signed by the president and secretary and bearing the seal of the company, is void. *Held*, competent for the general agent and president of the company to bind it by a parol agreement, giving the policy-holder accommodations concerning the payment of premiums, in contravention of the terms of the policy: *Dillebar* v. *Knickerbocker Life Ins. Co.*, 70 N. Y. 567.

J. R. BERRYMAN.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

CIRCUIT COURT OF THE UNITED STATES.[2]
INTERSTATE COMMERCE COMMISSION.[3]
SUPREME COURT OF ARIZONA.[4]
SUPREME COURT OF ARKANSAS.[5]
SUPREME COURT OF COLORADO.[6]
SUPREME COURT OF FLORIDA.[7]
SUPREME COURT OF GEORGIA.[8]
SUPREME COURT OF ILLINOIS.[9]
SUPREME COURT OF INDIANA.[10]
SUPREME COURT OF KANSAS.[11]
COURT OF APPEALS OF KENTUCKY.[12]
SUPREME COURT OF LOUISIANA.[13]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[14]
SURPEME COURT OF MINNESOTA.[15]
SUPREME COURT OF MICHIGAN.[16]
SUPREME COURT OF NORTH CAROLINA.[17]
COURT OF ERRORS AND APPEALS OF NEW JERSEY.[18]
COURT OF APPEALS OF NEW YORK.[19]
SUPREME COURT OF NEBRASKA.[20]
SUPREME COURT OF PENNSYLVANIA.[21]
SUPREME COURT OF RHODE ISLAND.[22]
SUPREME COURT OF TENNESSEE.[23]
SUPREME COURT OF TEXAS.[24]
SUPREME COURT OF APPEALS OF VIRGINIA.[25]
SUPREME COURT OF WEST VIRGINIA.[26]
SUPREME COURT OF WISCONSIN.[27]

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

Distribution of individual assigned estate must first be made to the individual creditors, and after payment in full to them the balance is applicable to debts of a firm of which the assignor was a member: *Appeal of Fox*, S. Ct. Penna., October 31, 1887.

Foreign assignment for creditors, executed in conformity with

[1] To appear in 123 or 124 U.S. Rep.
[2] To appear in 33 or 34 Fed. Rep.
[3] To appear in 1 I. S. Com. Rep.
[4] To appear in 2 or 3 Ari. Rep.
[5] To appear in 50 or 51 Ark. Rep.
[6] To appear in 10 or 11 Col. Rep.
[7] To appear in 22 or 23 Fla. Rep.
[8] To appear in 76 or 77 Ga. Rep.
[9] To appear in 121 or 122 Ill. Rep.
[10] To appear in 111 or 112 Ind. Rep.
[11] To appear in 37 or 38 Kan. Rep.
[12] To appear in 83 or 84 Ky. Rep.
[13] To appear in 39 or 40 La. Rep.
[14] To appear in 145 or 146 Mass. Rep.
[15] To appear in 36 or 37 Minn. Rep.
[16] To appear in 60 or 61 Mich. Rep.
[17] To appear in 95 or 96 N. C. Rep.
[18] To appear in 50 or 51 N. J. Rep.
[19] To appear in 107 or 108 N. Y. Rep.
[20] To appear in 22 or 23 Neb.
[21] To appear in 116 or 117 Pa.St.Rep.
[22] To appear in 15 or 16 R. I. Rep.
[23] To appear in 86 or 87 Tenn. Rep.
[24] To appear in 77 or 78 Tex. Rep.
[25] To appear in 82 or 83 Va. Rep.
[26] To appear in 29 or 30 W. Va. Rep.
[27] To appear in 68 or 69 Wis. Rep.

the laws of Texas relating to conveyance of lands, will pass the title to land conveyed as between parties thereto: *Hervey* v. *Edens*, S. Ct. Texas, December 13, 1887.

BANKS AND BANKING.

Stockholder of a national bank is liable to its receiver for a subscription which he made for new stock, on a proposed increase to $500,000, notwithstanding the fact that when he found at a subsequent meeting the increase was only $450,000 he refused to vote on the stock. The stockholder was held to have ratified the increase, because he retained the certificate issued to him on his subscription to the new stock: *Butler* v. *Aspinwall*, U. S. C. Ct. Dist. Mass., December 13, 1887.

