ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME JUDICIAL COURT OF MAINE.[3]
SUPREME COURT OF NORTH CAROLINA.[4]

AGENT. See *Banks any Banking.*

BANKS AND BANKING.

Cashier—Agency—Liability of Bank.—Where a cashier of a bank, acting as a special agent for a third party, purchases bonds for him, and then, as agent of the bank, receives them as a special deposit, and afterwards, to conceal certain embezzlements of his own, he, without the knowledge of the depositor, transfers these bonds from the special deposit, and enters them as part of the assets of the bank, his agency for the depositor ceases with the purchase. Throughout the remainder of the transaction he is the agent of the bank, and his knowledge of the depositor's rights is notice to the bank. The bank does not become a purchaser for value without notice: *Bank* v. *Dunbar*, 118 Ill.

CONSTITUTIONAL LAW.

Grant in Constitution of State not Repealable.—A grant in the constitution of a state of a privilege to a corporation is not subject to repeal or change by the legislature of a state: *New Orleans* v. *Huston*, 119 U. S.

CONTRACT.

Time of Performance, when not Expressed—Time to Perform Act which may Qualify or Change Rights and Duties of Parties.—Where a party undertakes to do some particular act the performance of which depends entirely upon himself, and the contract is silent as to the time of performance, the law, without reference to extraordinary circumstances, will imply that it shall be performed within a reasonable time: *Hamilton* v. *Scully*, 118 Ill.

Where a party has obligated himself to pay a given sum of money by a future day, which is fixed as the time for full performance, and it is agreed that the sum to be paid may be increased or diminished by the performance of another act left to the option of the parties, the law will require either party to exercise his option, and perform such act, before full payment of the sum named is made. After full payment the party will be held to have waived his right to do the act entitling him to a further sum: *Id.*

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[1] From J. C. Bancroft Davis, Esq., Reporter; to appear in 119 U. S. Rep.

[2] From Hon. N. L. Freeman, Reporter; to appear in 118 Ill. Rep.

[3] From Joseph W. Spalding, Esq., Reporter; to appear in 78 Me. Rep.

[4] From Hon. Theo. T. Davidson, Reporter; to appear in 95 N. C. Rep.

The owner of a farm supposed to contain 4141 acres, sold the same at $45 and $50 per acre, the purchase-money to be paid as follows: $15,000 on the execution of the contract, $85.000 on the execution and delivery of the deed by May 10th 1877, and the balance, $115,297.40, on or before March 1st 1878, which was to be secured by note and mortgage. It was further provided in the contract, that either party might, at his own expense, survey the land, if he saw fit, to ascertain the number of acres, and if such survey showed the land to contain more acres than the parties supposed, the purchaser should pay the difference, and if it contained less, the amount of the deficit should be deducted from the purchase-money or credited upon the note and mortgage. Some seven years after the date of the last payment the vendor had a survey made, and brought suit against the purchaser for an excess shown by the survey: *Held,* that he could not recover, the survey after payment of the last instalment being too late: *Id.*

Trover.—An agreement acknowledging the possession of personal property claimed by another and promising to "keep said property free of expense" to the other, "and to deliver to him on demand such * * * as I admit to be" his property, and to keep the balance "until such time as the question of title is settled," will not prevent such other person from maintaining trover for the same after demand and refusal: *Buck* v. *Rich,* 78 Me.

Logs with same Mark—Trover—Conversion—Demand.—A. and H. each owned a lot of logs of the same kind, quality and value, and bearing the same mark. H. (and another party) contracted to saw A.'s logs at the same mill where his own were to be manufactured. The logs became intermixed without the fault of either party. *Held,* that A. was entitled to his proportional part of the lumber manufactured from all the logs, and that if H. converted to his own use more than his proportional part of the lumber, he would be liable in trover for the same without a special demand: *Martin* v. *Mason,* 78 Me.

Corporation.

