that this was erroneous; that the price to be paid for the logs in question was a certain sum per thousand, for logs delivered afloat in season, for the spring run of 1875; that the purchasers were not to be at any risk in the matter, and were not obliged to receive any other logs; that they were not called upon to give notes until a balance could be found beyond the $3000 of cash advances, and this balance could not be calculated on any logs not set afloat; that whether scaled in one place or another, the logs scaled could not entitle Moore to payment, until he had delivered them, and that defendants were not in default when the suit was brought: *Boyden* v. *Moore*, S. C. Mich. Jan. Term 1877.

CORPORATION. See *Waters*.

COVENANT.

Running with the Land.—A covenant that confers an immediate, permanent and beneficial effect on the use to which real estate is designed to be applied, will run with the title: *Nat. Union Bank* v. *Segur*, 10 Vroom.

CRIMINAL LAW.

Challenges—Manslaughter—Self-defence.—Where, on the trial of a criminal cause, a juror is challenged by the defendant for cause, and the challenge is improperly refused, but such juror is afterwards excused on a peremptory challenge, the judgment will not be reversed for such error, if an acceptable jury be impanelled before the defendant has exhausted his right to peremptory challenges: *Erwin* v. *The State*, 29 Ohio St.

Intention or purpose to kill may be present in the crime of manslaughter, where the killing is without malice upon a sudden quarrel: *Id.*

Where death is caused by the use of a deadly weapon, and the circumstances of the killing are detailed to the jury, some of which tend to disprove a malicious or intentional killing, it is misleading to charge the jury "that in *this* case the law raises a presumption of malice in the defendant, and an intent on his part to kill the deceased:" *Id.*

Where a person in the lawful pursuit of his business, and without blame, is violently assulted by one who manifestly and maliciously intends and endeavors to kill him, the person so assaulted, without retreating, although it be in his power to do so without increasing his danger, may kill his assailant if necessary to save his own life or prevent enormous bodily harm: *Id.*

Larceny—Lost Goods.—When a person finds goods that have actually been lost, and takes possession with intent to appropriate them to his own use, really believing at the time, or having good ground to believe, that the owner can be found, it is larceny: *Baker* v. *The State*, 29 Ohio St.

Spiritualism—Palmistry.—The appellant was convicted by justices under 5 Geo. 4, c. 83, s. 4, which makes punishable as a rogue and vagabond "every person * * * using any subtle craft, means or device by *palmistry or otherwise*, to deceive and impose on any of his majesty's subjects." In a case stated for this court, the justices found as a fact that the appellant attempted to deceive and impose upon certain persons by falsely pretending to have the supernatural faculty of obtaining from invisible agents and the spirits of the dead, answers, messages and manifestations of power, namely, noises, raps and the winding up of a musical box: *Held*, that the means used by the appellant came within the words "by palmistry or otherwise," and that the conviction was right: *Monck* v. *Hilton*, Law Rep., 2 Ex. Div.

Damages.

Intention of Plaintiff in bringing Suit.—In an action by a passenger against a railroad company for being wrongfully ejected from the cars by the conductor, it appeared that the rates of fare fixed by the company, and which by its established rules it was made the duty of the conductor to demand, were higher than those allowed by law. The plaintiff tendered what he claimed to be, and what was ultimately held to be the legal rates, and, upon refusal to pay more, was ejected from the cars, but without any rudeness or unnecessary violence. It also appeared that the plaintiff, at the time he took passage, knew the established rates, and expected to be ejected from the cars, intending to bring an action for such ejection, in order to test the right of the company to charge the established rates. *Held*, that the plaintiff was only entitled to compensatory damages, and that it was competent for the company, for the purpose of mitigating damages, or preventing the recovery of exemplary damages, to give in evidence subsequent declarations of the plaintiff, tending to prove that his object in taking passage on the cars was to make money, by bringing suits against the company for demanding or receiving their established rates of fare: *C. H. & D. Railroad Company* v. *Cole*, 29 Ohio St.