BILLS AND NOTES.

Acceptance was validly made when the drawee wrote across the face of the draft the words "excepted Sept. 18, L. B. M.," and parol evidence was admissible to explain the words: *Cortelyou* v. *Maben*, S. Ct. Neb., January 5, 1888.

Accommodation indorser has the right to show that the payee indulged the maker for three years after the maturity of the note on an agreement for the employment of the payee's son by the maker: because a surety will be discharged by an extension of time, upon a valid consideration, suspending the right to enforce the payment of the debt entered into without consent of the surety: *Powers* v. *Silbersteen*, Ct. of App. N. Y., January 17, 1888.

Lost note, being the cause of action and to be proved, the trial court, and not the jury, must determine from the evidence offered at the trial whether the note was indorsed at the time of the loss; then secondary evidence of the contents of the note may be given to the jury: *O'Neill* v. *O'Neill*, S. C. Ill., January 19, 1888.

Maker is not discharged when guarantor pays on account with express promise of payee that the note should be kept alive for the benefit of the guarantor: *Granite N. Bank* v. *Fitch*, S. Jud. Ct. Mass., January 6, 1888.

Not negotiable, if the words "and attorney's fees" are inserted, because the sum to be paid is rendered uncertain: *Altman* v. *Rittershofer*, S. Ct. Mich., January 19, 1888.

Payment of balance due on a note is not presumed from acceptance of new note by the same maker for the balance: *Granite N. Bank* v. *Fitch*, S. Jud. Ct. Mass., January 6, 1888.

BILL OF LADING. See *Railroads.*

COMMERCIAL TRAVELER. See *License Tax.*

CONSIGNEE. See *Railroads; Replevin.*

CONSTITUTIONAL LAW.

See *Insurance; Interstate Commerce Law; License Tax; Liquor Laws; Negligence; Nuisance; Sunday Laws; Telegraphs.*

Amendment of an existing law may be made by citing the title without inserting the act in full, as § 17, Art. III, Const. N. Y. (providing that "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act"), does not apply to an act purporting to amend existing laws: *People* v. *Squire*, Ct. App. N. Y., January 17, 1888.

Constitutionality of an act cannot be called in question by a party whose rights are not affected by its enforcement: *County Commissmissioners* v. *State ex rel.*, S. Ct. Fla., January, 1888.

Local act, in fact, but in terms prescribing that "all telegraph * * * cables used in any incorporated city of this State having a population of 500,000 or over shall hereafter be placed under the surface," is not a local bill, forbidden by § 16, Art. III, Const. N. Y.; it applies to all cities of this class, and such classification is not rendered unconstitutional by reason of the limited number of such cities: *People, etc.*, v. *Squire*, Ct. App. N. Y., January 17, 1888.

Manner of performing an act when prescribed in the Constitution is in effect a prohibition against the passage of a law directing a different manner of doing it: *State ex rel.* v. *Barnes*, S. Ct. Fla., January, 1888.

One subject only is embraced by Chap. 499 (N. Y. Laws of 1885), entitled, "An Act providing for placing Electrical Conductors under ground in cities of this State and for Commissioners of Electrical Subways," and the act is not obnoxious to § 16, Art. III, Const. N. Y., providing that "No private or local bill shall embrace more than one subject, and that shall be expressed in the title." *People, etc.*, v. *Squire*, Ct. App. N. Y., January 17, 1888.

Proviso of Penna. Act (May 14, 1874, P. L. 158), entitled, "An Act to Exempt from Taxation Public Property used for Public Purposes and Places of Religious Worship, Places of Burial not Used or Held for Private or Corporate Profit, and Institutions of Purely Public Charity," is worded as follows: "*Provided*, that all property, real or personal, other than that which is in actual use and occupation for the purposes aforesaid, and from which any income or revenue is derived, shall be subject to taxation except where exempted by law for State purposes, and nothing herein contained shall exempt same therefrom," is void; it is an attempt to impose taxation without indicating the intention in the title, as required by § 3, Art. III, Const. Penna., which provides that "No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title:" *Sewickley* v. *Sholes*, S. Ct. Penna., January 3, 1888.

