

right to consider it a subsisting contract until the end of the term of service. To allow the defendant to extinguish the contract by his own breach of its terms so as to defeat the plaintiff's rights thereunder, would be to allow him to profit by his own wrong. It was the duty of the plaintiff to seek other employment of like character, and to credit his earnings, if he made any, to the defendant on his contract liability. He had no right to sit by and hold his hands without any exertion until the end of the term. Such idleness would in itself have been a breach of moral obligation, and a fraud which the law would rather punish than reward. The plaintiff did seek and obtain other employment, and in his petition has allowed the defendant the proper legal credit in that behalf. He is guilty of no delinquency as far as this record shows. The facts stated in this petition, I hold, constitute a cause of action. Let the demurrer be overruled.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹

SUPREME COURT OF ALABAMA.²

SUPREME COURT OF CALIFORNIA.³

SUPREME COURT OF GEORGIA.⁴

SUPREME COURT OF ILLINOIS.⁵

SUPREME COURT OF KANSAS.⁶

SUPREME JUDICIAL COURT OF MAINE.⁷

COURT OF APPEALS OF MARYLAND.⁸

SUPREME COURT OF MONTANA.⁹

COURT OF CHANCERY OF NEW JERSEY.¹⁰

COURT OF ERRORS AND APPEALS OF NEW JERSEY.¹¹

COURT OF APPEALS OF NEW YORK.¹²

SUPREME COURT OF OHIO.¹³

SUPREME COURT OF SOUTH CAROLINA.¹⁴

SUPREME COURT OF VERMONT.¹⁵

SUPREME COURT OF APPEALS OF WEST VIRGINIA.¹⁶

ASSIGNMENT. See *Taxes*.

ATTORNEY AND CLIENT.

Authority of Attorney—Claim by Third Party.—Where attorneys had a claim of their client for collection, and accepted in payment or

¹ To appear in 122 U. S. Rep.

² To appear in 80 or 81 Ala. Rep.

³ To appear in 70 or 71 Cal. Rep.

⁴ To appear in 76 or 77 Ga. Rep.

⁵ To appear in 120 or 121 Ill. Rep.

⁶ To appear in 36 or 37 Kan. Rep.

⁷ To appear in 79 or 80 Me. Rep.

⁸ To appear in 67 or 68 Md. Rep.

⁹ To appear in 7 or 8 Mont. Rep.

¹⁰ To appear in 42 or 43 N. J. Eq. Rep.

¹¹ " " " "

¹² To appear in 105 or 106 N. Y. Rep.

¹³ To appear in 45 or 46 Ohio Rep.

¹⁴ To appear in 25 or 26 S. C. Rep.

¹⁵ To appear in 59 or 60 Vt. Rep.

¹⁶ To appear in 29 or 30 W. Va. Rep.

part payment thereof from the debtor certain property, they had title thereto, and could claim the property when levied on under a judgment subsequently obtained by a third party: *Hirsh v. Fleming*, 76 or 77 Ga.

Nor could the plaintiff in such judgment defeat their claim on the ground that the client of the claimants had not authorized or ratified the transaction. That was a matter between the attorneys and their client: *Id.*

BAILMENT.

Livery-Stable Keeper—Duty in Case of Sick Horse.—When a horse in charge of a livery-stable keeper becomes sick, it is his duty either to see that proper treatment is furnished to the animal, *i. e.*, such treatment as reasonable care and skill would dictate, or else to give immediate notice of the sickness to the owner. *DEPUE, VAN SYCKEL, BROWN, PATTERSON and WHITTAKER, J.*, dissenting: *Hexamer v. Southal*, 42 N. J. Eq.

Bill of Lading—Common Carrier—Warehouseman.—P. shipped by rail a large quantity of cotton at different times, and at different points south of Texarkana, Ark., to be made up into bales there at a compress house, and to be thence forwarded to various destinations north and east. The work at the compress house was to be done by the carrier, but under direction of the shipper, who had control of the cotton there for that purpose, and who superintended the weighing, the classing and the marking of it, and who selected for shipment the particular bales to fill the respective orders at the points of destination. Bills of lading for it were issued from time to time by the agents of the railroad company, sometimes in advance of the separation by P. of particular bales from the mass to correspond with them. P. was in the habit of drawing against shipments with bills of lading attached, and his drafts were discounted at the local banks. When shipments were heavy, drafts would often mature before the arrival of the cotton: 525 bales, marked in the margin as of a particular quality, were so selected and shipped to K. at Providence, R. I. The bill of lading described them as "contents unknown," "marked and numbered as per margin." The contents of the bales, on arrival, were found not to correspond with the marks on the margin. The consignee had honored the draft before the arrival of the cotton. He refused to receive the cotton, and sold it on account of the railroad company, after notice to it, and sued in *assumpsit* on the bill of lading, to recover from the company, as a common carrier, the amount of the loss. *Held*, 1. That the bill of lading was not a guarantee by the carrier that the cotton was of the quality described in the margin. 2. That if the railroad company was liable as warehouseman, that liability could not be enforced under this declaration; nor, under the circumstances of this case, by the consignee of the cotton. 3. That the company was not liable as a common carrier from points south of Texarkana for the specific bales consigned to K. 4. That its liability as a common carrier began only when specific lots were marked and designated at Texarkana, and specifically set apart to correspond with a bill of lading then or previously issued: *St. Louis Iron Mountain & Southern Ry. v. Knight*, 122 U. S.

