

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹

UNITED STATES DISTRICT COURT, NORTH-
ERN DISTRICT OF MISSISSIPPI.²
SUPREME COURT OF CALIFORNIA.³
SUPREME COURT OF COLORADO.⁴
SUPREME COURT OF INDIANA.⁵
SUPREME COURT OF KANSAS.⁶
SUPREME COURT OF LOUISIANA.⁷
COURT OF APPEALS OF MARYLAND.⁸
SUPREME JUDICIAL COURT OF MASSACHU-
SETTS.⁹

SUPREME JUDICIAL COURT OF MAINE.¹⁰
SUPREME COURT OF MICHIGAN.¹¹
SUPREME COURT OF NEW JERSEY.¹²
SUPREME COURT OF NEW HAMPSHIRE.¹³
COURT OF APPEALS OF NEW YORK.¹⁴
SUPREME COURT OF OREGON.¹⁵
SUPREME COURT OF PENNSYLVANIA.¹⁶
SUPREME COURT OF RHODE ISLAND.¹⁷
SUPREME COURT OF VERMONT.¹⁸

AGENTS.

Irrevocable interest, coupled with a power, must be an interest in the thing itself, and not in the product. Hence, the State of Missouri could revoke the appointment of an agent who had given security for the faithful prosecution of a claim of the State against the United States, in consideration of an agreed commission on the amount collected, all expenses to be borne by the agent: *State v. Walker*, S. Ct. U. S., April 2, 1888; 125 U. S. 339.

ATTORNEY-AT-LAW.

Privilege of counsel to speak defamatory words in his capacity as counsel, in the trial of a cause in a court of justice, is qualified and not absolute, and extends only to such words as have relation to the cause or subject-matter under judicial investigation: *Maulsby v. Reifsnnyder*, Ct. App. Md., June 13, 1888.

BILLS AND NOTES.

Bankrupt member of a solvent firm cannot be held liable on a firm note, renewed in the same firm name, after his discharge in bankruptcy and withdrawal from the firm, of which notice had been given in a newspaper, but no actual notice given to the payee: *Eustis v. Bolles*, Sup. Jud. Ct. Mass., March 6, 1888.

¹ To appear in 125 U. S. Rep.
² To appear in 34 Fed. Rep.
³ To appear in 73 Cal. Rep.
⁴ To appear in 8 Col. Rep.
⁵ To appear in 113 Ind. Rep.
⁶ To appear in 39 Kan. Rep.
⁷ To appear in 40 La. Ann.
⁸ To appear in 68 Md. Rep.
⁹ To appear in 146 Mass. Rep.

¹⁰ To appear in 80 Me. Rep.
¹¹ To appear in 62 Mich. Rep.
¹² To appear in 50 N. J. Law Rep.
¹³ To appear in 64 N. H. Rep.
¹⁴ To appear in 109 N. Y. Rep.
¹⁵ To appear in 16 Ore. Rep.
¹⁶ To appear in 119 Pa. State Rep.
¹⁷ To appear in 16 R. I. Rep.
¹⁸ To appear in 60 Vt. Rep.

Patent rights, when paid for by promissory notes, are not interfered with by the Penna. act 12 April, 1872, P. L. 60, requiring the words "given for a patent right" to be prominently and legibly written on the face of the note or other negotiable instrument: such act is not unconstitutional, and, by preventing gross frauds, is a valuable police regulation: *Shires et al. v. Comm.*, S. Ct. Penna., May 14, 1888.

CONSTITUTIONAL LAW.

Drains were authorized by a borough ordinance, without providing for compensation for damages in taking ground in opening them; no statute or other authority provided for the assessment of such damages, but the State Constitution (Art. XVI., § 8) required compensation, and consequently the ordinance was void and an entry to make such drain would be a trespass: *Borough of Strasburg v. Bachman*, S. Ct. Penna., April 30, 1888.

Gifts, as inducement to purchase goods, are improperly forbidden by law, as such an act is not a proper exercise of police power, not being necessary to protect the public health, comfort, and safety; nor of the public policy which forbids lotteries, there being no pretence of a lottery; it is to be distinguished from the Pennsylvania law against oleomargarine, sustained by the United States Supreme Court in *Powell v. Comm.*, which was designed to protect the public health from a detrimental manufacture: *People v. Gillson*, Ct. App. N. Y., June 5, 1888.

