

by the parties may also throw light upon their intentions, and are always admissible for such a purpose.

It has been attempted in this note merely to indicate the rule of law as to the legality of stock and grain contracts, to show the criterion by which their legal-

ity may be determined, and the evidence from which the intention of the parties may be gathered. Other interesting matters pertaining to this subject will be discussed in a future note.

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## ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.<sup>1</sup>

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

SUPREME COURT OF RHODE ISLAND.<sup>3</sup>

SUPREME COURT OF VERMONT.<sup>4</sup>

SUPREME COURT OF WISCONSIN.<sup>5</sup>

### ACTION.

*Case for Deceit—Representations as to Solvency.*—An action on the case for deceit will not lie against a person for obtaining credit by falsely and fraudulently representing himself to be “a person safely to be trusted and given credit to.” To maintain such an action, the false representations must consist of definite statements of fact as distinguished from expressions of opinion: *Lyons v. Briggs*, 14 R. I.

### ADMIRALTY.

*Rights of Master and Owner of Cargo over same—Bottomry Bond.* The master can neither sell nor hypothecate the cargo except in case of urgent necessity, and his authority for that purpose is no more than may reasonably be implied from the circumstances in which he is placed; and a lender, upon the hypothecation of the cargo by a master under his implied authority, is chargeable with notice of the facts on which the master appears to rely as a justification for what he is doing: *Bank of St. Thomas v. Brigantine Julia Blake*, S. C. U. S., Oct. Term; 1882.

When a cargo-owner finds a vessel, with his cargo on board, at a port of refuge needing repairs which cannot be effected without a cost to him of more than he would lose by taking his property at that place and paying the vessel all her lawful charges against him, he may pay the charges and reclaim the property: *Id.*

<sup>1</sup> Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1882. The cases will probably appear in 107 U. S.

<sup>2</sup> From Hon. N. L. Freeman, Reporter; to appear in 106 Ill. Rep.

<sup>3</sup> From Arnold Green, Esq., Reporter; to appear in 14 R. I. Rep.

<sup>4</sup> From Edwin T. Palmer, Esq., Reporter; to appear in 55 Vt. Rep.

<sup>5</sup> From Hon. O. M. Conover, Reporter; to appear in 58 Wis. Rep.

## ATTACHMENT.

*Assignment of unearned Wages.*—An assignment in good faith of wages to be earned under an existing contract is valid against a garnishment subsequent in time, provided the garnishee have such notice of the assignment as will enable him to disclose it in his affidavit and thus avoid being charged: *Tiernay v. McGarity*, 14 R. I.

## ATTORNEY.

*Contingent Fee.*—An attorney-at-law may contract to render services in the conduct of a suit for a fee contingent on his success therein, and such agreement does not make him a party to the action or render evidence admissible of his personal treatment of the opposite party; *Gilchrist v. Brande*, 58 Wis.

## CONFLICT OF LAWS.

*Married Woman—Contract valid in State where made—Enforcement of in another State.*—A contract valid where made is valid everywhere; hence, the contract of a married woman, made in one state and valid there, is to be held valid in another state where its enforcement is sought: *Holmes v. Reynolds*, 55 Vt.

CONSTITUTIONAL LAW. See *Insolvency, Insurance.*

## CONTRACT.

*Construction of Contract for Joint Employment.*—Several insurance companies having policies outstanding on the same property, agreed among themselves to unite in resisting the claim made upon said policies. A committee was appointed, "with full power and authority to employ counsel and attorneys to appear for said companies and each thereof." It was agreed that each company should pay such proportion of the costs, fees and expenses as the amount insured in such company bore to the whole amount insured in all the companies, and the said committee was authorized to make *pro rata* assessments on the said companies to provide for such payments. *Held*, that an attorney employed by said committee could not hold the companies jointly liable for his fees: *Insurance Co. v. Treadwell*, S. C. U. S., Oct. Term 1882.

CRIMINAL LAW. See *Removal of Causes.*

## DEBTOR AND CREDITOR.

*Payment by Forged Securities—Novation—Estoppel.*—Novation is the substitution of one debtor for another, or the substitution of a new obligation for an old one which is thereby extinguished; and where there is a novation by the substitution of a new contract for an old one, the new contract must be a valid one upon which the creditor can have his remedy: *Guichard v. Brande*, 58 Wis.

Payment, to constitute a defence, must be of money or something accepted in its stead. A valid obligation cannot be paid or satisfied by the transfer of forged securities: *Id.*

To create an estoppel by an admission of payment it must appear that the person setting up the estoppel was induced by such admission to do something to his prejudice, if that admission should be withdrawn or contradicted: *Id.*

## DEED.

*Escrow—Delivery to Grantee.*—A deed or other sealed instrument cannot be delivered to the grantee or obligee as an escrow, to take effect upon a condition not appearing on its face. In order to operate as an escrow the delivery must be made to a stranger, otherwise the deed or other instrument will become absolute at law: *McCann v. Atherton*, 106 Ill.