BILLS AND NOTES.

Promissory Notes—Presentment and Notices.—Where a negotiable note is, by its terms, payable at a particular bank, proof of presentment at that bank for payment at its maturity is indispensable to a recovery in an action thereon against an endorser: *Peabody Ins. Co. v. Wilson*, 29 or 30 W. Va.

In such an action it will not be sufficient to show that such note was presented for payment to the cashier of the bank at which it is payable, unless it further appears that such presentment was so made to the cashier at the bank: *Id.*

Where the endorser resides in the same city or town where the demand of payment was made, the notice to the endorser must be personal, or left at his dwelling-house. If he resides at a different place, the notice must be sent to him by the first mail which leaves after the day of dishonor is past, and does not close before early and convenient hours of the day succeeding the day of dishonor, directed to him at the place of his residence, or to his nearest post-office, or to the post-office where he usually receives his mail matter, advising him of the protest: *Id.*

Promissory Note—Action on—Parties—Principal and Agent—Death of Agent.—A promissory note payable to the order of an agent of a corporation (the principal as well as the agent being specified by name) is, in legal effect, payable to the corporation, and, while the agent can maintain an action thereon, so can the principal: *Martin v. Lamb*, 76 or 77 Ga.

An action upon such a note by the agent, for use of the principal, is virtually an action by the principal, and the death of the agent before or pending the action will not affect the suit. The words importing that the agent sues, and that the suit is for use of the principal, are surplusage, and may be stricken from the declaration by amendment at any time, whether before or after verdict: *Id.*

BOUNDARIES.

Municipal Corporations—Commissioners under Statute—Boundary on Stream.—Under the South Carolina act of 1786, (4 St. 751), for the purpose of establishing the town (now city) of Columbia, commissioners were "authorized and required to lay off a tract of land of two miles square, near Friday's Ferry, on the Congaree river." According to the map filed by them in the office of the secretary of state, the northern, southern and eastern boundaries of the city are laid down as straight lines, two miles in length; but the western boundary, where the Congaree river runs, is left open. In an action where the question in issue was whether any part of a bridge across the Congaree was within the city, so as to be subject to taxation, *held*, that it must be presumed that the commissioners fulfilled the duty required of them by the statute, and laid out the western boundary in a straight line, running up and down the Congaree, and that it was not necessary that they should show such line upon the map prepared by them: *State v. City of Columbia*, 25 or 26 S. C.

Even, assuming that the commissioners failed to lay off a tract two miles square, the boundary shown upon the map must be applied in same manner as boundaries on the banks of unnavigable streams in surveys of private lands; and thus applied, the southern and northern lines

would be extended to the centre of the stream, and the western boundary of the city would follow the *filum aquæ*, and thus under either application of the plan the bridge would be taxable: *Id.*

CONSPIRACY. See *Corporations*.

CONTRACT.

Weekly Board—Deductions for Absence.—G. contracted with L. for board, room, and lights for himself and wife at an agreed price of \$12 per week, no time being specified; the wife of G. was absent forty-three weeks of the time during which the contract was in force. *Held*, that this was simply a contract from week to week, and that G. was entitled to a reasonable deduction for the time his wife was so absent: *Green v. Lavender*, 59 or 60 Vt.

Public Policy—Restraint of Trade—Compromise of Litigation.—A contract by which the owners of several water-rights in a certain stream agree with each other, under a penalty of \$10,000, "agreed and liquidated damages," not to sell to certain parties, or any other person or persons who may be now or hereafter endeavoring to obtain the possession of the said water-rights, and not to make any settlement or compromise with such parties, except by the written consent of the others, no limit of time being set, is void as against public policy, being analogous to a contract in restraint of trade, and also as imposing a restraint and condition upon compromises or settlements of litigation and disputes, which are favored by the law: *Ford v. Gregson*, 7 or 8 Mont.