Liberty, as used in the Constitution clause, "no person shall be deprived of life, liberty, or property without due process of law," means more than mere freedom from physical restraint: it is the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation; some or all of these fundamental and valuable rights are invaded by a law forbidding the seller of food from giving away any other thing as a part of the sale and as an inducement, and such law is invalid: *Id.*

Reputation of a building as a place for the sale of intoxicating liquors is made evidence by the Rhode Island Pub. Stat. chap. 80, § 3: this is within the legislative power to change the rules of evidence, as it is not in conflict with Art. I. § 10, of the Constitution of that State, securing to all persons prosecuted for crimes, the right "to be confronted with the witnesses against them": *State v. Waldron*, S. Ct. R. I., April 14, 1888.

Telegraph companies may be nominally taxed upon the shares of their capital stock where the basis of taxation is the proportion which the length of its lines within the State bears to their entire length. The national statute (July 24, 1866; Rev. Stat. §§ 2563-9) giving telegraph companies the right to run their lines over the public domain, post-roads, etc., is merely permissive, without granting exemption from the ordinary burdens of taxation beyond forbidding

such taxation as would interfere with or impair their efficiency in performing the functions by which they serve the government. Consequently, the tax, though valid, cannot be enforced by an injunction forbidding the operation of the wires until payment: *W. U. Tel. Co. v. Att'y-Gen. Mass.*, S. Ct. U. S., March 10, 1888; 125 U. S. 530.

CONTRACTS.

Real estate broker cannot recover commissions for selling land unless he has procured a contract for the sale of the property which could be enforced between the seller and the party whom the broker has procured: *Pierce v. Truitt*, S. Ct. Penna., February 20, 1888.

Receipts are subject to explanation, unless they contain a contract; such contracts are as binding as any agreement regularly framed: hence, a receipt for a promissory note, specifying that the note was given for the purchase of 379½ shares of stock of a certain corporation, then held by the person signing the receipt and to be delivered on the payment of the note, is a valid conditional sale or agreement for sale on the performance of the condition: *Davison v. Davis*, S. Ct. U. S., March 19, 1888; 125 U. S. 90.

Restraint of trade for a limited period of time, but unlimited as to place, is void, and no action can be maintained on an agreement for the sale of a business in consideration of \$5000 and the covenant in restraint of trade, the parties making no separate valuation of the different elements of the consideration which was therefore entire and inseverable: *Bishop v. Palmer*, S. Jud. Ct. Mass., April 6, 1888.

CORPORATIONS.

Stockholder cannot file a bill in behalf of himself and others who might join, against the corporation and its directors, unless he asks for relief, which has been sought within the corporation and refused, or the bill contains such averments as to satisfy the court that there is a sufficient reason for not applying to the corporation before filing the bill: *Dunphy v. Traveller N. Ass.*, S. Jud. Ct. Mass., April 6, 1888.

Subscription to the stock of a proposed business corporation may be procured by a secret agreement of the promoters with the subscriber, to buy from him within one year his stock at the subscription price: this is not a contract between the subscriber and the corporation; the subscriber is bound to pay for his stock; and, where there is no actual fraud, the promoters may facilitate the formation of their company in this way: *Meyer v. Blair*, Ct. App. N. Y., June 5, 1888.

Foreign corporations may be excluded entirely by State laws, unless in the employ of the National Government, or engaged in a business which is strictly commerce, interstate, or foreign, and consequently may be put upon terms of admission into the State when not so accepted; they are not protected by the Fourteenth Amendment to the Constitution of the United States, which forbids a State to deny to

any person within its jurisdiction, the equal protection of the laws; and the corporations of one State are not such citizens as to be entitled to all the privileges and immunities of citizens in the several States; being artificial and not natural persons: *Pembina C. S. M. & M. Co. v. Penna.*, S. Ct. U. S., March 19, 1888; 125 U. S. 181.

CRIMINAL LAW.

Abduction from one State by the law officers of another will give no jurisdiction to the criminal courts of the latter State, to try and punish the parties so carried away: *State v. Simmons*, S. Ct. Kan., May 4, 1888.

DAMAGES.

Exemplary damages cannot be recovered in a civil action, where the complaint is for wilful removal of soil and destruction of fences: it is not material that the act is not punishable criminally: *Greeley, S. L. & P. R. R. Co. v. Yeager*, S. Ct. Colorado, May 4, 1888.

DIVORCE.

Residence is not *bona fide* obtained, if complainant departed from the State of his residence because dissatisfied with its divorce laws and came into this State, intending only to remain long enough to obtain a divorce and then return: though, if he came intending to remain, the motive for selecting this State would be immaterial: *Colburn v. Colburn*, S. Ct. Mich., June 15, 1888.

EXECUTION.

