

## ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.

SUPREME COURT OF GEORGIA.<sup>2</sup>SUPREME COURT OF ILLINOIS.<sup>3</sup>

COURT OF ERRORS AND APPEALS OF MARYLAND.

SUPREME JUDICIAL COURT OF MAINE.<sup>5</sup>SUPREME COURT OF MISSOURI.<sup>6</sup>

## ACTION.

*Obstruction of Common Right—Individual Remedy.*—For any act obstructing a public and common right, no private action will lie for damages of the same kind as those sustained by the general public, although in a much greater degree than any other person, but an action will lie for peculiar damages of a different kind, though even in the smallest degree: *Chicago v. Union Building Association*, 102 Ill.

The fact that property owners upon a street have been specially assessed as benefited by the opening of a part of the street some blocks off, and have paid such assessments, does not give them any special property in such street any more than to any other tax-payer, and gives them no equitable ground to enjoin the vacation of such part of the street: *Id.*

## ADMIRALTY.

*Maritime Law—Limited Liability Act—Foreign Vessel—Practice—Measure of Damages.*—The Limited Liability Act of 1851, reproduced in sects. 4282, &c., Revised Statutes, applies to owners of foreign as well as domestic vessels, and to acts done on the high seas, except when a collision occurs between two vessels of the same foreign nation, or perhaps, of two foreign nations having the same maritime law: *Nat. Steam Nav. Co. v. Dyer*, S. C. U. S., Oct. Term 1881.

The courts of every country will administer justice according to its laws unless a different law be shown to apply, and this rule applies to transactions taking place on the high seas: *Id.*

Shipowners may avail themselves of the defence of limited liability by answer or plea, as well as by the form of proceeding prescribed by the rules of the Supreme Court: *Id.*

If the owners plead the statute, a decree may be made requiring them to pay the limited amount into court, and distributing said amount *pro rata* among the parties claiming damages. Such a proceeding is an "appropriate proceeding" under the statute: *Id.*

<sup>1</sup> Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1881. The cases will probably appear in 14 or 15 Otto.

<sup>2</sup> From J. H. Lumpkin, Esq., Reporter; to appear in 66 Georgia Reports.

<sup>3</sup> From Hon. N. L. Freeman, Reporter; to appear in 102 Illinois Reports.

<sup>4</sup> From J. Shaaff Stockett, Esq., Reporter; to appear in 57 Maryland Reports.

<sup>5</sup> From J. W. Spaulding, Esq., Reporter; to appear in 73 Maine Reports.

<sup>6</sup> From T. K. Skinker, Esq., Reporter; to appear in 74 Missouri Reports.

It is not necessary for the owners to surrender the ship. They may plead their immunity, and abide a decree for the value of the ship and freight: *Id.*

The rule of damages for goods lost on the high seas is their value at the place of shipment, with all charges of lading, insurance and transportation, and interest at the rate of six per cent. per annum, but without allowance for anticipated profits. If the goods had no market value at the place of shipment, other means of ascertaining their value may be used, such as their usual price at the port of destination, with a fair deduction for profits and charges: *Id.*

#### ADVANCEMENT.

*Declarations of Parent.*—Loose declarations of a parent, that he intended an existing debt should be an advancement, not substantiated by writing, nor made to the child, nor assented to by him, nor accompanied by any act, are not sufficient to destroy a debt secured by a legal instrument in full force, and to change it into a gift by way of advancement, whether offered by the son to defeat the recovery of the debt, or by the representatives of the parent against the son to defeat his claim to a distributive share: *Hurley v. Hurley*, 57 Md.

#### ATTACHMENT. See *Partnership.*

*Garnishment—Foreign Corporation—Common Law—How far adopted.*—A foreign corporation doing business and having property in this state, is liable to garnishment, the same as a domestic corporation, and service of process may rightfully be made on its agent in this state: *Hannibal and St. Joseph Railroad Co. v. Crane*, 102 Ill.

The courts of this state are not required by our statute adopting the common law of England, to enforce local customs of that realm, as it does not prescribe local customs and statutes as a rule of action in this state. On the contrary, they are excluded: *Id.*

#### BILLS AND NOTES.

*When Contract under Seal.*—In order to make a note a contract under seal, it must be recited to be so in the body thereof; the mere addition of a scroll after the signature is not sufficient: *Skrine v. Lewis*, 66 Geo.