Stockholders—Dividends—Directors.—The Erie Railway Company, being embarrassed and in the hands of a receiver, appointed in a suit for the foreclosure of two of the mortgages upon the property of the company, its creditors and its shareholders, preferred and common, entered into an agreement for the reorganization of the company, to be accomplished by means of a foreclosure. Among other things it was agreed that there should be issued "preferred stock, to an amount equal to the preferred stock of the Erie Railway Company now outstanding, to wit, $85,369 shares, of the nominal amount of $100 each, entitling the holders to non-cumulative dividends, at the rate of six per cent. per annum, in preference to the payment of any dividend on the common stock, but dependent on the profits of each particular year as declared by the board of directors." The mortgage was foreclosed, and a new company was organized, and the new preferred stock was issued as agreed. The directors of the new company reported to its share and bond holders that during and for the year ending September 30th 1880, the operations of the road left a net profit of $1,790,620.71, which had been applied to making double track, and other improvements on the

property of the company. A., a preferred stockholder, on behalf of himself and other holders, filed a bill in equity to compel the company to pay a dividend to the holders of preferred stock. *Held*, that while the preferred stockholders are entitled to a six per cent. dividend in advance of the common stockholders, they are not entitled, as of right, to dividends, payable out of the net profits accruing in any particular year, unless the directors declare or ought to declare a dividend payable out of such profits; and that whether a dividend should be declared in any year, is a matter belonging in the first instance to the directors, with reference to the condition of the company's property and affairs as a whole: *New York, &c., Rd.* v. *Nichols*, 119 U. S.

Railroads—Right to Remove all Things Growing within Lines of Location.—A railroad corporation has practically the exclusive possession and control of the land within the lines of its location and the authority of removing therefrom all things growing thereon, the removal of which it may deem necessarily conducive to the safe management of its road: *Hayden* v. *Skillings*, 78 Me.

DAMAGES. See *Waters and Water-courses.*

To Real Estate—When Recoverable—Action for Injury to Land, where not Transferable with the Land.—In an action brought for a deterioration in the value of real estate, occasioned by a nuisance of a permanent character, or which is treated as permanent by the parties, all damages for the past and future injury of the property may be recovered, and one recovery in such a case is a bar to all future actions for the same cause: *Rd.* v. *Loeb*, 118 Ill.

Where private lots in a city are physically damaged, or injured in value, by the construction and operation of a railroad in close proximity thereto along a public street, the right of action, if any exists, is vested in the owner of the lots immediately upon the construction of the railroad, to recover for all damages, past, present and future, and a subsequent grantee of the lots cannot maintain an action at all for the proper use and operation of the road, after his purchase: *Id.*

Rights of Purchaser in respect to Subsequently Accruing Damages.—While the purchaser of land cannot recover damages for an injury thereto by the construction of a railroad over the same, or a part thereof, before his purchase, yet if the railway company, after his purchase, adopts a new feature in the construction and operation of its road in the future, as, by making an opening in an embankment for the passage of water and constructing a bridge over the opening, such purchaser will, in a proceeding to condemn, be entitled to just compensation for any damages growing out of the change or alteration in the nature of the work: *Rd.* v. *McDougall*, 118 Ill.

Railroad—Repair to Bridge—Obstruction to Navigation—Damnum Absque Injuria.—Whenever the exercise of a right, conferred by law for the benefit of the public, is attended with temporary inconvenience to private parties, in common with the public in general, they are not entitled to damages therefor: *Hamilton* v. *Vicksburg Rd.*, 119 U. S.

A railroad company was authorized by the Legislature of Louisiana to construct a railroad across the state, and as part of such road to con-

struct necessary bridges for crossing navigable streams. The act made no provision for the form or character of such structures. A bridge across a navigable stream was constructed with a draw. In process of time it became decayed, and defendant in error, having succeeded to the rights of the company, employed a contractor to construct a new bridge in its place, the work to be done at a time of the year when it would least obstruct navigation. The contractor complied with his contract as to the time; but owing to unusual rains, the river continued navigable, and the work was unavoidably prolonged, thereby obstructing its navigation and preventing the vessels of plaintiff in error from passing beyond the bridge. *Held,* That this was a case of *damnum absque injuria. Id.*

DEED.