Homestead is a term to be understood in its popular sense as a house where a family resides, without regard to the architecture, or location in the business part of a town, which would make it more valuable as a store, or the leasing of part of the building for mercantile uses, so long as the house is actually, and not nominally, a residence: *Bebb v. Crowe*, S. Ct. Kan., May 4, 1888.

FIRE INSURANCE.

Application for insurance, falsely filled out by the soliciting agent of the insurers, when he had been truthfully told by the applicant, and knew the condition of the premises from personal examination, is not binding on the applicant, though he had signed it after hearing the truthful part read to him, presuming all his answers had been correctly written down. The soliciting agent's acts in writing down the answers were those of the insurers and not of the applicant, and the stipulation, on the face of the application, that all the statements, answers, and descriptions were the acts of the applicant, were an attempt to create, on paper, an agency in the solicitor for the applicant, which, in fact, did not exist: *Continental Ins. Co. v. Pierce*, S. Ct. Kan., May 4, 1888.

FORMER RECOVERY.

Judgment recovered in New York against a non-resident, served with process, in Massachusetts, is void for want of jurisdiction and not a bar to a subsequent action in Massachusetts, where the defendant resides: *Stone v. Wainwright*, S. Jud. Ct. Mass., June 19, 1888.

HIGHWAYS.

Dedication occurs when a conveyance is made with one boundary on a strip of land "reserved for a street and no other purpose." The grantee or those claiming under him have a right to enter on the strip and prepare it for travel as a street: *Heselton v. Harmon*, S. Jud. Ct. Me., March 15, 1888.

INSOLVENCY.

Property includes a claim which the sovereign has established against an indemnity fund obtained by treaty with a foreign power: hence, where a passenger was captured at sea by the Georgia, and had his personal effects burned, and was afterwards duly allowed a sum as indemnity by the Court of Commissioners of Alabama Claims, this allowance would pass to the claimant's assignee in insolvency: *Goreley v. Butler*, S. Jud. Ct. Mass., May 4, 1888.

JURORS.

Accomplice's testimony, being disbelieved on principle by some men, it is proper in a criminal case, where conviction is likely to depend upon such evidence, to permit the State to ask the juror whether the fact that a witness participated in the crime would cause him to disbelieve the evidence of such witness: *State v. Flint*, S. Ct. Vt., May 29, 1888.

LABOR LAW.

Banners cannot be carried before a factory as a means of deterring men from working there, in pursuance of a scheme to intimidate workmen, at the time of a strike. Where it is a continuous act, an injunction will be granted to stop it: *Sherry v. Perkins*, S. Jud. Ct. Mass., June 19, 1888.

LIBEL.

Petition for removal of a co-receiver, on the ground of embezzlement, cannot be made the subject of a suit for libel, even though its statements were false and malicious: every pleading or other proceeding, in the ordinary course of the administration of justice, is privileged: *Bartlett v. Christhilf*, Ct. App. Md., June 13, 1888.

LIFE INSURANCE.

Application for life insurance, in Pennsylvania, cannot be introduced in evidence in any controversy between the parties to or inter-

ested in the policy, and cannot be considered a part of the policy or contract between the parties, unless a copy is attached to and accompanies the policy. (Act May 11, 1881.) As this act merely affects the formalities, in proving the contract, it is constitutional, as being within the power of the State to regulate the mode of making and proving contracts: *New Era L. Assn. v. Musser*, S. Ct. Penna., May 14, 1888.

Intemperate habits are such as increase the risk without regard to extreme views upon the temperance question, and when alleged, may be shown by conduct towards his family and proof of drinking, established step by step: *U. B. Mutual Aid Soc. v. O'Hara*, S. Ct. Penna., April 30, 1888.

LIQUOR LAWS.

Regulations by law, requiring liquor saloons to remove all screens, etc., which might obstruct the view of the interior during Sundays and other times when saloons must be kept closed, are not repugnant to the constitutional provision against unreasonable searches and seizures: as the Legislature may regulate the traffic, they may make such conditions as will render detection easy: *Robison v. Haug*, S. Ct. Mich., June 22, 1888.

MASTER AND SERVANT.

Owner is liable as master where he interferes with a contractor and a workman of the contractor is injured; and also when the contract provides that the owner's supervising architect shall give final directions on all points: *Faren v. Sellers*, S. Ct. La., December 5, 1887.

MORTGAGE.

Delivery is necessary to create a valid lien, and where the mortgage papers are executed by the mortgagor with a blank for the mortgagee's name, and, in that condition, are delivered to an agent with authority to fill the name of the person who may make the loan, and the name of a real person who does not make the loan, and did not know of the transaction, is inserted, while the papers are handed to the lender, there is no delivery of the mortgage and payment must be postponed until all valid though junior liens are discharged: *Shirley v. Burch et al.*, S. Ct. Oregon, February 15, 1888.