#### CONFLICT OF LAWS.

*Municipal Bonds—Judgment of Federal Court.*—When a county court, acting in obedience to a mandate from the federal court and in conformity with the laws of the state authorizing the levy of taxes to pay county indebtedness, has levied a tax for the purpose of paying a judgment of the federal court against the county, the state courts will not interfere to prevent its collection, on the ground that bonds on which the judgment was rendered were void. The judgment of the federal court will be held conclusive of their validity: *The State v. Rainey*, 74 Mo.

The state courts will respect as valid a judgment of a federal court against a county on its bonds, notwithstanding the same bonds are held by the state courts to be void: *Id.*

When the legislature has clothed a municipal corporation with the right to levy taxes to pay debts, any court having jurisdiction to enforce the payment of a debt, may, by mandamus, compel the corporate authorities to levy a tax in conformity with the mode prescribed, and to the extent of the power conferred by law; but beyond this no court can go: *Id.*

#### CONSTITUTIONAL LAW.

*Charter of Corporation—Reservation of Right of Repeal—Grant of same Franchises to New Corporation.*—After the passage of a statute enacting that every act of incorporation thereafter passed, shall be subject to repeal at the pleasure of the legislature, the right of repeal becomes part of every subsequent act of incorporation: *Greenwood v. Union Freight Railroad Co.*, S. C. U. S., Oct. Term 1881.

After such repeal a corporation can originate no new transactions dependent solely on the power conferred by the charter and which could not be exercised by unincorporated private persons: *Id.*

The rights of the shareholders to the real and personal property acquired by the corporation, and rights of contract and choses in action are not destroyed by such repeal, and if the legislature has provided no specific mode of enforcing such rights, the courts will do so by the means within their power: *Id.*

So far as the property or franchises of the old corporation were necessary to the public use, the legislature could authorize a new corporation to take them on making due compensation therefor: *Id.*

A statute which, under a reserved right, repeals an act of incorporation and creates a new corporation with similar powers, the use of which requires the exercise of eminent domain, is not unconstitutional if it provides for compensation for the property of the extinct corporation so taken by the new one: *Id.*

#### CONTRACT.

*Judicial Sale—Agreement not to Bid.*—Property of S. was levied on and advertised for sale. M. agreed that if S. would permit him to buy it at the sheriff's sale, and would not have the price run up on him, he would buy and would pay to S. the difference between the price paid at the sale and \$1000, which S. claimed to be a fair valuation. Relying on this S. made no effort to pay the *fi fa* or stop the sale, as he could otherwise have done. M. bought for \$625. S. sued for the balance to complete the \$1000. *Held*, that the contract was founded on a sufficient consideration: *Matthews v. Starr*, 66 Geo.

Such a contract was not illegal: *Id.*

If the proposed purchaser desired to annul the contract, it was incumbent on him to have given notice to the defendant in the *fi. fa.* in ample time for him to have made other arrangements: *Id.*

#### CORPORATION.

*Limitation on Power to issue Stock—Rights and Liabilities of Holders of Unauthorized Stock—Agreement between Company and Stockholders.*—Where the amount of the capital stock of a corporation is limited by charter, all stock issued in excess of the limit is void: *Scovill v. Thayer*, S. C. U. S., Oct. Term 1881.

A holder of such stock is not entitled to any of the rights or subject to any of the liabilities of a holder of authorized stock: *Id.*

After partial payments on stock the company agreed with its stockholders that no further assessments should be made, and issued to them full paid certificates. In an action by the assignee in bankruptcy of the corporation against the stockholders to recover their unpaid subscriptions, *held*, that the agreement was void as to creditors, but that before the action could be maintained some proceeding in the interest of creditors to set aside the agreement and to make an assessment was necessary: *Id.*

*Suit for Benefits—Conclusiveness of Decision of Corporation under By-laws.*—The by-laws of the appellant (of which the appellee's intestate was a member), provided that whenever a member had cause of complaint on questions which related to his enjoyment of benefits, he should seek redress from his tribe, and if against him, on appeal from its decision to the Grand Tribe of Maryland, and on that to the Grand Tribe of the United States, and should he neglect to pursue such course, and should bring suit in a tribunal outside the order, he would be subject to expulsion. It appeared that the appellee's intestate pursued the course prescribed, and his claim having been decided against him, originally and on the appeals, he brought this suit to recover back sick benefits from the appellant. *Held*, that the proceedings mentioned being specially pleaded and relied upon as a bar to this action, were conclusive against the appellee's right to recover: *Osceola Tribe v. Schmidt*, 57 Md.

