ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

INTERSTATE COMMERCE COMMISSION.[2]
SUPREME COURT OF CALIFORNIA.[3]
SUPREME COURT OF COLORADO.[4]
COURT OF ERRORS OF CONNECTICUT.[5]
COURT OF CHANCERY OF DELAWARE.[6]
SUPREME COURT OF THE DISTRICT OF COLUMBIA.[7]
SUPREME COURT OF ILLINOIS.[8]
SUPREME COURT OF INDIANA.[9]
SUPREME COURT OF KANSAS.[10]
SUPREME COURT OF LOUISIANA.[11]
SUPREME JUDICIAL COURT OF MAINE.[12]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[13]
SUPREME COURT OF MICHIGAN.[14]
SUPREME COURT OF MISSOURI.[15]
COURT OF APPEALS OF NEW YORK.[16]
SUPREME COURT OF OREGON.[17]
SUPREME COURT OF PENNSYLVANIA.[18]
SUPREME COURT OF UTAH.[19]
SUPREME COURT OF WASHINGTON TERRITORY.[20]

ACCORD AND SATISFACTION.

Settlement of a disputed claim is binding on the parties where a bill is presented, *bona fide* objected to, and another bill for a reduced amount is then prepared, paid and receipted: *U. P. R. R.* v. *Anderson*, S. Ct. Colorado, April 27, 1888.

AGENTS.

Real estate broker has a lien on the specific deed delivered to him by or at the request of his principal for his work thereon, and also for his commission earned by him, as also the money paid by the broker at the request of the principal, but there is no right of general lien: *Richards* v. *Gaskill*, S. Ct. Kan., June 9, 1888.

ATTORNEY AND CLIENT.

Professional employment extends to all an attorney does, when retained because of professional character and ability, even though some of the services are commercial rather than professional, and is not to be compensated at the aggregate value of the single acts, but of the services taken together: *Kelley* v. *Richardson*, S. Ct. Mich., April 20, 1888.

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[1] To appear in 125 U. S. Rep.
[2] To appear in 2 I.-S. C. Rep.
[3] To appear in 73 or 74 Cal. Rep.
[4] To appear in 11 or 12 Col. Rep.
[5] To appear in 55 or 56 Conn. Rep.
[6] To appear in 5 or 6 Del. Chan. Rep.
[7] To appear in 6 or 7 Mack. Rep.
[8] To appear in 122 or 123 Ill. Rep.
[9] To appear in 114 or 115 Ind. Rep.
[10] To appear in 38 or 39 Kan. Rep.
[11] To appear in 39 or 40 La. Ann. Rep.
[12] To appear in 80 or 81 Me. Rep.
[13] To appear in 146 or 147 Mass. Rep.
[14] To appear in 62 or 63 Mich. Rep.
[15] To appear in 92 or 93 Mo. Rep.
[16] To appear in 109 or 110 N. Y. Rep.
[17] To appear in 15 or 16 Ore. Rep.
[18] To appear in 118 or 119 Pa. St. Rep.
[19] To appear in 4 or 5 Utah Rep.
[20] To appear in 3 or 4 Wash. Ter. Rep.

BANKS.

Cashiers of national banks are not within the prohibition of § 64, Penna. Act March 31, 1860, making it a misdemeanor for bank cashiers to engage in any other business; Congress has not enacted such a restraint and the State cannot. Hence, such cashier could rightfully, as surviving partner, wind up the business of a firm in which he was a partner: *Aclen's Appeal*, S. Ct. Penna., March 12, 1888.

Certificate of deposit, issued by a bank, payable to the order of the depositor bearing interest at 4 per cent. if left 6 months and 5 per cent. if 12 months, and dated and signed, is not a negotiable instrument, and in the hands of an indorsee, is subject to all equities between the bank and the depositor: *Schlaudecker's Appeal*, S. Ct. Penna., May 14, 1888.

BILLS AND NOTES.

Payment by the drawee of a draft, to preserve his credit and under protest, is not such an involuntary payment as to permit a suit to recover back the amount paid; the element of coercion is essential: *Harvey* v. *Girard Nat'l B'k*, S. Ct. Penna., March 19, 1888.