Debtor and Creditor. See *Husband and Wife; Partnership.*

Deed.

Evidence to Identify the Land granted.—Extrinsic testimony is admissible to identify land conveyed by the following description, to wit: "A tract or lot of land known as the east half of the southwest division of section 17," although such testimony shows that the land so conveyed is less in quantity than the mathematical half of the division: *Schlief* v. *Hart*, 29 Ohio St.

Eminent Domain. See *Constitutional Law.*

Equity Pleading.

Effect of Answer—Must be negatived by more than one Witness.—The general rule of equity practice is that when a defendant has by his

answer under oath expressly negatived the allegations of the bill, and the testimony of one person only has affirmed what has been negatived, the court will not decree in favor of the complainant. There is then oath against oath. In such cases there must be two witnesses, or one with corroborating circumstances, to overbear the defendant's sworn answer: *Seitz et ux.* v. *Mitchell*, S. C. U. S., Oct. Term 1876.

This rule, however, does not extend to averments in the answer not directly responsive to the allegations of the bill: *Id.*

ERRORS AND APPEALS.

From Circuit Court to Supreme Court of United States.—The allowance of an appeal, under section 692, Rev. Stat., follows of course if prayed for by one who has the right to it. The language of the statute is, "*shall* be allowed," which means "*must* be allowed" when asked for by one who stands in such relation to the cause that he can demand it. The question upon such an application is not what will be gained by an appeal, but whether the party asking it can appeal at all: *Ex parte Jordan et al.*, S. C. U. S., Oct. Term 1876.

The Circuit Court can be compelled by writ of mandamus to allow the appeal asked for: *Id.*

Mandamus.—A writ of mandamus cannot perform the offices of a writ of error: *Ex parte Loring*, S. C. U. S., Oct. Term 1876.

Jurisdiction.—The Supreme Court of the United States has only such appellate jurisdiction as has been conferred by Congress, and in the exercise of such as has been conferred can proceed only in the manner which the law prescribes: *United States* v. *Young*, S. C. U. S., Oct. Term 1876.

In the Supreme Court of the United States a writ of certiorari is allowed only as auxiliary process to enable the court to obtain further information in respect to matter already before it for adjudication: *Id.*

Appeals in Bankruptcy.—Appeals do not lie to the Supreme Court from the decisions of the Circuit Courts in the exercise of their supervisory jurisdiction under the bankrupt law: *Conro et al.* v. *Crane et al.*, S. C. U. S, Oct. Term 1876.

Who may appeal.—Where a decree is entered directing a receiver for a railroad company to pay money into court, although not a party to the foreclosure suit under which the money was realized, he is such a party in interest as to be entitled to an appeal: *Hinclay* v. *Railroad Co.*, S. C. U. S., Oct. Term 1876.

ESTOPPEL. See *Bills and Notes; Negotiable Instrument; Vendor; Waters.*

FERRY.

Damnum absque injuria—Loss of Traffic—Disturbance by Bridge.—The owner of a ferry cannot maintain an action for loss of traffic caused by a new highway by bridge or ferry made to provide for a new traffic.—*Quære*, Whether the exclusive right of the owner of a ferry extends beyond the carriage of passengers by boat? A railway company, under the authority of their act, constructed across a river, half a mile above an ancient ferry, a railway bridge and a foot-bridge, the foot-bridge

being used by persons going to the railway station and also to other places. The traffic across the ferry fell off, and the ferry was given up. The owners of the ferry claimed compensation: *Held*, reversing the decision of the Queen's Bench Division, that no compensation could be recovered, on the ground that an action could not have been maintained for disturbance of the ferry in respect of the traffic either by the railway or by the foot-bridge, if they had been erected without the authority of an act: *Hopkins* v. *Great N. Railroad Co.*, Law Rep. 2 Q. B. Div.

Foreign Judgment.