#### CRIMINAL LAW.

*Right to be present at Trial—Waiver of.*—The constitutional right of a prisoner to appear and defend in person and by counsel, to demand the nature and cause of the accusation, and to meet the witnesses face to face, is conferred for the protection and benefit of one accused of crime; but, like many other rights, it may be waived by him: *Sahlinger v. People*, 102 Ill.

So where a prisoner, after his trial has begun, voluntarily abandons the court room, and refuses to appear, he will be regarded as having waived a right which is guaranteed to him, and the court is under no obligation to stop the trial, but may proceed in his absence to final judgment. He will not be allowed to take advantage of his own fault: *Id.*

*Murder—Intoxication—Effect on question of Degree—Reducing Charge to Writing.*—Under a statute establishing degrees of the crime of murder, and providing that wilful, deliberate, malicious and premeditated killing shall be murder in the first degree, evidence that the accused was intoxicated at the time of the killing is competent for the consideration of the jury upon the question whether he was in such a condition of mind as to be capable of deliberate premeditation: *Hoft v. People*, S. C. U. S., Oct. Term 1881.

*Confession obtained by Artifice.*—A confession not induced by promises or threats is admissible in evidence, notwithstanding it was obtained by artifice practised upon the prisoner by the officer having

him in charge, and, when properly corroborated, will sustain a conviction: *State v. Phelps*, 74 Mo.

## DAMAGES.

*Railroad Employee—Negligence.*—An employee of a railroad company who has been injured by its negligence without fault on his part, may recover general damages on account of pain, physical injury and general depreciation of power to labor, although no proof of the value of his services as such employee or in other business may be made: *Georgia Southern Railroad v. Neal*, 66 Geo.

*Contract for Sale of Seed.*—In an action by a purchaser of seed against the vendor on the latter's warranty, no fraud being alleged, the measure of damages is the purchase-money with interest and the expense of hauling the seed, preparing the land, sowing, &c., but plaintiff cannot recover for prospective profits on the land planted with the seed: *Butler v. Moore*, 66 Geo.

## DEBTOR AND CREDITOR.

*Voluntary Conveyance—Subsequent Creditors—Burden of Proof.*—A voluntary conveyance made by a party solvent at the time, may be impeached and set aside by subsequent creditors, provided it be executed with the intention and design to defraud those who should thereafter become his creditors. Where such fraud is charged, the fraudulent purpose will not be presumed, but must be proved. The onus rests on the parties assailing the deed to establish the fraudulent intent by satisfactory proof: *Ingram v. Heather*, 57 Md.

## EMINENT DOMAIN.

*City—Change of Grade—Obstruction of Street.*—Where a city under statutory authority constructed a viaduct or bridge on a public street, near its intersection with another street, thereby cutting off access to the first-named street from the plaintiff's house and lot over and along the street intersected, except by means of a pair of stairs, whereby the plaintiff's premises fronting on the latter street and near the obstruction were permanently damaged and depreciated in value, by reason of being deprived of such access, it was held, the city was liable to the plaintiff in damages for the injury: *Rigney v. City of Chicago*, 102 Ill.

## EQUITY.

*Jurisdiction—Bill to quiet Title.*—The rule that a bill to quiet title and remove a cloud upon a party's title to land, lies only where the complainant is in possession of the land, or where he claims to be the owner and the land is vacant and unoccupied, applies only where the object of the bill is purely to remove a cloud from the title, and not where the primary relief sought is upon other and well established grounds, and the removal of the cloud is prayed only as an incident to that relief. The rule has no application where a deed is sought to be set aside upon the ground of fraud: *Booth v. Wiley*, 102 Ill.