Boundary—Natural Objects.—As a general rule, natural objects called for in a deed will govern course and distance, but there are exceptions to the rule, one of which is, where it can be proved that a line was actually run and marked and a corner made, such line will be taken as the true one, although the deed called for a natural object, not reached by such line: *Baxter* v. *Wilson*, 95 N. C.

Ordinarily, the number of acres contained in a deed constitutes no part of the description, but where the description is doubtful, it may have weight as a circumstance in aid of the description, and in some cases, in the absence of other definite descriptions, it may have a controlling effect: *Id.*

EQUITY. See *Patent.*

EVIDENCE.

Cross-Examination.—The rule is, that the cross-examination of a witness shall be restricted to such matters and things as he may have been examined upon in his direct examination: *Hanchett* v. *Kimbark*, 118 Ill.

But greater latitude is allowed on cross-examination, when the witness is one of the parties in interest, or an unwilling witness, than in the case of an ordinary witness. It is a matter of discretion to allow a wider range to the cross-examination of a party, and not confine it strictly to the matters elicited on the direct examination, and its exercise cannot be assigned for error unless such discretion has been abused: *Id.*

So where the court allowed a witness, who was a party to the suit, in his cross-examination, to be interrogated upon other subjects than those he testified about in his direct examination, and it did not appear that any injury resulted therefrom, it was held no ground to reverse the judgment: *Id.*

INSURANCE.

Evidence to Rebut Negligence of Assured.—In an action on a policy of insurance for a loss by fire, if a point in the defence is made that the property, or some part thereof, was lost by the neglect of the assured to use his best endeavors to save the same, which is made a bar to a recovery, evidence to rebut this theory, as, that other property of the assured was destroyed, is proper; but if not material for such purpose, its admission, when no recovery is sought for such other property, can

work no injury, and is no ground for a reversal: *Ins. Co.* v. *La Pointe* 118 Ill.

Insurable Interest— Who entitled to Insurance Money as between Vendor and Vendee, or Mortgagor and Mortgagee.—One in the possession of property under a contract of purchase, who has made a partial payment thereon, has such an equitable interest therein as to uphold an insurance of the same against loss by fire: *Grange Mill Co.* v. *Western Assurance Co.*, 118 Ill.

As between the vendee and vendor, the insurance money, in case of the destruction of the property, represents the property itself, and in equity the insurance money should be appropriated to the vendor, to the extent of the unpaid purchase-money, in case of the insolvency of the vendee: *Id.*

Where a mortgagor or vendee agrees to insure for the benefit of the mortgagee or vendor, in equity such mortgagee or vendor will be entitled to the insurance money in case of a loss, to the extent, at least, of the interest of the mortgagor or vendee in the property insured; and after notice to the insurance company having the risk, it cannot pay the loss to the assured, except at its peril, until the rights of such mortgagee or vendor shall have been adjusted: *Id.*

Marine—Insurance by one Owner for Himself and other Owners— Action.—Where one owner of a vessel agrees to procure insurance for two or more other owners, and does procure insurance on their part with his in one policy, and collects on that policy for a loss, such of the other owners, whose portion of the vessel was covered by that policy, may maintain an action for his proportional part of the insurance money thus collected: *Gray* v. *Buck*, 78 Me.

MASTER AND SERVANT. See *Negligence; Patent.*

Fellow-Servants, who are — Contributory Negligence. — While A., a longshoreman in the employ of a steamship company, was engaged in his regular work, a tub filled with coal fell upon him and injured him seriously. The fall was caused by the breaking of a rope which suspended the tub. A. sued the company to recover damages, claiming that the injury was caused by the negligence of B. in not providing a proper rope to hold the tub after notice of the insufficiency and weakness of the one which broke, and that B. was an agent of the company, for whose acts or omissions it was responsible. The company defended, setting up (1) contributory negligence in A.; and (2) that B. was a fellow-servant of A., for whose acts or omissions the company was not responsible. The judge who presided at the trial, refused to direct a verdict for the company, and referred the question of contributory negligence to the jury; and also referred to them the question as to what the authority of B. was. There were various exceptions by the company to the charge, and to refusals to charge. A verdict was rendered in favor of A., and judgment entered on the verdict. This court affirms that judgment by a divided court: *Cunard Steamship Co.* v. *Carey*, 119 U. S.