## DOMICILE.

*Meaning of in State Constitution.*—In the Constitution of Rhode Island, the word "residence" means domicile or home, not the place of actual habitation: *State v. Aldrich*, 14 R. I.

Hence, when a qualified citizen had his domicile in the town of L., but for temporary purposes was residing in another town: *Held*, that he had the right to vote in the town of L.: *Id.*

## ERRORS AND APPEALS.

*Practice—Determination of Limit.*—When an appeal to the Supreme Court of the United States has been allowed, after a contest as to the value of the matter in dispute, and there is evidence in the record which sustains their jurisdiction, the court will not dismiss the appeal simply because upon an examination of all the affidavits, they may be of the opinion that possibly the estimates acted upon below were too high: *Gage v. Pumpelly et al.*, S. C. U. S., Oct. Term 1882.

ESTOPPEL. See *Debtor and Creditor*.

## EVIDENCE.

*Impeachment by Party of his own Witness—When not allowed.*—A party cannot impeach his own witness; and it is not in the discretion of the court to allow him to do so, either by general evidence or by proof by other witnesses of prior contradictory statements: *Cox v. Eayres*, 55 Vt.

When a deposition was excluded on the ground that the witness was in court, and the witness was then called, and on cross-examination testified that the plaintiff, about the time of the taking of the deposition, had given him a pair of shoes and intoxicating liquor, it was *held* that the plaintiff could repel the imputation cast upon him, but that he could not show that the witness had made prior contradictory statements: *Id.*

*Medical Books.*—Medical books cannot be introduced in evidence, nor can an expert witness be permitted to testify as to statements made therein. And it is equally inadmissible to permit the reading of such books to the jury by counsel: *Boyle v. The State*, 58 Wis.

## EXECUTION.

*Exemption—Partnership.*—One partner, with the consent of the others, may claim a separate exemption out of partnership property which has been seized on an execution against the firm; *O'Gorman v. Fink*, 58 Wis.

The consent of the partners that each should have and select an exemption out of the partnership property, after a levy thereon, amounts to a severance of the joint property, and the several right of each

attaches to the portion by him selected. A demand by each partner for such an exemption will be deemed a consent that the others have and select the same: *Id.*

In such case there is a sufficient demand if the partner informs the officer making the levy that he claims his exemption and that the other partners do the same, and asks permission to make his selection: *Id.*

FRAUDS, STATUTE OF. See *Trust*.

#### GIFT.

*Promissory Note—Consideration—Trust.*—The intestate, a short time before her death, gave a promissory note to the female plaintiff, who was a daughter of the intestate's husband by a former marriage. The daughter worked for her father for some time after her majority; but no contract was proved that she was to receive pay for her services. The father, by a third person, conveyed his homestead of small value to the intestate. It is stated by the referee as a fact that they designed and often talked between themselves that the said plaintiff should be paid for her services; that the father so expressed his wish when he conveyed the homestead; and it was to carry out this purpose that the note was given: *Held*, that there was no declaration of a trust, no legal consideration for the note, and as a gift, it rested in promise, not executed: *Rogers v. Rogers*, 55 Vt.

HUSBAND AND WIFE. See *Conflict of Laws*.

#### INSOLVENCY.

*Discharge—When a bar—Debt contracted before Passage of Law—Effect of obtaining Judgment.*—A discharge under an insolvent law does not bar a debt contracted before its passage, the creditor in no way becoming a party to the proceedings in insolvency: *Conway v. Seamons*, 55 Vt.

Nor is such debt discharged though merged in a judgment rendered after the passage of the act, and which judgment is the basis of this action: *Id.*

A law discharging such debt is unconstitutional: *Id.*

#### INSURANCE.

*Statute prescribing Penalty against Agents of Foreign Companies not complying with State Law.*—An insurance law providing a penalty against any agent of a foreign insurance company for acting for such company without a certificate of authority from the auditor showing it has complied with the requisitions of the act, and declaring that any person aiding, in any manner, in transacting the insurance business of such company shall be subject to such a penalty, is a constitutional and valid law: *Pierce v. The People*, 106 Ill.

In this case, upon the question whether a person acting in the matter of procuring property in this state to be insured by a foreign insurance company was acting as the agent of the company or of the assured, it was considered, on the facts appearing, that he should be regarded as the agent of the insurance company, and as such subject to the penalty imposed by the Act, notwithstanding a clause in the policy providing that any person, other than the assured, who shall participate in

any transaction concerning the insurance will be deemed the agent of the assured, and not of the company. [See *Union Ins. Co. v. Chipp*, 93 Ill. 96, as bearing on this subject.] *Id.*

#### INTOXICATING LIQUOR.

*Sale to Minor—What constitutes.*—Where a sale of liquor is made to an adult, it is of no consequence that the barkeeper sees a minor present, and understands he is to participate in drinking the same. In such case, while he is letting a minor have liquor, he is not guilty of either selling or giving liquor to a minor: *Siegel v. The People*, 106 Ill.