## ERRORS AND APPEALS.

*Amount in Controversy—Separate Liability of Joint Litigants.*—The

Supreme Court has no jurisdiction of an appeal by property holders from a decree refusing an injunction against the collection of assessments against their properties, to pay a claim of \$71,623 against the district in which they resided, it appearing that although their petition for the injunction was joint, no one petitioner was assessed at over \$2500, and that there was no joint liability: *Russell v. Stansell*, S. C. U. S., Oct. Term 1881.

## EVIDENCE.

*Duplicate Contract*.—Where a contract is executed by the parties thereto in duplicate or triplicate form, they are all originals and primary evidence; and it does not require, in order to introduce one of the duplicates as evidence, that notice should be given to produce the other: *Totten v. Bucy*, 57 Md.

*Opinion as to Mental Capacity—Employees*.—Non-experts must state grounds and facts sufficient to justify the expression of an opinion, and the reasons for it, respecting mental capacity: *Kerby v. Kerby*, 57 Md.

Persons in the service of one alleged to be infirm in mind, and frequently or constantly about such person, and having business dealings together, are competent to express an opinion respecting the mental condition of such person: *Id.*

EXECUTORS AND ADMINISTRATORS. See *Surety*.

*Failure to Account—Interest*.—Where an administrator has used the funds of his intestate in his own business, rendering no account thereof, he is properly charged with compound interest thereon at ten per cent: *Camp's Creditors v. Camp's Administrator*, 74 Mo.

The failure to account raises the presumption of such use of the money: *Id.*

## FIXTURES.

*Rights of Mortgagee*.—Fixtures actually or constructively annexed to the realty, after the execution of a mortgage of the real estate become a part of the mortgage security, and, while the mortgage is in force cannot be removed or otherwise disposed of by the mortgagor or by one claiming under him, without the consent of the mortgagee: *Wight v. Gray*, 73 Me.

GARNISHMENT. See *Attachment*.

## GIFT.

*Donatio causa mortis—Bank Check*.—To constitute a valid *donatio causa mortis*, there must be actual delivery of the subject of the gift in the lifetime of the donor. Delivery to an agent with directions to him to deliver to the donee after the death of the donor, and if he should recover, then to return the property to the donor, is insufficient: *Walter v. Ford*, 74 Mo.

Whether a bank check can be the subject of a *donatio causa mortis*, *quære?* *Id.*

## HUSBAND AND WIFE.

*Action for Slander of Wife—How brought*.—An action for slanderous words spoken of a wife must be brought by the husband and wife

jointly; and the claim for damages must be made in behalf of them, as plaintiffs: *Newcomer v. Kean*, 57 Md.

## INFANT.

*Contract—Rescission of—Trover—Agent.*—If minors having in their possession the consideration received by them upon the sale and delivery of their goods and chattels, desire to return the same to the party contracting with them and rescind the contract, they may do so during their minority as well as within a reasonable time after they come of age; and upon the refusal of the other party to accept the consideration returned and to restore the property, they may maintain trover, prosecuting their suit by *prochein ami* for the property withheld from them: *Towle v. Dresser*, 13 Me.

The rescission of a minor's contract in this manner through the intervention of an agent employed by him for that purpose, is not manifestly nor necessarily prejudicial to the minor, and is therefore not to be classed nor regarded as void; and his appointment of an agent for such purpose is at the worst only voidable; and the opposite party when thus notified of the rescission, if he refuses to accept the consideration returned and to restore the property, can no longer shield himself under the contract: *Id.*

## INSURANCE.

*Policy Payable to Children—Adopted Child.*—By a life insurance policy in the name of a wife on the life of a husband, the amount of the policy was payable to the wife, her executors, administrators or assigns, if she survived her husband; otherwise to her children for their use or to their guardian if under age. The wife did not survive her husband; *Held*, that the children were the sole beneficiaries, and the policy became payable to them: *Martin v. Aetna Life Ins. Co.*, 73 Me.

In such a case where a child by adoption is the only child and is of age, and the circumstances show that the parties intended that he should be included in the benefits of the policy, he is entitled to all the proceeds of the policy, and an action upon it should be in his name: *Id.*

## LIBEL.

*Question for Jury.*—Whether words declared upon are libellous or not is a question for the jury. The court should not instruct them that the words declared on are libellous, unless where crime is distinctly charged, if at all: *Beazley v. Reid*, 66 Geo.