A treaty which is self-executing and a statute are on the same footing, and when inconsistent, the latter in point of time will prevail: *Whitney* v. *Robertson*, S. Ct. U. S., January 9, 1888.

CONTEMPT OF COURT.

Criticism by an attorney, neither made in the presence of the court nor during its session, but during an altercation with the court clerk and opposing counsel, which criticism extended to the general manner of transacting the court business, is not a contempt of court even if of an unprofessional character: *Watson* v. *People*, S. Ct. Col., January 4, 1888.

CONTRACTS. See *Railroads.*

Dissolution of a contract to put up a gas machine and pipes is worked by the destruction of the building by fire, but an action can be maintained for the labor and materials furnished on account of the contract before the fire: *Gilbert & Barker Mfg. Co.* v. *Butler*, S. Jud. Ct. Mass., January 10, 1888.

Statute of Illinois, forbidding wheat deals, does not prevent a partner from requiring an account from his partner for the use made of the proceeds of a wheat deal after the same had been successfully completed: *Wells* v. *McGeoch*, S. Ct. Wis., January 10, 1888.

Time spent in going to and from work cannot be charged as overtime where the plaintiff agreed to work for the defendant at $2.50 for a day's work of ten hours and twenty-five cents for every hour of work done over and above the said ten hours: *Wilson* v. *Lyle*, S. Ct. Penna., February 6, 1888.

Waiver of the conditions of the contract is a defense to an action for breach of the contract and the burden of proof of this defense is on the defendant: *Treacy* v. *Barclay*, Ct. App. Ky., January 12, 1888.

CONVEYANCE. See *Nuisance.*

Particular exception to a general description of land in the granting clause is good and restrains grant accordingly: *Witt* v. *St. Paul, etc., R. Co.*, S. Ct. Minn., January 10, 1888.

CORPORATIONS. See *Banks and Banking.*

Directors occupy the relation of trustees toward the corporation and its property: *Sweeney* v. *Grape Sugar Co.*, S. Ct. App. W. Va., November 19, 1887.

Subscription to corporate stock cannot be collected from a *bona fide* purchaser of a stock certificate without notice of any sum being due: *West Nashville P. M. Co.* v. *Nashville S. Bk.*, S. Ct. Tenn., January 9, 1888.

ERRORS AND APPEALS.

Citation must issue where the affidavit does not state appellant's interest in judgment but opposing affidavit does show such value: the question of jurisdictional amount must be left to the Supreme Court: *Davie* v. *Heyward*, U. S. C. Ct. W. Dist. S. C., December, 1887.

Dismissal refused when taken to a decree of the inferior State court, where the appellant had, after the decree and before appealing, instituted a suit in the U. S. C. Ct. in this State and suffered an adverse decree upon the pleadings and evidence: *Guaranty T. & S. D. Co.* v. *Buddington et al.*, S. Ct. Fla., January, 1888.

Rulings of a circuit court made during a trial without a jury are not reviewable in the Supreme Court when there has been no written stipulation (waiving trial by jury) duly signed and filed: *Dundee M. & T. Co.* v. *Hughes*, S. Ct. U. S., January 9, 1888.

Evidence.

Handwriting of a decedent may be proved by the evidence of one who had never seen him write but had seen many letters and addresses on newspapers coming from the decedent: *Tuttle* v. *Rainey*, S. Ct. N. C., December 5, 1887.

Guaranty. See *Bills and Notes.*

Revocation of a continuing guaranty is effectual when the surrender of the written guaranty, for the purpose of revocation, is requested four months before the liability in suit is claimed to have occurred: *Tischler* v. *Hofheimer*, S. Ct. App. Va., December 31, 1887.

Insurance.

Arbitration of amount of loss when agreed to is a waiver of written notice of loss but not of the provision in the policy which requires assured to state his knowledge of the origin of the fire and title and interest of the owners: *Nelson* v. *Bound Brook M. F. I. Co.*, Ct. Errors and App. N. J., June Term, 1887.