A case might arise where the barkeeper ought to know from the circumstances that the person purchasing liquor is being used by a minor as a screen to conceal his own participation, and in such case the vendor would be liable under the statute. But the question whether such fact exists should be submitted to the jury on the evidence: *Id.*

#### MASTER AND SERVANT.

*Fellow-Servant—Negligence—Defective Culvert.*—A railroad company is liable in an action on behalf of its fireman killed by the washing out of a culvert, the culvert being in an improper condition resulting from the negligence and carelessness of its bridge-builder and road-master: *Davis v. Central Vermont Railroad Co.*, 55 Vt.

The negligence of the bridge-builder and road-master in caring for the culvert in law was the negligence of the defendant; and notice to the former of a defective construction was notice to the latter; hence it is not a question of whether the servant whose negligence caused the injury and the servant injured were fellow-servants; nor whether the former was ordinary skilful; nor whether the defendant was negligent in employing them: *Id.*

*Defective Machinery—Liability of Master—Negligence of Co-Servant.*—A., a workman in the employ of B., was injured by the break of an elevator chain and the fall of the elevator in B.'s machine shop. A.'s business was to load the elevator on the lower floor and unload it on the upper. A staircase near the elevator connected the two floors, and A. was injured while riding with his load on the elevator. It appearing that the chain had broken some six weeks before and had been repaired, and the evidence being conflicting whether B.'s superintendent had been notified of the break, and it also appearing that the ratchets to arrest the fall of the elevator were not in working order: *Held*, that the question of B.'s negligence was for the jury: *Held, further*, that B. was not relieved from liability if the defective condition of the chain and ratchets arose from the negligence of one of A.'s fellow workmen, whose duty it was to care for them. A master cannot delegate to another his obligation to keep the machinery operated by his servants reasonably safe: *Mulvey v. Rhode Island Locomotive Works*, 14 R. I.

#### REMOVAL OF CAUSES.

*Jurisdiction—Corporation incorporated by two States.*—The Memphis and Charleston Railroad Company is made by the statutes of Alabama an Alabama corporation, and, although previously incorporated in Tennessee also, cannot remove into the Circuit Court of the United States

a suit brought against it in Alabama by a citizen of Alabama: *Memphis & Charleston Railroad Co. v. Alabama*, S. C. U. S., Oct. Term 1882.

*Prosecution of Officer acting under Revenue Laws.*—A person acting as a guard in aid of a United States marshal officially engaged in lawful attempts to enforce a revenue law, by the arrest of persons accused of offences against it, is acting under the authority of that law, and entitled to have a prosecution against him for an act done in the performance of his duty, removed into the U. S. Circuit Court under sect. 643 of the Revised Statutes: *Davis et al. v. State of South Carolina*, S. C. U. S., Oct. Term 1882.

#### TAXATION.

*Credits—Situs of.*—If the owner of credits reside in the state, there is jurisdiction over his person and over his credits, which in the law, in the absence of anything showing they have a *situs* elsewhere, accompany him. If he is absent from the state, but the credits are in fact here, in the hands of an agent, for renewal or collection, with a view of re-loaning the money by the agent as a permanent business, they have a *situs* here for the purpose of taxation: *Goldgart v. The People*, 106 Ill.

A non-resident creditor having debts due him from residents of the state, not put into the hands of an agent here, is not liable to taxation in this state. Such credits follow his person, leaving nothing here to which jurisdiction can attach, it being the credits, not the debts, which are taxable: *Id.*

#### TELEGRAPH.

*Condition as to claim—When reasonable—Question for the Court.*—A condition printed on a telegraph blank "that no claim for damages shall be valid unless presented in writing within twenty days from sending the message," is reasonable and valid. A delay in receiving the message, though occasioned by a mistake of the company, would not modify the condition or extend the time if a reasonable time was left, after knowledge of the mistake, to present the claim: *Herman v. W. U. Tel. Co.*, 58 Wis.

Whether the time fixed by a contract within which an act is to be performed is reasonable as affecting the validity of the contract itself, is a question of law to be determined by the court: *Id.*

#### TRUST.

*Resulting Trust—When created—Statute of Frauds.*—If one person purchases land with the money of another, and takes a deed in his own name, though done under a verbal agreement between them, a resulting trust is created by operation of law in favor of the one furnishing the money, which a court of equity will enforce: *McNamara v. Garrity*, 106 Ill.