ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

INTERSTATE COMMERCE COMMISSION.[2]
UNITED STATES CIRCUIT COURT, DISTRICT OF COLORADO.[3]
UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF MICHIGAN.[3]
UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK.[3]
UNITED STATES DISTRICT COURT, DISTRICT OF OREGON.[3]
UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA.[3]
SUPREME COURT OF CALIFORNIA.[4]
COURT OF ERRORS AND APPEALS OF DELAWARE.[5]
SUPREME COURT, DISTRICT OF COLUMBIA.[6]
SUPREME COURT OF ILLINOIS.[7]
SUPREME COURT OF INDIANA.[8]
SUPREME COURT OF KANSAS.[9]
SUPREME JUDICIAL COURT OF MAINE.[10]
COURT OF APPEALS OF MARYLAND.[11]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[12]
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AGENTS.

Parol authority to sell will not authorize the agent to sign a written contract for the sale of land in behalf of his principal; but the principal may, by parol only, authorize his agent to sign such written contract; in either case, the purchaser is bound to ascertain the extent of the agent's authority: *Milne* v. *Kleb*, Ct. Chan. N. J., July 5, 1888.

ATTORNEY-AT-LAW.

Lien of counsel, for compensation, for recovery of land obtained by successfully contesting a will, is superior to that of the judgment creditors of the heir; the services of counsel created the fund and in good conscience should be protected: *Justice* v. *Justice*, S. Ct. Ind., April 10, 1888.

BANKS.

Taxation of shares of stock of national banks cannot be increased by a board of equalization raising the assessment to 65 per cent.,

[1] To appear in 127 U. S. Rep.
[2] To appear in 2 I. S. Com. Rep.
[3] To appear in 35 Fed. Rep.
[4] To appear in 74 or 75 Cal. Rep.
[5] To appear in 6 or 7 Hous. Del.
[6] To appear in 6 or 7 Mack.
[7] To appear in 123 or 124 Ill. Rep.
[8] To appear in 114 or 115 Ind. Rep.
[9] To appear in 39 or 40 Kan. Rep.
[10] To appear in 80 or 81 Me. Rep.
[11] To appear in 68 or 69 Md. Rep.
[12] To appear in 145 or 146 Mass. Rep.
[13] To appear in 44 or 45 N. J. Eq. Rep.
[14] To appear in 110 or 111 N. Y. Rep.
[15] To appear in 45 or 46 Ohio Rep.
[16] To appear in 16 Ore. Rep.
[17] To appear in 119 or 120 Pa. State.
[18] To appear in 16 R. I. Rep.
[19] To appear in 28 S. C. Rep.

whilst other personal property is assessed at 60 per cent., although it may be that the increase equalizes the taxes on all personal property; § 5219 Rev. Stat. U. S. only allows equalization between the capital stock of all incorporated banks in the State: *Whitbeck* v. *Mercantile Nat. Bank*, S. Ct. U. S., April 23, 1888, 127 U. S. 193.

Bills and Notes.

Credit on the plaintiff's books and in statements of account rendered a debtor, of a promissory note made by a third person, does not raise a presumption that the note was taken in absolute payment, any more than giving a receipt in full, which clearly does not raise such a presumption: *Cheltenham S. & G. Co.* v. *Gates Iron Co.*, S. Ct. Ill., May 9, 1888.

Negotiability of a note is destroyed by a stipulation contained in it for the payment of all counsel fees and expenses in collecting, or giving power to declare the note due before its maturity if the payee deems the note insecure, or promising to pay the face of the note with exchange added: *Savings Bank* v. *Strother*, 28 S. C. 504.

Presentation is not made in time where a bank receives a draft payable at another bank in the same city, but about three miles distant, and does nothing until the next day, when it mails the draft and receives in reply a notice of the bank's suspension: it also appeared that on the day of the receipt of the draft and also the next day, there were funds to pay the draft in the hands of the bank which failed on the day it received the draft: this was negligence for which the collecting bank was liable: *Harvey* v. *Girard Natl. Bk.*, S. Ct. Penna., March 19, 1888, 119 Penna. St. 212.