Conclusiveness of.—A judgment rendered in another state, when sued on here can be impeached only on the ground that the adjudging court did not have jurisdiction over the person of the defendant or the subject-matter: *Jardine* v. *Reichart*, 10 Vroom.

If the defendant was present in the foreign state when proceedings were begun and process was served upon him, no irregularity in such service, unless such as deprived it of all citatory effect, can be set up against the judgment ensuing thereon, in a suit on such judgment in this state: *Id.*

Former Adjudication. See *Arbitration; Set-off.*

Frauds, Statute of. See *Waters.*

Memorandum—Telegram.—Buck *et al.*, defendants in error, were allowed to recover damages for McElroy's (plaintiff in error) refusal to keep his contract to accept and pay for a quantity of hogs he had agreed to take of them. The original undertaking was verbal, and nothing was ever paid, and there was no delivery. Buck & Williams, defendants in error, were to procure the hogs, being in value $100, and deliver them for shipment within two weeks of August 11th 1874, at Sturgis, at 5 cents per pound, and McElroy was to accept and pay at Sturgis, on or before August 25th. McElroy was to have the right to go to Ohio before being bound, and in case he should decide to take the hogs on the terms specified, was to telegraph Buck & Williams to that effect, and one Bryant was to act as his agent in the matter. McElroy, on August 15th, telegraphed from Ohio that he would take double-deck car of hogs, and that Bryant would close the contract. This quantity was the same specified in the original arrangement. The hogs were duly provided and held ready for delivery, but McElroy repudiated the arrangement, and refused to accept the hogs, or pay for them. The court below held the telegram sufficient as a memorandum under the Statute of Frauds. *Held*, that this ruling was wrong; that standing by itself the telegram contained none of the elements of a bargain, except the quantity, and did not purport to be a memorandum of an agreement at all, but only a simple notification of adhesion to an agreement before provisionally arranged, and the terms of which were assumed to be understood: *McElroy* v. *Buck et al.*, S. C. Mich., Jan. Term 1877.

Guaranty.

Bond—Sureties—Continuing Obligation—Indefinite Time—Withdrawal of Guaranty—Subsequent Transactions.—This was an action upon a bond given by plaintiffs in error to defendants in error for the

performance by Jeudevine of an agreement to pay defendants in error such notes as he should, under such agreement, give them for the purchase price of musical instruments to be sold and delivered by them to him. The bond was given in November 1874. In December following, defendants in error sold and delivered to Jeudevine an Estey organ and took his note, which was paid. Subsequently further sales were made to Jeudevine, under the arrangement, the sureties on the bond called on defendants in error and forbade their making further sales to Jeudevine, and gave notice that they would not be responsible on account of any further sales. Further sales were made, nevertheless, and Jeudevine's notes taken, which not being paid, this suit was brought on the bond for the amount thereof. The bond specified no limitation in time for the duration of the liability of the sureties. *Held*, first, that the courts lean strongly to a construction of instruments of suretyship, given to secure performance of future mercantile engagements without express limitation as to time, which will confine the liability, in point of time, within reasonable bounds. *Held*, second, that while as to transactions already had there could be no withdrawal, and accrued liability could not be cancelled in that way, yet in the absence of obligation for a continuance of liability in point of time, there is no good reason for precluding a withdrawal as against transactions in no way yet entered upon; that as to transactions not yet instituted, not as yet in existence, the guaranty was meant to be at the will of the guarantors; and that the sureties were not liable on the bond for the notes given for sales made against their protest, and after they had notified the obligees of their withdrawal from further liability: *Jeudevine et al.* v. *Rose et al.*, S. C. Mich., Jan. Term 1877.

Highway.

Need not be from Town to Town.—The ancient rule of the common law, that it was of the essence of a highway that it should be laid to a market town, or from town to town, and be a thoroughfare having no *terminus a quo* or *terminus ad quem*, has been overruled. It is now not essential to a highway that it be a thoroughfare. If, in fact, it is open and common to all the public, it is a public highway, without regard to the place of its termination: *The State* v. *Bishop et al.*, 10 Vroom.