## MASTER AND SERVANT.

*Railroad—Section Foreman.*—A section foreman, whose duty is to keep the track in repair and free from obstructions, in that particular represents the company, and is not a fellow servant with the switchman: *Lewis v. Railroad Co.*, 59 Mo. 495, followed: *Hall v. The Missouri Pacific Railway Co.*, 74 Mo.

MORTGAGE. See *Fixtures*.

*Deed of Trust—Release by Trustee—Rights of Subsequent Incumbrancer.*—Where a deed of trust given to secure a debt is released by the trustee without authority of the party secured, and he has never

sanctioned or ratified the act, a subsequent incumbrancer, even without notice of the want of authority, cannot obtain a prior lien: *Barbour v. Scottish-American Mortgage Co.*, 102 Ill.

But if the party secured by the deed of trust authorizes the trustee to release the lien, or if he fails at once to repudiate the act of the trustee in making the release without authority, when informed of the fact, and lies by until third persons have advanced large sums of money upon the faith of what his agent has done, he will be estopped from repudiating the act as unauthorized: *Id.*

*Assignee of Note—How far Protected.*—Where a mortgagee, after an assignment of the notes secured by his mortgage, acquires the equity of redemption and enters a formal release of the mortgage upon the record, a party taking a mortgage from him upon the same premises without notice of the assignment of the notes, will acquire a lien superior to that of the holder of the assigned notes: *Ogle v. Turpin*, 102 Ill.

An assignee of notes secured by mortgage may protect his equitable lien on the mortgaged premises, by taking and putting upon record an assignment of the mortgage, so as to give notice of his interest, and thereby prevent others from being deceived by any subsequent satisfaction entered of record by the mortgagee: *Id.*

*Payment by Mortgagee of Prior Encumbrance—Right of Redemption.*—A mortgagee who has paid a prior mortgage or other encumbrance upon the land, is entitled to be repaid the sum so advanced when the mortgagor or his vendee comes to redeem: *McCormick v. Knox*, S. C. U. S., Oct. Term 1881.

MUNICIPAL BONDS. See *Conflict of Laws*.

*Cancellation of, on Forged Assignments—Replacement.*—Where the mayor and city council had wrongfully cancelled certificates of its stock belonging to a minor, upon assignments which were afterwards discovered to be forgeries, and had issued new certificates of the stock to the holders who had presented the certificates for cancellation and transfer, it was held, that the mayor and city council should replace the certificates of stock belonging to the minor, and pay to his guardian all arrears of interest due: *Council of Baltimore v. Ketchum*, 57 Md.

MUNICIPAL CORPORATIONS.

*Liability on Warrants.*—A county is not liable generally upon a warrant drawn upon a fund which has become exhausted, and which the county court has no power to replenish by taxation or otherwise: *Moody v. Cass County*, 74 Mo.

PARENT AND CHILD. See *Insurance*.

PARTNERSHIP.

*Proof of—Declarations of one Member—Agent.*—Sayings of one member of an alleged partnership, not made in the presence of the others, or brought to their knowledge and assented to or ratified by them, are inadmissible to establish the existence of the partnership so as to bind the other parties: *F'lournoy v. Williams*, 66 Geo.

*Payment of Individual Debt with Partnership Funds—Attachment in*

*Hands of Creditor.*—The funds of an insolvent firm, paid by one partner upon his private debt, without the consent of the copartner, may be attached in the hands of the private creditor, by trustee process in behalf of a firm creditor, the private creditor knowing when he received the funds that they belonged to the firm: *Johnson v. Hersey*, 73 Me.

The principle applies, although the note upon which the payment is made, be the single partner's note with the copartner's name thereon as a surety; and although the money be collected by a draft given in the name of the firm to the order of an agent of the private creditor: *Id.*

*Endorsement on Note of Individual Partner.*—When a member of a firm makes his individual note payable to his own order, and indorses thereon his own name and the name of his firm, and receives and appropriates the proceeds thereof to his own use, the firm will be liable therefor, being duly notified, to an endorsee who, in good faith, for an adequate consideration purchased the same before maturity, ignorant of all the circumstances affecting its validity: *Redlon v. Churchill*, 73 Me.