CORPORATIONS.

By-Laws—What constitutes Majority.—The by-laws of a corporation provided that "the capital stock of the company shall be \$10,000, divided into 400 shares of \$25 each," and that "no business shall be transacted at any meeting of the stockholders, unless a majority of the stock is represented, except to organize the meeting, and adjourn to some future time." *Held*, that, although only 243 shares had been subscribed for, it required 201 shares to constitute a majority, and that an election of directors at a meeting, where less than that number was represented, was illegal: *Ellsworth Woollen Mfg. Co. v. Faunce*, 79 or 80 Me.

Stock Dividends—Right to Issue.—Under art. 13, sect. 6, Const. of Ala., providing that "no corporation shall issue stock or bonds except for money, labor done, or money or property actually received," an increase in the value of the property in which the original stock is invested will not justify an issue of additional capital stock to the stockholders as a stock dividend: *Fitzpatrick v. Dispatch Pub. Co.*, 80 or 81 Ala.

Liability for Conspiracy.—An action may be maintained against a corporation to recover damages caused by conspiracy: *Buffalo Lubricating Oil Co. v. Standard Oil Co.*, 105 or 106 N. Y.

Officers—Obligations—Liability.—When the offices of vice-president and treasurer of a corporation are vested in one person, and at the same time he is the managing and controlling officer of the company, his relations to the creditors and stockholders is of that character that the utmost good faith towards their interest, and the most scrupulous attention to

the affairs of the corporation, are imperatively demanded of him. The law does not permit such a person to so manage the affairs of the corporation as to result to his own pecuniary advantage; and if he speculates with the funds of the company, or buys claims against it at discount, he must account to its creditors or stockholders for any profit that results from such dealings: *Thomas v. Sweet*, 36 or 37 Kans.

CRIMINAL LAW.

Emotional Insanity—Defence to Crime.—It is not error to state, in a charge upon the defence of insanity, that "the law rejects the doctrine of what is called 'emotional insanity,' which begins on the eve of the criminal act, and leaves off when it is committed:" *People v. Kernaghan*, 70 or 71 Cal.

DIVIDENDS. See *Corporations*.

EVIDENCE.

Confessions—Statement to Marshal.—A., suspected of murder, on being brought to the marshal of police, was asked by that officer where he got the body that was taken by A. to a certain place on a specified evening, and, being satisfied that A. was evading, the officer said to him: "You are not telling the truth." Afterwards, the officer being informed that A. wished to tell him all about the crime, said to him, "Go on, now, if you want to make your statement." *Held*, that on the trial of A. for the murder, his confession made under the circumstances to the officer was admissible in evidence, and did not contravene the rule prohibiting involuntary confessions: *Ross v. State*, 67 or 68 Md.

INSANITY. See *Criminal Law*.

LIMITATIONS, STATUTE OF. See *Marriage*.

MARRIAGE.

Validity of—Bigamous Relations—Divorce—Presumption Thereafter—Equity—Limitations and Laches.—Defendant claimed title to certain real property through the daughter of one L.: L., on April 29, 1841, was lawfully married in Kentucky to S. J. After about one year he abandoned this first wife, moved to Illinois, married again December 11, 1843, one Z. C., with whom he lived until his death, January 10, 1868. By her he had four children, whom he always recognised and treated as his legitimate offspring; the daughter, through whom defendant claims, being one of them. L. and Z. C. continued to live as man and wife openly, avowing themselves as such, and never changing their relation, or celebrating or agreeing upon any marriage after the first. In December, 1846, the first wife procured a divorce from L. in Kentucky. The evidence indicates that Z. C. knew nothing of L.'s first marriage, and supposed she was his lawful wife. *Held*, that the second marriage was void; that the continued cohabitation and dwelling together as man and wife after the divorce of the first wife do not raise a presumption of marriage, or such an agreement as will constitute a common-law marriage, and that the offspring is illegitimate: *Cartwright v. McGown*, 118 or 119 Ill.

The legitimate heirs having brought a bill in equity for partition of

the land seventeen years after the death of L., held, that the possession of defendant during that time was not a possession under cover of title, and therefore the Illinois seven years' statute of limitation, which requires such possession, was not a defence, and that, as equity generally follows the law in the matter of limitations, and twenty years had not run, the suit would not be held barred by laches: *Id.*

MORTGAGE.