A road may be laid out as a public road, under the statute of New Jersey, though it have, at one end, no outlet, and terminate on private property: *Id.*

Homestead.

Mortgage—Subsequent selection of Premises as Homestead.—A mortgage of premises, no part of which constitutes the family homestead of the mortgage debtor, at the time of the execution and delivery of the mortgage, although not executed by the wife, is not affected by the subsequent selection and occupancy of the premises mortgaged, as the homestead of the mortgagor: *Gibson* v. *Mundell*, 29 Ohio St.

As against such mortgage, the wife of the mortgage debtor is not entitled to an assignment of a homestead in the premises mortgaged: *Id.*

Husband and Wife.

Property purchased by Wife during Coverture—Title as against Creditors.—In a contest between a wife and her husband's creditors, mere

evidence that she purchased the property during the coverture is not sufficient to give her title; it must be satisfactorily shown that the property was paid for with her own separate funds; and in the absence of such evidence, the presumption is a violent one that the husband furnished the means of payment: *Seitz et ux.* v. *Mitchell*, S. C. U. S. Oct. Term 1876.

JUDGMENT.

By default—Assessment of Damages—In an assessment of damages under judgment interlocutory by default, the only matter that the plaintiff has to prove, or the defendant is permitted to controvert, is the amount of damages. The cause of action stated in the declaration, and the right to some damages in respect to it, are admitted by the default: *Creamer* v. *Dikeman*, 10 Vroom.

LANDLORD AND TENANT.

Lien on Chattels on the demised Premises—Landlords leasing real property in the District of Columbia, have a tacit lien upon such of the personal chattels of the tenant upon the premises as are subject to execution for debt, commencing with the tenancy and continuing for three months after the rent is due, and until the termination of any action for such rent brought within the said three months: *Beall et al.* v. *White et al*, S. C. U S., Oct. Term 1876

Statutory liens have without possession the same operation and efficacy that existed in common-law liens where the possession was delivered: *Id.*

Personal chattels on the premises, sold in the ordinary course of trade, without knowledge of the lien, are not subject to its operation, or, in other words, the lien in respect to sales, where the goods are removed from the premises, is displaced, and the purchaser takes a perfect title to the property discharged of the lien: *Id.*

LIBEL.

Privileged Communication—Publication of matters of Public Interest—Meetings of Poor-law Guardians—Ex parte Charges.—The administration of the poor-laws, both by the government department and by the local authorities, including the conduct of the medical officers, is a matter of public interest; but the publication of a report of proceedings at a meeting of poor-law guardians, at which ex parte charges of misconduct against the medical officer of the Union were made, is not privileged by the occasion: *Purcell* v. *Sowler*, Law Rep. 2 C. P. Div.

Slander of Title.—The plaintiffs, vocalists, advertised in a theatrical newspaper, as follows: "The sisters Hartridge have great pleasure in thanking [certain firms, music publishers,] for their kind unhesitating permission to sing any morceaux from their musical publications." The defendant, who was interested as agent for the proprietors of the "stage right" of certain songs published by the firms mentioned, wrote to the proprietors of two music halls at which the plaintiffs were engaged to sing, to the effect that the advertisement, if relied upon in every particular, was calculated to lead them to incur penalties under the copyright act, inasmuch as the publishers named had in some instances no power to give the alleged permission, and further, that the firms in question had not accorded the permission claimed, insinuating that music hall singing

was not calculated to create a demand for their musical publications. Plaintiffs claimed that as they had the right to sing the songs they had advertised, this letter was in the nature of slander of their title, and by reason of it they had been discharged from certain engagements to sing. Upon a motion to set aside a nonsuit. *Held*, that inasmuch as the letters were reasonably susceptible of a construction which would make them libellous, the opinion of the jury ought to have been taken upon their meaning: *Hart* v. *Wall*, Law Rep. 2 C. P. Div.