The form of the note is not notice that it was given for the maker's accommodation and in fraud of the firm: *Id.*

The purchase of the note of a broker furnishes no presumption that the broker was the agent of the maker: *Id.*

#### PATENT.

*Re-issue—Identity of Invention—Determination.*—The question of the identity of the inventions described in the original patent and the re-issue is one for the court and not for the jury, unless it appears from the face of the instruments that extrinsic evidence is needed to explain terms of art or to apply the descriptions to the subject-matter: *Hcald v. Rice*, S. C. U. S., Oct. Term 1881.

A patent for a machine cannot be re-issued for the purpose of claiming the process of operating that class of machines: *Id.*

#### PENSION.

*Excessive Compensation to Agent—Recovery of Excess.*—The U. S. Statutes provide severe penalties against any person taking or contracting to take from a pensioner more than the statutory price allowed for obtaining a pension. And taking an excessive sum is *per se* an unlawful and punishable act; although the taker intended no wrong or injury, and practised no deceit or duress; the intention is not an element of the offence: *Smart v. White*, 73 Me.

Money taken from a pensioner exceeding the statutory allowance for services in obtaining a pension, may be recovered of the taker by the pensioner, although obtained from him without any wrongful intention, and whether the pensioner when paying or allowing the sum, knew of the statutory protection or not. The parties do not stand *in pari delicto*: *Id.*

#### REMOVAL OF CAUSES.

*Separate Controversy—Must involve distinct Cause of Action.*—*Repeal of Sect. 639 Rev. Stat.*—To entitle a party to a removal under the second clause of the second section of the Act of March 3d 1875, there must exist in the suit a separate and distinct cause of action in respect

to which all the necessary parties on one side are citizens of different states from those of the other: *Hyde v. Ruble*, S. C. U. S., Oct. Term 1881.

The second clause of sect. 639 Rev. Stat. was repealed by the Act of 1875: *Id.*

SHERIFF'S SALE. See *Contract*.

#### SHIPPING.

*Seaman's Wages—Extra Wages for discharge in Foreign Port—Action for.*—A seaman discharged with his own consent in a foreign port, who was prevented by the conduct of the master from making application to the American consul at the place of discharge, may maintain an action at common law against the master for two months' wages as his part of the three months' extra pay which the U. S. R. S., sects. 4582, 4584 required the master to pay to the consul on account of the discharge of such seaman: *Wilson v. Borstel*, 73 Me.

SLANDER. See *Husband and Wife*.

STREET. See *Eminent Domain*.

*Sidewalk—Obstructions—Negligence.*—Sidewalks in front of a warehouse must not be obstructed by piles of cotton bales longer than is reasonably necessary to move the cotton from the delivery wagons into the warehouse. A stoppage of any part of the sidewalk longer than is necessary for such transit becomes a nuisance, and if a passer-by be injured by such obstruction without negligence herself, the warehouseman is responsible in damages: *Maddox v. Cunningham*, 66 Geo.

Even if the cotton bales be on the sidewalk but a reasonably necessary time for transit from the wagons to the warehouse, and yet be placed on the sidewalk so negligently as to cause injury to the passer-by by falling on her, the warehouseman is responsible: *Id.*

#### SURETY.

*Administrator's Bond—Stipulation for Co-surety—Conversion of Assets—Settlement.*—One who has signed an administrator's bond as surety cannot avoid liability by showing that he signed upon an understanding with the administrator that another person was also to sign, and that such understanding was made known to the probate court at the time of accepting him as surety, and that the other person never signed: *Wolff v. Schaeffer*, 74 Mo.

If an administrator who has converted assets of the estate by pledging them for his own purposes, fails to recover them when he might, his conduct constitutes a continuing breach of duty, and if he has given an additional bond after the original conversion, but while he might yet recover the assets, the sureties in both bonds will be liable: *Id.*

The surety on an administrator's bond is concluded by, and cannot attack collaterally, a final settlement from which there has been no appeal: *Id.*

UNITED STATES COURTS. See *Conflict of Laws*.