NEGLIGENCE.

Contributory is chargeable to a cabman who, in disobedience to a municipal regulation, placed his cab so as to obstruct the street, and, in consequence, is run into by a fire apparatus, which, by another regulation had the right of way: *Newcomb v. Boston P. D.*, S. Jud. Ct. Mass., May 4, 1888.

PARTNERSHIP.

Community of interest, both in the profits and in the property or stock engaged in a business, makes the parties liable to creditors as partners: Dame v. Kempster, Sup. Jud. Ct. Mass., March 12, 1888.

PUBLIC RECORDS.

Mandamus will lie to enforce the right of any person having a present and existing interest in the information to be obtained from the public records, to make such examination and copies or abstracts from the records as he chooses: Boylan v. Warren, S. Ct. Kan., May 4, 1888.

RAILROADS.

Crossings of highways must generally be constructed by the railroad, in a reasonable manner, with reference to the double use of travellers and of the railroad: Roxbury v. Cent. Vt. R. R. Co., S. Ct. Vt., May 30, 1888.

Earnings of a railroad leased at a percentage of the gross income need not be accumulated by the lessee after paying the current rental and expenses; the lessee is not bound to accumulate a fund to meet possible contingencies in respect to the future rental: St. Louis, A. & T. H. R. R. Co. v. C. C. C. & I. R. R. Co., S. Ct. U. S., April 16, 1883; 125 U. S. 658.

Lights need not be kept burning in a station for the convenience of a passenger who has missed the last train for the night and remains (while the station master is locking up) after having ample time to leave the station: Heinlein v. B. & P. R. R. Co., S. Jud. Ct. Mass., May 7, 1888.

Passenger who refuses to pay his fare, show his ticket, or leave the train, may be forcibly ejected with the assistance of the police, but they are then acting only as special agents of the company until the passenger's conduct becomes disorderly, and they cannot use any excessive violence: Jardin v. Cornell, S. Ct. N. J., June 20, 1888.

Right of way of a railroad in actual operation belongs exclusively to the railroad company, and the owner of the land can neither use the portion included in the right of way himself nor recover for use by a trespasser: St. Onge v. Day, S. Ct. Colorado, May 11, 1888.

Standing between two tracks, where there is danger of being crushed between the cars, in a yard where there are many tracks and trains are constantly being made up, without his duty requiring him to do so, is contributory negligence on the part of an experienced railroad man: Ryall v. C. P. R. R. Co., S. Ct. Cal., June 9, 1888.

Tariffs are subject to legislative control unless protected by their charters, and if improperly limited by law, must be remedied by the

Legislature, and not the courts: *Dow v. Beidelman*, S. Ct. U. S., April 16, 1888; 125 U. S. 680.

RIPARIAN LAW.

Filling out by one of several owners of adjoining land, bordering on a cove, so as to make land extending into the cove, opposite the premises of both, must be governed by the same principles as the making of alluvium by natural causes, and the made land divided accordingly: *Watson v. Horne*, S. Ct. N. H., March 16, 1888.

SET-OFF.

Conversion of personalty cannot be made the subject of a set-off, even though in a suit for the damages the tort might have been waived; the claim is not a "matter arising out of debt, duty, or contract" (Rev. Stat. 1881, § 348): *Richey v. Bly*, S. Ct. Ind., June 15, 1888.

U. S. COURTS.

Jurisdiction of the U. S. Circuit Court attaches to a controversy turning upon the validity of a land patent from the United States without allegation of the citizenship of either party: *Doolan v. Carr*, S. Ct. U. S. Nov. 21, 1887; 125 U. S. 618.

Jurisdiction, in case of an injunction bill filed in the U. S. Circuit Court against an ejection judgment in the same court, is ancillary, and an averment of citizenship is not necessary: *Johnson v. Christian*, S. Ct. U. S., May 14, 1888; 125 U. S. 642.

Residence of either plaintiff or defendant is the jurisdiction in which suits may be brought under act of March 3, 1887, when founded on only the citizenship of the parties: *Bank of Winona v. Avery et al.*, U. S. Dist. Ct. N. Dist. Miss., Feb'y 10, 1888.

WITNESS.

Privilege of a witness exempts him from liability for false and malicious, defamatory words, uttered in a judicial proceeding: *Hunckel v. Voneiff*, Ct. App. Md., June 13, 1888.

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