LIEN. See *Landlord and Tenant.*

MANDAMUS.

To Inferior Court—Bill of Exceptions—A writ of mandamus will lie to the judges of an inferior court to seal a bill of exceptions, but not to settle it in a particular way. The writ when issued will be in the alternative form, *quod si ita est*, and if it be returned *quod non ita est*, it is sufficient: *Benedict* v. *Howell*, 10 Vroom.

Where the thing in issue, on an application for a mandamus, relates to a matter with respect to which an inferior court or special tribunal is, by law, invested with a discretionary power to decide questions of law or to ascertain matters of fact, the court will not, by mandamus, usurp the power to dictate how the discretion shall be exercised, or to decide what conclusions of law or of fact shall be reached: *Id.*

Justice of Peace—Entry of Judgment erroneously—Remedy.—While a justice who has improperly refused to enter a judgment may be compelled by mandamus in a proper case to do so, yet, where he has once rendered and entered up a judgment, however erroneous, such judgment cannot be reviewed or disturbed by mandamus, the remedy by appeal or certiorari being ample and adequate; a justice of the peace, after he has once rendered judgment in a cause, has no further power or control over it, to vacate or set it aside, or to render a new judgment, and what is beyond his authority of his own motion to do, he cannot be lawfully required by the mandate of another court to perform: *O'Brian* v. *Tallman*, S. C. Mich., Jan. Term 1877.

MARRIED WOMAN. See *Trust.*

MUNICIPAL CORPORATION.

Subscription to Stock of Bridge Company—Must be authorized by Legislature—Bonâ fide holder—A municipality must have legislative authority to subscribe to the capital stock of a bridge company before its officers can bind the body-politic to the payment of bonds purporting to be issued on that account. Municipal officers cannot rightfully dispense with any of the essential forms of proceeding which the legislature has prescribed for the purpose of investing them with power to act in the matter of such a subscription. If they do, the bonds they issue will be invalid in the hands of all that cannot claim protection as bona fide holders: *McClure* v. *Township of Oxford*, S. C. U. S., Oct. Term 1876.

A statute under which bonds were issued and which was referred to in the bonds, though passed and approved March 1st 1872, was not by its terms to go into effect until after its publication in the *Kansas*

Weekly Commonwealth. This publication did not take place until March 21st. The statute further provided that no bonds could be issued under its authority until the question of their issue had been submitted to the legal voters of the town at an election of which thirty days' notice had been given. The bonds issued under this act bore date April 15th 1872. *Held*, that the bonds carried upon their face unmistakable evidence that the forms of the law under which they purported to have been issued had not been complied with, and that every dealer in such bonds is bound to take notice of the statute and of all its requirements: *Id.*

NEGLIGENCE. See *Bills and Notes; Negotiable Instrument.*

Contributory—Evidence for Jury.—In actions for personal injuries caused by railroad trains, where there are doubtful and qualifying circumstances, the question of negligence or want of proper care must be left to the jury: *Bonnel* v. *Delaware, L. & W. Railroad Co.*, 10 Vroom.

The plaintiff will not be nonsuited, unless, upon his own showing, he is guilty of negligence which contributed to the injury; nor will the verdict be set aside, unless the jury are clearly wrong in their conclusion: *Id.*

Where a person, as he approaches a railroad crossing, with a single track and infrequent trains, sees a train with the rear towards him, going apparently in an opposite direction, and is deceived by appearances, and his attention distracted by the actions of persons at a distance attempting to warn him of his danger from the train, which is backing rapidly and quietly towards him, and a wagon has crossed just before him, it will be left to the jury to say whether there is want of proper care: *Id.*

Contributory—Walking on Railroad track—Want of care.—Where a man voluntarily places himself in a position of great danger, and makes a highway of a railway track, where he has no right to be, and upon which dangerous vehicles are constantly liable to pass, he is bound to exercise more than ordinary care and caution to protect himself against danger, which is thus constantly imminent, and where he fails in this, and does not even avail himself of the precaution of looking about him, it is impossible, in speaking of his conduct to characterize it by anything short of recklessness; in such a case his negligence contributes to the injury, and the court should instruct the jury that the plaintiff is not entitled to recover: *Michigan Central Railroad Co.* v. *Campan*, S. C. Mich. Jan. Term 1877.