Constitution of the United States (Art. I, § 8, cl. 4) does not apply to the issuing of a policy of insurance by a company in one State to a person domiciled in another, as such a transaction is not commerce within the constitutional sense of that word: *List* v. *Commonwealth*, S. Ct. Penna., January 3, 1888.

Doubtful policies are to be construed against the insurer and in favor of the insured: *Id.*

Permanent occupation is meant where the policy provides for its termination on an increase of the risk by occupation of neighboring buildings or other means within the control of the insured: *Id.*

Interstate Commerce Law.

Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it cannot be predicated of action which is of itself impartial. But a regulation which is general and uniform is the opposite of discrimination, and if the result be favorable to some localities and unfavorable to others, it is not obnoxious to the act: *Crews* v. *Richmond & Danville R. R. Co.*, The Commission, February 15, 1888.

License Tax.

Commercial traveler selling by sample, not liable to the penalties of the Texas statute, which is unconstitutional as being a regulation of interstate commerce: *Ex parte Stockton*, U. S. Dist. Ct. E. D. Texas, December 6, 1887. (See *contra*, *Ex parte Asher*, S. Ct. Texas, ante, page 77.)

Peddling produce or merchandise in Pennsylvania cities of the second and third class without a license was prohibited by Act of June 10, 1881; this was not a tax on a particular class of occupations but merely a police regulation, and not obnoxious to § 1, Art. IX, Const. Penna., providing that "All taxes shall be uniform upon the same class of subjects." * * * *Kneeland* v. *Pittsburgh*, S. Ct. Penna., November 11, 1887.

Peddlers may be classified and taxed at different rates by the municipal authorities under the provisions of the above act: *Id.*

Liquor Laws.

Classification of all liquor dealers within five miles of a town at one rate of license, and keepers of wayside inns at another rate, is uniform and within the power of the legislature: *Territory* v. *Connell*, S. Ct. Ari., January, 1887.

Georgia statute, requiring the consent of a certain number of freeholders (except in incorporated cities or towns) before a liquor license may be granted, does not deny to liquor dealers outside of such cities or towns the equal protection of the laws, in violation of the Const. U. S.: *U. S.* v. *Rowan*, U. S. C. Ct. S. Dist. Ga., November 7, 1887.

Rhode Island Public Statute (Chap. 634, May 4, 1887, § 1) prohibiting any person from keeping any intoxicating liquors for the purpose of sale, is not in conflict with Art. I, § 8, Const. U. S., which confers upon Congress the exclusive power to regulate commerce with foreign nations and among the several States, even if it should incidentally interfere with foreign or interstate commerce: *State* v. *Fitzpatrick*, S. Ct. R. I., January 7, 1888.

Territorial governments can license and regulate liquor dealers by virtue of their police powers: *Territory* v. *Connell*, S. Ct. Ari., January, 1887.

Malicious Prosecution.

Probable cause a question for the jury when there is a substantial dispute over the facts from which it is inferred: *Bell* v. *Matthews*, S. Ct. Kan., December 10, 1887.

Probable cause is wanting, *prima facie*, on discharge from an arrest made by the authority of U. S. Commissioner: *Jones* v. *Finch*, S. Ct. App. Va., November 17, 1887.

Master and Servant. See *Negligence; Railroads.*

Discharge of a servant before end of term for which he was en-

gaged does not compel him to enter upon a new business, but he must use reasonable diligence in procuring another place of the same kind, in order to fix the amount of his damages: *Fuchs* v. *Koerner*, Ct. App. N. Y., December 13, 1887.

Failure to replace defective appliance for two weeks after notice from employee and promises of master to remedy the defect raises a question for the jury to decide whether the servant had assumed the risk: *Counsell* v. *Hall*, S. Jud. Ct. Mass., January 4, 1888.

NEGLIGENCE. See *Railroads.*

Machinery or appliances of two kinds being in general use, and skillful persons being divided in opinion as to their relative safety, the master who uses either is not negligent: *Pierce* v. *Atlanta Cotton Mills*, S. Ct. Ga., October 5, 1887.

Question of law for the court arises where the facts from which negligence is sought to be inferred are not disputed, and the inference to be drawn from the facts is unequivocal; otherwise negligence is a mixed question of law and fact: *Chicago, etc., R. R. Co.* v. *Ostrander*, S. Ct. Ind., January 21, 1888.