MORTGAGE.

Payment.—When a mortgagee, who holds two mortgages, one of real and the other of personal estate, to secure the payment of the same

debt, forecloses the personal mortgage, takes possession of the property and converts it to his own use, if its value exceeds the debt secured, it operates as a payment or satisfaction of it. There is no longer an existing debt to uphold the real mortgage: *Bank* v. *McKenney*, 78 Me.

NEGLIGENCE. See *Insurance; Master and Servant.*

Master and Servant—Exposing the Latter to Poisonous Gases—Proper Care on Part of Servant—Instruction.—Where a gas company, by negligence, permits the escape of poisonous gases into a room not properly arranged so as to let it pass out, and knows of such escape and the danger of inhaling the same, and either the company, or its superintendent, duly authorized to employ and discharge, manage, direct and control its employees or workmen, orders a servant to do certain work in such room, and the servant, in obedience to such order, without knowledge of the danger to which he is exposed, and without fault or negligence on his part, undertakes to do the work, and is overcome by the gas so escaping, whereby he falls and receives an injury, from which he dies, the company will become liable to the personal representative of such deceased servant, in damages, for his death: *Citizens' Gas Light Co.* v. *O'Brien*, 118 Ill.

In such case, on the trial of a suit brought by the administrator of the deceased servant, the court instructed the jury, that if they believed from the evidence, that the defendant company and its superintendent had knowledge of the danger of the service required, and that the servant, without such knowledge, *or* any fault or negligence, but in obeying the order of the superintendent, inhaled said gas, which caused his death, to find for the plaintiff: *Held*, That while the use of the disjunctive "or," was not grammatical or proper, it was not such an error as to call for a reversal, especially where the instructions, as a whole, were more favorable to the defendant than it could ask: *Id.*

NOTICE.

As to the Character of Possession required to Operate as Notice of Occupant's Rights—Delay in filing Bill in Equity.—A widow furnished her bachelor brother with $1600, with which, together with $500 advanced by him, to buy a farm for their joint use, the title to be taken to each in proportion to the sums advanced by them, respectively. He, however, took a conveyance of the entire estate to himself, and they both moved upon the place in 1869, he managing the land, and she attending to the household duties. The deed was recorded, and he borrowed money and had mortgaged the land to secure the loan, and appeared to the world as the owner for a period of over ten years, during which time the sister took no steps to have her equitable rights enforced or asserted: *Held*, that her possession under such circumstances was not such a possession as would charge a purchaser or subsequent encumbrancer from her brother with notice of her equitable rights: *Harris* v. *McIntyre*, 118 Ill.

In this case it appeared that the widow reposed great confidence in her brother, which he shamefully abused, and it appeared that she remained upon the place all the time, in the belief that she owned the greater interest in the same, until in 1881, when she filed her bill to have a resulting trust declared, and to set aside a conveyance made by her brother to one having

notice of her equities, and for partition. It was *held*, that she was not barred of relief by her delay in filing the bill, it clearly appearing that she was kept in ignorance of the fraud practiced upon her until shortly before filing her bill, and that there was no possession hostile to her rights: *Id.*

PATENT.

Right of Master in Patent of Employee—Transfer by Master—Equity.—In a suit in equity by the trustees of a dissolved Missouri corporation to compel an employee of the corporation to convey to the plaintiffs the title to letters-patent obtained by him for an invention made while he was in their employ, it not appearing, from the facts set forth in the bill, that there was any agreement between the employee and the corporation, that it was to have the title to the invention, or to any patent he might obtain for it, it was held, on demurrer, that the bill could not be sustained: *Hapgood* v. *Hewitt*, 119 U. S.