Railroad bonds and the interest warrants thereunto belonging, are not negotiable promissory notes, within the meaning of the Massachusetts Pub. Stat., ch. 77, § 9, and are not entitled to grace: *Chaffee* v. *Middlesex R. R. Co.*, Sup. Jud. Ct. Mass., March 3, 1888.

CHECKS.

Forged indorsement is no justification to the bank in paying the check, if the forgery could have been known by proper care, as by comparison with a genuine signature in the possession of the bank, even though the depositor was negligent in examining his returned checks: *Brixen* v. *Deseret Natl. Bk.*, S. Ct. Utah, February 18, 1888.

Presentation must be made to the bank on which a check is drawn, with due diligence, to prevent the check operating as actual payment of a debt for which it has been received without any special agreement; loss to the drawer or endorser of the check converts the conditional payment presumed by the law into actual payment: *Kilpatrick* v. *Home B. & L. Ass'n*, S. Ct. Penna., February 20, 1888.

CONSTITUTIONAL LAW.

Damaged, in the Illinois Constitution of 1870, providing that "private property shall not be taken or damaged, for public use, without just compensation," does not merely mean that the injury complained of should be caused by a trespass or actual, physical invasion of the land, but in addition, any substantial damage caused by a public improvement; hence where the value of a coalyard was diminished, by difficulty of access caused by a street viaduct in the

neighborhood, damages were recovered: *Chicago* v. *Taylor*, S. Ct. U. S., March 19, 1888; 125 U. S. 161.

Obligation of a contract is protected by the Constitution of the United States against the Constitution and laws of a State, or any enactment given the force of law by any State, but not against the decisions of State courts, or the acts of administrative or executive boards or officers or the doings of corporations or individuals; otherwise, every interpretation of the obligation of a contract might be reviewed by the Supreme Court of the U. S.: *N. O. Waterworks Co.* v. *L. Sugar Ref. Co.*, S. Ct. U. S., March 19, 1888; 125 U. S. 18.

CONTRACTS.

Combination among lumber manufacturers, designed to increase the price, limit the quantity and control the sale to those not in the combination, is against public policy, and a contract made for this purpose, whereby no lumber was to be sold in four counties except to the plaintiffs at $11 per M. and if any should be sold to others, then to pay the plaintiffs $20 per M. so sold, is void: *Santa Clara V. M. & L. Co.* v. *Hayes*, S. Ct. California, June 4, 1888.

Specific performance of contracts relating to personalty will not, as a general rule, be enforced in equity, unless it is apparent that the failure to perform the contract cannot be adequately redressed by damages, as in the case of goods of peculiar value from curiosity, antiquity or affection, or which no one but the defendant could supply; hence a contract for the sale of stock in a private corporation, which, in America, unlike England, is ordinarily sold in the market, will not be specifically enforced: *Diamond S. I. Co.* v. *Todd*, Ct. Chan. Delaware, April 12, 1888.

Services rendered in keeping house, as if the defendant's wife and not his servant, by a woman who agreed to live with defendant as his wife, without any lawful marriage, and also money expended by her in paying some of the household expenses, during a period of over thirteen years, cannot be recovered in a court of justice; they were in furtherance and for the continuation of their unlawful relations and would not even support an express promise to pay: *Brown* v. *Tuttle*, S. Jud. Ct. of Maine, February 6, 1888.

Warranty, when broken, entitles the buyer to set off against the price of the goods, the difference between the value at the time of the sale and what the value would have been if the goods had conformed to the warranty: *Blacker* v. *Slown*, S. Ct. of Ind., April 11, 1888.

CORPORATIONS.

Stockholder can file his own bill against the directors where he avers that one of them controls a majority of the stock and has elected persons as co-directors who have combined with the wrongdoer to carry out his will, and also avers such matters as would be

a fraud upon the corporation which the directors ought to redress: *Dunphy* v. *Traveler N. Ass.*, S. Jud. Ct. Mass., April 6, 1888.

Criminal Law.

Imprisonment depends for its validity, on a *habeas corpus* hearing, upon the judgment and not upon the *mittimus*, which is only evidence of authority for the jailor: *Sennott* v. *Swann*, S. Jud. Ct. Mass., April 6, 1888.