Sale of Premises—Assumption of Mortgage—Liability of Purchaser—Measure of Damage.—Where A. who is the owner of a tract of land which is subject to mortgage, sells a part to B., who assumes and agrees to pay as part of the purchase price the amount of the mortgage, and thereafter A. sells the remainder of the tract to C., C., or his assignee, may on the foreclosure of the mortgage, through the failure of B. to pay the same, and the sale of his lands therefor, maintain an action against B. to recover damages. In such a case, the value of the land is the measure of damage: *Wilcox v. Campbell*, 105 or 106 N. Y.

MUNICIPAL CORPORATIONS. See *Boundaries*.

NEW TRIAL.

Keeping Jury Out—Misconduct of Foreman.—A new trial will not be granted because the foreman of the jury kept the panel out till 2 o'clock in the morning, and did not apprise them that the officer in charge communicated to him at 11 o'clock (three hours earlier) the direction of the presiding judge to permit the jury to separate, if they had not agreed at that hour: *Spinney v. Bowman*, 79 or 80 Me.

NOTICE. See *Bills and Notes*.

PARENT AND CHILD.

Custody of Child—Disposal of—Mother's Right.—A father cannot, by any instrument in writing or otherwise, relinquish or surrender to another the custody of the person of his minor child so as to deprive the mother of such child, after the father's death, of her right to the custody thereof, and to the care of its education: *State v. Reuff*, 29 or 30 W. Va.

PAYMENT.

Presumption of—Lapse of Time—Care of Documents.—Where a party claiming to be an assignee of certain mortgages made in 1853, and claimed by him to have been assigned in 1866, testifies that the agreements relating to the sale of the mortgages, and the assignment to him were, while in his possession, eaten by rats, the fact that the documents were placed within the reach of rats by a business man will be held plenary proof that they were of no other value than as food for rats, and the presumption of payment from lapse of time will be allowed to prevail: *Ward v. Greinlds*, 43 or 44 N. J. Eq.

PLEDGE. See *Contract*.

PRINCIPAL AND AGENT. See *Bills and Notes*,

PUBLIC POLICY. See *Contract*.

RAILROADS.

Tickets—Requiring Passenger's Signature—Waiver of Condition.—A railroad company sold and delivered a thousand-mile ticket to a purchaser, who paid in money the usual rate to the class of travellers to which he belonged, and who secured it in ignorance of the following directions printed thereon. "Conductors will not honor this ticket unless properly stamped and signed by the purchaser, and will strictly enforce the above conditions." Instructions of the company to its ticket agents, and the uniform custom regulating the sale of such tickets, required that the purchaser sign certain conditions printed thereon before delivery to them. The ticket in question was delivered to the purchaser, and several times honored by the company's conductors, without requiring him to sign the conditions: *Held*, the company thereby waived such requirement, and its conductor was not justified in ejecting the purchaser from his car by reason of his refusal to sign the ticket, and to pay the usual fare in money for his proposed passage: *Kent v. B. & O. Rd.*, 45 or 46 Ohio.

STOCKS. See *Corporation*.

TAXES.

Assignment—Subrogation.—The levying and collecting of a tax, whether state or county, is a matter solely of statutory creation. Such taxes are not debts; and, unless they are by plain implication or expressly authorized to be assigned legally or equitably, they are incapable of assignment; and no one can be subrogated to the rights and remedies of the state: *Hinchman v. Morris*, 29 or 30 W. Va.

TRUST. See *Will*.

WATERS AND WATERCOURSES. See *Boundaries*.

WILL.

Devise and Legacy—Construction—Trust—Remainder.—The substance of a will was as follows: *Second*, I give and devise to my nephew, D., and his heirs, all my effects, estate both real and personal, excepting support of my sister, H., during her lifetime; and I give my estate in trust to my executor. *Third*, I give to H., my sister, her support during her natural lifetime out of my estate." *Held* to be a gift of the whole of the estate to the executor in trust for the life support of H., and the remainder after the termination of the trust to D.: *Barnes v. Dow*, 59 or 60 Vt.

Construction—"Money."—In a will devising both real and personal estate, the clause, "If there is any money remaining after my death, it shall be equally divided," etc., *held* to intend, not only actual cash, but also all the other personal estate of the testator, consisting chiefly of money loaned, not disposed of in paying funeral expenses, debts, etc.: *Decker v. Decker*, 120 or 121 Ill.

ERRATA.

The title of the leading article to the August number should be "Conditional Statutory Jurisdiction," instead of "Constitutional Statutory Jurisdiction."

In the same article "reasonable" (on p. 482, 5th line from top) should be "reversible," and "substantial" (p. 488, 11th line from foot) should be "substituted."