NEGOTIABLE INSTRUMENT.

Scrip—Shares in Banking Company—Estoppel.—Scrip certificates, by which it was certified that, after the payment of certain instalments, the bearer thereof would be entitled to be registered as the holder of shares in a banking company, were issued to the plaintiff, and by him deposited with a stockbroker for the purpose of paying the instalments remaining due, and dealing with such certificates as the plaintiff should direct. The broker, in fraud of the plaintiff, and without his authority, deposited the scrip with the defendants as security for an amount due from him, the broker, to the defendants. The defendants were not aware of the fraud. It was proved that the usage among bankers, discounters, money dealers, and on the stock exchange, had been for many years to treat such scrip certificates as negotiable instruments trans-

ferable by mere delivery: *Held*, on the authority of *Goodwin* v. *Roberts*, 1 App. Cas. 476, Law Rep., 10 Ex. 337, that the defendants were entitled to the scrip certificates as against the plaintiff, first, on the ground that by reason of the usage the certificates had become negotiable instruments transferable by mere delivery, and, secondly, on the ground that the plaintiff, by depositing with his broker instruments purporting to be transferable by delivery to a bona fide holder for value, was estopped from denying they were so transferable: *Rumball* v. *The Metropolitan Bank*, Law Rep. 2 Q. B. Div.

Partnership.

Insolvent—Assignment for Creditors against the consent of a Partner.—One of the members of an insolvent firm cannot, either before or after dissolution of the partnership, make a valid assignment of all its effects for the benefit of creditors, against the will of a copartner, or without his assent, when he is present or accessible: *Holland* v. *Drake and others*, 29 Ohio St.

Where an assignment is so made against the will of the non-executing partner, or when he is present and not assenting, and he subsequently ratifies the assignment, the ratification will relate back to the time of executing the assignment, and give it effect from that date; but not so as to defeat the rights of third persons acquired in good faith in the meantime: *Id.*

Where, in such a case, an attachment had been levied upon the property between the date of the assignment and its ratification, and by agreement between the attaching creditor, the assignee and the partners, the property was delivered by the sheriff to the assignee, to be by him sold in place of the sheriff, and the proceeds to stand in place of the property, and be applied to the attaching creditor's judgment when obtained, if the court should hold the attachment good; in an action by the attaching creditor against the assignee and the partners, to have the proceeds of the property so applied: *Held*, that the defendants were estopped from setting up as a defence that the lien of the attachment was lost by delivery of the property to the assignee under said agreement: *Id.*

In such action it was not necessary to make the partnership-creditors parties defendant: *Id.*

Patent.

Infringement of—Measure of Damages.—In the ascertainment of profits made by an infringer of a patented invention the rule is that the profits are not all he made in the business in which he used the invention, but they are the worth of the advantage he obtained by such use, or, in other words, they are the fruits of that advantage: *Meys* v. *Conover*, S. C. U. S. Oct. Term 1876.

Surrender—Effect upon Suits.—A surrender of a patent means an act which, in the judgment of law, extinguishes the patent. It is a legal cancellation of it, and hence can no more be the foundation of the assertion of a right, after the surrender, than could an Act of Congress which has been repealed: *Meyer et al.* v. *Pritchard*, S. C. U. S., Oct. Term 1876.