Incest occurs when an illegitimate daughter is seduced by her natural father, as much as when he has intercourse with his daughter, born in wedlock: *People* v. *Lake*, Ct. App. N. Y., June 5, 1888.

Divorce.

Defense to an action by a wife for separation on the ground of abandonment and for alimony, cannot be made by pleading a decree of divorce in another State, in which the wife was not served and did not appear and of which she had no actual notice until served with a copy of the final decree: *Cross* v. *Cross*, Ct. App. N. Y., January 17, 1888.

Divorce may be granted by the legislature of a Territory, when either party is at that time, a resident of the Territory, and there need be neither cause for the divorce nor notice to the non-resident party: *Maynard* v. *Hill*, S. Ct. U. S., March 19, 1888; 125 U. S. 190.

Marriage is not a contract within the protection of the Constitution of the United States, as it is such a contract that when made, becomes an institution of which the rights and duties are regulated by law and cannot be terminated by agreement. The constitutional protection applies only to perfect contracts vesting certain, definite, and fixed, private rights of property: *Id.*

Fraud.

Opinions, which are not statements of fact, may be expressed by the vendor of a silver mine, without risk of the sale being set aside for fraudulent representations, when the purchaser undertakes to make investigations of his own, and the vendor does nothing to prevent the vendee doing all he chooses: *Southern Devel. Co.* v. *Silva*, S. Ct. U. S., March 19, 1888; 125 U. S. 247.

Insolvency.

Definition of insolvency cannot be made more definite than declaring it to be the condition of one who is presently unable to pay his debts in full: *Cunningham* v. *Norton*, S. Ct. U. S., March 19, 1888; 125 U. S. 77.

INSURANCE.

Insurable interest must exist at the time of the insurance and of the loss, or else the insured is not injured, as the contract is one of indemnity purely: *Chrisman* v. *State Ins. Co.*, S. Ct. Oregon, May 8, 1888.

INTERSTATE COMMERCE LAW.

Joint tariffs or rates are not censurable, unless the joint agreement is for the accomplishment of something unlawful or unjust in itself or in its consequences: the policy of the law and the convenience of business favor them, and the more completely the whole railroad system of the country can be treated as a unit, the greater will be the benefit of its service to the public and the less the liability to unfair exactions: *Martin* v. *C. B. & Q. R. R. Co.*, The Commission, June 19, 1888.

Trade centers, or large commercial towns, are not, of right, entitled to more favorable rates than the smaller towns for which they are the points of distribution: nor can they complain of single, direct rates to the smaller towns, less in amount than the aggregate of the rate to the center and from the trade center to the smaller towns: the rates can be made proportional to the distance, or nearly so, without regard to the trade centers: *Id.*

LAND.

Riparian owner, along the Mississippi, owns to the middle thread of the stream, including islands separated from the mainland by sloughs or arms of the river: *Fuller* v. *Dauphin*, S. Ct. Ill., May 9, 1888.

LIFE INSURANCE.

Answers to an application for a policy of life insurance, were followed in the printed form, by an "acknowledgment" or statement that the answers were "true to the best of my knowledge and belief:" *Held*, that the policy was not avoided by an untrue answer, unless the untruth was within the knowledge or belief of the applicant: *Clapp* v. *Mass. Ben. Ass.*, S. Jud. Ct. Mass., April 6, 1888.

Assignee of a policy of insurance taken out by the assignor on his own life may recover against the company, whether the assignee had an original insurable interest or not, if the assignment is an honest exchange of property and not a mere cover for a wagering transaction: *Fitzpatrick* v. *Hartford L. & A. Ins. Co.*, S. Ct. of Errors Conn., April, 1888.

LIQUOR LAWS.

Common carriers cannot be prevented by State laws from carrying intoxicating liquors from State to State, and such statute is no excuse for refusal to carry: *Bowman* v. *C. & N. R. R. Co.*, S. Ct. U. S., March 19, 1888; 125 U. S. 465.

MANDAMUS.

Relator need not show any special interest in the result, where a public right is involved and the writ of mandamus is asked to enforce a public duty; hence, a private citizen may invoke the aid of this writ to compel the board of police commissioners of St. Louis to vacate an order that the chief of police should not interfere with the sale of beer and wine, in that city, on Sunday: *State ex rel.* v. *Francis*, S. Ct. Missouri, May 7, 1888.