NUISANCE.

Livery stable is not prohibited by a covenant forbidding the erection of "cow stables or any other dangerous, noxious, or unwholesome or offensive establishment, trade, calling, or business," as by express words stables are separated from other offensive places; and further, by forbidding a particular class of stables, all others are free from the prohibition: *Flanagan* v. *Hollingsworth*, Ct. App. N. Y., January 17, 1888.

Public picnics and dances are not nuisances at common law and cannot be declared such by villages incorporated under a general law empowering them to declare what shall be a nuisance. The people have a right to assemble together for health, recreation, or amusement in the open air, and because this privilege may be abused is no reason for its denial: *Des Plaines* v. *Poyer*, S. Ct. Ill., January 19, 1888.

PARTNERSHIPS. See *Assignment for the Benefit of Creditors.*

PRACTICE. See *Trusts; United States Courts; Witness.*

Filing of a paper is accomplished by delivery to the proper officer for official custody. The usual file marks are but one evidence of the filing: *County Commissioners* v. *State ex rel.*, S. Ct. Fla., January, 1888.

At law a court of the United States may exercise equitable powers over its process to prevent abuse, oppression, and injustice, and in favor of a stranger to the litigation without regard to citizenship, as an incident to the jurisdiction already vested: *Gumble* v. *Pitkin*, S. Ct. U. S., January 9, 1888.

RAILROADS.

Delivery of cattle must be made at the place of destination and to the order of the consignee, notwithstanding the way bill contains a direction to notify another person: *N. Penna. R. R. Co.* v. *Commercial N. Bank*, S. Ct. U. S., October T., 1887.

Delivery of cattle without requiring the production of the bill of lading or other authority of the shipper renders the carrier liable, and a custom of the carrier to deliver without such authority is not a defense where a wrongful delivery has been made: *Id.*

Fellow servants; the foremen and the trackmen of a section gang: *Olsen* v. *St. Paul, etc., R. R. Co.*, S. Ct. Minn., January 10, 1888.

Employee may recover damages for a defective side-stake on a lumber car where the previous inspection had been merely casual and the company had no rules requiring inspections: *Bushby* v. *N. Y., etc., R. R. Co.*. Ct. App. N. Y., November 29, 1887.

Fire, accidentally destroying cars while on the private tracks of the consignees, is not a risk which the company delivering the cars on to the private tracks could be held accountable for; the duties of the carrier had terminated with the delivery of the cars on the private tracks: *E. St. L. C. R. R. Co.* v. *W. St. L. & P. R. R. Co.*, S. Ct. Ill., January 20, 1888.

Fire communicated by a locomotive is not evidence of negligence in managing the engine, as the use of fire in the engine is necessary in the prosecution of a lawful business—to wit, the operation of a railroad; hence, the plaintiff must prove a negligent management of the engine: *Chicago, etc., R. R. Co.* v. *Ostrander*, S. Ct. Ind., January 21, 1888.

Risk ordinarily incident to his employment, which a brakeman impliedly agrees to take, includes the increased dangers of railroading from rain, snow, ice, etc.: *O'Bannon* v. *Louisville, etc., R. R. Co.*, Ct. App. Ky., January 12, 1888.

Trackmen cannot recover for injuries received from a snow-plow sent out in a storm, where it is a rule of the company to run specials without notice to such employees: *Olsen* v. *St. Paul, etc., R. R. Co.*, S. Ct. Minn., January 10, 1888.

Trains have a right of priority of passage at a highway crossing, and a traveler has no right to expect them to slacken their speed, much less stop, when he is seen to cross or about to cross the track: *Ohio, etc., R. R. Co.* v. *Walker*, S. Ct. Ind., January 27, 1888.

Ticket sold as good for fifteen days after date of identification of the purchaser cannot be used after the expiration of the time; the passenger may be ejected and no evidence of a parol variation of the contract can be admitted: *Rawitzky* v. *L., etc., R. R. Co.*, S. Ct. La., January 9, 1888.

REPLEVIN.