The re-issue of the patent has no connection with or bearing upon antecedent suits; it has as to subsequent suits. The antecedent suits depend upon the patent existing at the time they were commenced, and unless it exists and is in force at the time of trial and judgment the suits fail: *Id.*

POWER. See *Trust.*

RAILROAD. See *Constitutional Law; Negligence.*

Showing Tickets.—A railway company has the right to require passengers to show tickets or pay fare, and a rule directing its conductors to remove from the cars those who refuse to comply with the requirement is reasonable: *Shelton* v. *Lake Shore, &c., Railway Co.*, 29 Ohio St.

The fact that a ticket has been purchased by a passenger, which was afterwards wrongfully taken up by a conductor of one of the defendant's trains, will not relieve the passenger from the duty of providing himself with a ticket, or paying fare on another train of the defendant in which he may be a passenger: *Id.*

In such case, the right of action of the passenger would be for the wrongful taking up of the ticket, and not for having been removed from a train by another conductor for refusing to pay fare: *Id.*

Storm—Liability for Injuries occasioned by.—A railroad company is not liable for injuries occasioned by its buildings or structures being blown down by storms, where it has used that care and skill in their structure and maintenance which men of ordinary prudence and skill usually employ; and it is error in such cases to charge the jury that the company is "bound to guard against all storms which can reasonably be anticipated:" *Pittsburgh, Ft. W. & C. Railway Co.* v. *Brigham*, 29 Ohio St.

SALE. See *Landlord and Tenant.*

SCRIP. See *Negotiable Instrument.*

SET-OFF.

Lien for Labor—Former Adjudication.—A bailee, converting goods on which he has bestowed labor and acquired a lien, may, in an action of trover brought by the owner, set up his lien-claim in reduction of damages: *Longstreet* v. *Phile*, 10 Vroom.

In a suit brought by the lienor for his work and labor, against the owner, the fact that the owner had recovered judgment for the conversion, raises no presumption that the lienor's claim was adjudicated and allowed in estimating damages. It must be further shown, that the claim was, by assent of him entitled to make it, presented for litigation, and considered in the cause: *Id.*

SHIPPING.

Charter-party—Rejection—Time—Detention.—The plaintiff agreed to charter a ship for twelve months after the completion of her then present voyage. After the completion of the voyage and when the plaintiff was ready to load the ship, she was detained as unseaworthy; and the repairs were not finished until more than two months after the completion of the voyage. *Held*, affirming the decision of the Queen's Bench Division, that the plaintiff was entitled to throw up the charter-party: *Tully* v. *Howling*, Law Rep. 2 Q. B. Div.

SURETY. See *Guaranty.*

Good faith towards—Concealment of knowledge from.—A person taking a bond for the future good conduct of an agent already in his employment, must communicate to a surety his knowledge of the past criminal misconduct of such agent in the course of such past employment, in order to make such bond binding: *Sooy et al.* v. *The State,* 10 Vroom.

The mere non-communication of such knowledge, irrespective of motive or design, is a fraud in law, which will invalidate the obligation: *Id.*

TELEGRAPH. See *Frauds, Statute of.*

TRESPASS.

Assault and Battery—Self-defence—Protection of Property.—Birtch sued Ayres in trespass for an assault and battery. The act complained of took place at a blacksmith-shop leased by Birtch of Ayres, and occupied by Birtch at the time. The case made by Birtch was, that Ayres came into the shop, and being requested by him to leave refused to do so, whereupon, making use of no more force than was necessary, he proceeded to put him out, when Ayres struck him a severe blow with a whiffletree. Ayres, on the contrary, claimed that he went to the shop to prevent the carrying off by other parties, of some iron which he had sold to Birtch, but the title to which he was to retain until it was paid for, which had not then been done; that Birtch assaulted him immediately on his entering the shop, and that the blow he struck was in resistance to this assault. *Held,* that if the facts were as Ayers claimed, they would constitute a complete defence, unless the force employed by him in resisting the assault was greater than was necessary to his own protection; 2. That the arrangement between Ayres and Birtch was material as bearing on the question of damages: *Ayres* v. *Birtch,* S. C. Mich., Jan. Term 1877.