Although the dissolved corporation assigned its right in the premises to an Illinois corporation organized by the stockholders of the former, whatever implied license the former had to use the invention was confined to it, and was not assignable: *Id.*

The employee could bring no suit for infringement against the Missouri corporation, for it was dissolved; nor any suit in equity against its trustees for an infringement, for they were not alleged to be using the invention; and a suit at law against the trustees, or the stockholders, of the Missouri corporation, for infringement by it, could not be enjoined, because the theory of the bill was that there was a perfect defence to such a suit: *Id.*

PLEDGE.

Money Had and Received—Set-off.—Money received by the pledgee, from the legal sale of a pledge, becomes his own, to the extent of his debt; and he holds the balance, as "money had and received" for the pledgor's use: *Fletcher* v. *Harmon*, 78 Me.

Money received by the pledgee, from the illegal sale of a pledge, the pledgor, by waiving the tort, may require to be applied in payment of his debt, and the pledgee would hold any balance, as money had and received for the pledgor's use: *Id.*

Money so held may be recovered in assumpsit, or by set-off: *Id.*

The value of securities in pledge, tortiously dealt with by the pledgee, unless reduced to money or its equivalent, cannot be recovered in assumpsit, as money "had and received," nor by set off: *Id.*

The contract, touching a pledge to secure a debt, is collateral; and damages for its breach cannot be allowed by way of recoupment, in defence of a suit to recover the debt: *Id.*

RAILROAD. See *Corporation.*

SURETY.

Collectors of Taxes—Appropriation of Deficiency.—The same person was collector of taxes in a town for three years in succession, when there appeared a deficiency in his accounts. There was no evidence showing the time when the deficit commenced, or when it occurred, or if any appropriation of payments by him to the town, either by the collector or the town. He gave a bond each year. *Held*, That the deficit should

be divided between the three bonds in the proportion of the sums collected by the collector on each commitment: *Phipsburg* v. *Dickinson*, 78 Me.

TAX.

When on Corporation.—An assessment of a tax upon the shares of shareholders in a corporation appearing upon the books of the company, which the company is required to pay irrespective of any dividends or profits payable to the shareholder, out of which it might repay itself, is substantially a tax upon the corporation itself: *New Orleans* v. *Houston*, 119 U. S.

TROVER. See *Corporation.*

WATERS AND WATER-COURSES. See *Damages.*

Unnavigable Stream—Ice—Damages.—The owner of a mill-dam on an unnavigable stream, who does not own the bed of the stream above the dam, has a qualified interest in the water flowed but none in the ice formed upon it: *Stevens* v. *Kelley*, 78 Me.

The riparian owner is the owner of the ice in such case, though the ice privilege is made by the flowage: *Id.*

Where the owner of such a mill-dam maliciously and unnecessarily draws the water from the pond and thus destroys the ice field, he is liable in damages to the riparian owner who owned the land under the pond: *Id.*

WILL. See *Executors and Administrators.*

When an Interest or Estate becomes Vested.—A testator directed that all his estate, real and personal, be converted into money, and devised to each of the four children of his sister P., (naming them), one share, and to her two grand-children each a half share, and in case of the death of either of said four children, then to the widow of such deceased, and in like manner one share to each of the children (naming them) of his brothers and another sister, and three shares to his half-brother, and then directed, that "in the event of the death of any one named above, then the portion or share of the deceased to be paid to his or her offspring, and if no offspring" was left, his part to lapse. Thirteen days after the death of the testator one of the sons of P. died, leaving children, and his administrator claimed his share of the estate: *Held*, that the son of P. did not take a vested interest immediately upon the death of the testator, and that the share of such son went to his heirs: *Banta* v. *Boyd*, 118 Ill.

In such case the property of the testator was not devised, but only its proceeds when converted into money, and the persons named took no vested interest before the arrival of the time for distribution. In case of the death of anyone before the conversion of the estate into money and the period for distribution had arrived, his or her part went to his or her children, if any, and if no children, his share lapsed, thereby increasing the other shares: *Id.*