Consignee of goods sent C. O. D. has not such a title or right of possession in the goods as will entitle him to maintain an action of replevin against the carrier, whether the delivery was rightly or wrongly refused: *Lane* v. *Chadwick*, S. Jud. Ct. Mass., January 9, 1888.

ROADS AND STREETS.

Conveyance of land on a highway, creates a presumption that the title to the centre of the highway is thereby conveyed: *Green* v. *N. Y. Cent., etc., R. R. Co.*, Ct. App. N. Y., December 23, 1887.

Dedication of a highway may be inferred from the laying out of a thoroughfare by the owner of the ground through which it passes and use by the public. And such dedication, cannot be recalled, so long as the public use is maintained and public accommodation might be affected by an interruption of the enjoyment of the way: *Union Company* v. *Peckham*, S. Ct. R. I., January 7, 1888.

Dedication of land for use as a street, is not to be inferred from the fact that the owner, when conveying, bounds his ground on the side of a street laid out on the public plan, but not opened, and such grantor may recover damages for the land used in the street when it is actually opened: *In re Brooklyn Street*, S. Ct. Penna., February 20, 1888.

Express grant of a right of way may be found by the jury, in an action of trespass, for disturbance of right of way, where a tract was purchased in 1862, without any outlet to a public road, but with a verbal promise of a right of way over other property of the grantor, which was pointed out by the grantor and used by the grantee until 1885, when it was obstructed by a gate: *Allen* v. *Vandervert*, S. Ct. Penna., November 7, 1887.

SALE.

Acceptance of merchandise after instructions from the seller to the buyer not to receive the articles if bad waives defects, and the agreed price must be paid, without regard to the market value: *Smith* v. *New Albany R. M. Co.*, S. Ct. Ark., December 10, 1887.

Contract remains executory, even though the price has been paid, where the goods are to be thereafter manufactured, weighed, designated, and delivered: *Coplay Iron Co.* v. *Pope*, Ct. of App. N. Y., January 17, 1888.

SUNDAY LAWS.

Void when entitled "An Act making it a misdemeanor to do barbering on Sunday," and making it a misdemeanor not only to do barbering but to keep open bath-rooms on that day: The act contains more than one subject, in violation of the State Constitution, and it would be void, also, if it operated for the benefit of bath-

room keepers who were not barbers, as granting a special privilege, contrary to the constitutional provisions: *Ragio* v. *State*, S. Ct. Tenn., January 17, 1888.

TELEGRAPHS.

Tax laid by a State statute upon telegraph companies within its limits is not void as an attempt to regulate interstate commerce: *Attorney-General* v. *W. U. T. Co.*, U S. C. Ct. Dist. Mass., November 28, 1887.

TRIAL.

Instruction to the jury, that one of the jurymen knew more about the specifications of building contracts than the court, is not erroneous and would not cause a reversal of the judgment: *Bedell* v. *Errett*, S. Ct. Penna., November 7, 1887.

TRUSTS.

Cestui que trust not a necessary party to a suit by a stranger against the trustee for the purpose of defeating the trust, if the powers and duties of the trustee are such as to make his acts binding on the *cestui que trust* without consent: *Vetterlein* v. *Barnes*, S. Ct. U. S., January 9, 1888.

UNITED STATES COURTS. See *Errors and Appeals; Practice.*

Parties will be arranged according to the facts and not the mere form of the pleadings, when determining the jurisdiction: *Covert* v. *Waldron*, U. S. C. Ct. S. Dist. N. Y., January 3, 1888.

WILLS.

Testamentary capacity is not to be doubted merely because the testator omits to bequeath anything to his relatives, especially when he expressly declared to the scrivener, his determination that they should have nothing out of his estate: *Trost* v. *Dingler*, S. Ct. Penna., January 3, 1888.

Solicitations, however importunate and constraining, cannot of themselves constitute undue influence; this must destroy the free agency of the testator at the very time and in the very act of making his will: *Id.*

WITNESS.

Discharge by *habeas corpus* proceedings will be granted from imprisonment under a notary's *mittimus*, for failure to produce books and papers, where it appears that the books and papers would be inadmissible in evidence: *Re Beardsley*, S. Ct. Kan., December 10, 1887.

JOHN B. UHLE.