TRUST.

For Married Woman—When sustained—Powers.—Where a trust is created for the benefit of a married woman for the purpose of giving her the separate use and control of lands free from the control of her husband, it will be sustained; since, to merge the trust in the legal estate, or, to speak more properly, to convert it into a legal estate, would have the effect of placing the property in the husband's control by virtue of his marital rights, and would thus defeat the very purpose of the trust; *Bowen* v. *Chase et al.,* S. C. U. S., Oct. Term 1876.

A power to sell or exchange, when exercised, overrides all other distinct powers; for it is necessarily exclusive of all others; whereas the uses appointed under other powers may possibly be served out of the estate procured by the price of the sale or by the exchange: *Id.*

But when a mere power to convey (as distinguished from a power to sell) is once executed in favor of a voluntary beneficiary, it cannot be revoked without reserving a power of revocation, and will not, therefore, be superseded by a subsequent conveyance equally voluntary made under the same power: *Id.*

USAGE. See *Negotiable Instrument; Vendor*

VENDOR AND PURCHASER.

Purchaser without Notice—Agent with Limited Power—Estoppel—Muniments of Title—Trade Usage.—The plaintiff, a tobacco manufacturer at Bolton, bought of H., a commission-merchant and agent, and also a dealer in tobacco, fifty hogsheads of tobacco then lying in bond in the name of H., in the L. dock. The price was paid, but the tobacco was to remain in the dock, to be forwarded to the plaintiff as he might want it for the purpose of his business, with an understanding that the tobacco was to be cleared by H. and dispatched to Bolton free of any charge for commission, or, should the plaintiff sell any portion of it, to be delivered to his vendees; the plaintiff remitting to H. the amount of duty and dock charges. This arrangement was one so usual in the tobacco trade, that any other arrangement was exceptional. For this purpose the tobacco was allowed to remain in the name of H. in the dock books, and he retained the dock warrants. In his own books, however, the transaction was entered as a sale to the plaintiff. H., representing the tobacco to be his own property, pledged it with the defendants as security for a loan, handing them the dock-warrants; and he caused the tobacco to be transferred into their names in the dock books, the defendants having no knowledge that the plaintiff was interested in it. H. shortly afterwards absconded, and was adjudicated bankrupt. The plaintiff demanded the tobacco of the defendants, but they claimed to retain it, either on the ground that the plaintiff had armed H. with an ostensible authority to deal with the goods as his own, or that he was intrusted with the tobacco or the documents of title with authority to pledge or sell within the Factors' Acts: *Held*, by DENMAN, J., on motion for judgment, the judge having power to draw inferences of fact, that H. was not intrusted with the tobacco as factor or agent for sale, but only to clear and forward it to the plaintiff or to his vendees as and when required, and consequently that he had no authority to sell or to pledge it. *Held*, also, that, looking at the usage of the trade, the plaintiff had not given any ostensible authority to H. to pledge the tobacco: *Johnson* v. *The Credit Lyonais*, L. R. 2 C. P. Div.

WATERS AND WATERCOURSE.

License to fill up—Statute of Frauds—Estoppel—Ultra Vires.—An agreement between the owner of an artificial watercourse and a railroad company, whereby the former consents that the latter, in the construction of its road, may fill the channel and divert the water into a new channel on its own land, in consideration that the railroad company will open the old channel and restore the water thereto whenever requested, is not a contract for an interest in land within the meaning of the Statute of Frauds: *Hamilton and Rossville Hydraulic Co.* v. *Cincinnati, H. and D. Railroad Co.*, 29 Ohio St.

Where a license to fill up such watercourse is obtained from a corporation in possession as owner, in consideration of a promise to reopen and restore the watercourse when requested so to do, the licensee, when sued for a breach of his promise, is estopped from setting up that the ownership and maintenance of the watercourse by the corporation are *ultra vires*: *Id.*