MINING LAW.

Royalty paid under a coal mining lease, is not profit but part of the estate itself, and lien creditors have a right to stay the waste or have the proceeds applied to their liens; and in the latter case the proceeds are applied to all liens in their order without regard to who applied for the restraint of the waste: *Duff* v. *Hopkins*, S. Ct. Penna., May 21, 1888.

NEGLIGENCE.

Machine which breaks while being used in a proper manner and for the purpose intended, is evidence of its defective and unsafe condition: *Moynihan* v. *The Hills Co.*, S. Jud. Ct. Mass., May 4, 1888.

NUISANCE.

Navigation may be obstructed by a drawbridge erected under State authority over a navigable river, below the ebb and flow of the tide, notwithstanding the appropriation by Congress for improvements to navigation in other parts of the river; there must be a direct statute of the United States, forbidding such obstruction, and hence, the provision of an Act of Congress, admitting a State into the Union, that the navigation of a certain river should not be obstructed or interfered with, does not forbid a physical obstruction but relates solely to political regulations, hampering commerce: *Willamette I. B. Co.* v. *Hatch*, S. Ct. U. S., March 19, 1888; 125 U. S. 1.

PARTNERSHIPS.

Debts of a partnership are joint and several, and consequently a partner who pays the firm's debts with his own funds, cannot be allowed to come upon the firm assets by substitution, but must wait until the firm creditors are satisfied: *Lyons* v. *Murray*, S. Ct. Missouri, May 7, 1888.

PATENTS.

Contracts in relation to the payment of royalties, cannot be the basis of jurisdiction in the U. S. courts, unless the validity of the patent is drawn into question: *Felix* v. *Scharnweber*, S. Ct. U. S., March 19, 1888; 125 U. S. 54.

PRACTICE.

Bill of review, pure and simple, will not avail to reverse the decree on the original bill for anything but errors of law, apparent on the record; the decision upon the questions of fact at issue under the original bill and answer, must be assumed to be correct upon the view of the law taken by the court at the time of the original decree, so as to leave nothing for examination but the correctness of the view of the law: *Willamette I. B. Co.* v. *Hatch*, S. Ct. U. S., March 19, 1888; 125 U. S. 1.

Bill of review, pure and simple, for the reversal of a decree for apparent errors of law only, may be filed in the Circuit Court, after an appeal has been taken to the Supreme Court, but not prosecuted: *Id.*

RAILROADS.

Baggagemaster has no authority to invite a person to ride on a train and such person cannot be considered a passenger and cannot recover damages for any act not caused by the negligence or tort of the company: *Reary* v. *L., N. O. & T. R. R. Co.*, S. Ct. La., January 9, 1888.

Failure to stop, look and listen, is excusable where plaintiff saw a train moving away from the only crossing from one part of the town to another and not knowing that the train was being switched back and forwards, and not being able to see its approach on account of standing cars and a freight house, drove slowly on the crossing and was injured: *N. P. R. R. Co.* v. *Holmes*, S. Ct. Wash. Ter., February 2, 1888.

Net earnings of a railroad in the hands of a receiver, appointed in a judgment creditor's suit, are not applicable in discharge of the bonds secured upon the road by a mortgage, where the mortgage trustee has not asked for possession or intervened in the suit: *Sage* v. *M. & L. R. R. R. Co.*, S. Ct. U. S., March 19, 1888; 125 U. S. 361.

Passing from car to car of a rapidly moving train, to suit the passenger's convenience, is at the risk of the passenger, even though the conductor had remarked to the passenger that he might leave the train at the next station, by taking the rear car; this was not a command on the part of the conductor, for which the company could be held liable: *Stewart* v. *B. & P. R. R. Co.*, S. Jud. Ct. Mass., May 4, 1888.

STATUTES.

Locality, being limited in an Act of Congress, is not enlarged by an amendment containing language which might have a wider scope; in construing the amendment, the mischief to be remedied should be ascertained and the language used should be restrained to the evident purpose of the legislative will: *U. S.* v. *Crawford*, S. Ct. Dist. Columbia, March 12, 1888.

JOHN B. UHLE.