Charity.

Trust created by a devise of the residuary estate to a named person, "to be disposed of, for such charitable purposes as he shall think proper," is valid, and when the trustee dies before appointing the beneficiaries, a Court of Chancery will formulate a scheme for its distribution: *Minot* v. *Baker*, Sup. Jud. Ct. Mass., July 10, 1888.

Common Carriers.

See, also, Railroads.

Steamship, when lying at her dock loading with freight, is not open to the public from the fact that she is also a passenger steamer: hence, there can be no recovery by one who enters unobserved and in passing a hatchway is accidentally injured: *Metcalfe* v. *Cunard S. Co.*, S. Jud. Ct. Mass., May 4, 1888.

Copyright.

Assignee of a copyright is bound by the representation of the assignor when originally publishing, that the edition was limited and that there would be no reprint; the copyright continues available for protection, though stripped of its value as property: *Petition of Rider*, S. Ct. R. Isl., July 7, 1888.

Corporations.

Director may purchase the property of his corporation at a foreclosure sale, made in good faith, at which he was the highest bidder: *Saltmarsh* v. *Spaulding*, S. Jud. Ct. Mass., June 19, 1888.

Subscription, made by signing a paper, containing an agreement to form a corporation with a capital of $40,000 in shares of $100 each, each signer to take the number set opposite his name, is not binding unless all the capital is subscribed for or the subscriber waives this condition; taking part in conversations before the organization of the company is not such a waiver: *Rockland, Mt. D. & S. S. Co.* v. *Sewall*, S. Jud. Ct. Me., June 12, 1888.

Trust is not created to the extent of relieving from personal responsibility or of depriving of individual interest in a contract, where the officers of a railroad company, for the purpose of acquiring terminal facilities and with the expectation of being reimbursed for their outlay, enter into an agreement with other individuals to form a corporation for the purchase of such terminals: *King* v. *Barnes*, Ct. App. N. Y., April 10, 1888.

Criminal Law.

Infant, six weeks old, cannot be offered in evidence and viewed by the jury, in a bastardy process, to prove paternity: such evidence is too vague, uncertain, and fanciful. *Clark* v. *Bradstreet*, S. Jud. Ct. Me., July 2, 1888.

Damages.

Conversion of shares of stock, made under an honest mistake, entitles the owner of the stock to recover the highest market price reached by the stock, within a reasonable time after acquiring knowledge of the conversion; the owner must make the loss as light as possible, in case of good faith, and the Court will decide, where the facts are undisputed and not the foundation for different inferences, when the owner has had time to go on the market and buy other shares: *Wright* v. *Bank of the Metropolis*, Ct. App. N. Y., October, 1888.

Deeds.

Description of land in a deed of conveyance was by metes and bounds and also a reference to a map shown to be so inaccurate as to prevent a surveyor from laying off the land conveyed; the reference to the map should be treated as surplusage, and parol evidence of the true location be admitted to identify the metes and bounds: *Cleveland* v. *Choate et al.*, S. Ct. Cal., June 29, 1888.

Equity.

Mutual mistake in the sale of a promissory note, as to the solvency of the maker of the note, is not such a mutual error as will permit the recission of the contract; the mistake related only to the value

or quality of the note and not to its existence or identity: *Hecht* v. *Batcheller et al.*, S. Jud. Ct. Mass., June 23, 1888.

Insurance.

Foreign insurance companies may be taxed for the privilege of doing business in a State, under a retaliatory statute, fixing the same as that charged by the home government of the insurance company to insurance companies of this State: as the charge is a license fee, it is not within the constitutional provision in relation to equality of taxation: *State, ex rel.* v. *Ins. Co. North America*, S. Ct. Ind., June 20, 1888.

Interstate Commerce Law.

Classification sheets of freight are issued for the public information and are intended to be expressed in such plain terms that an ordinary business man can understand the classification, and determine, in connection with the rate sheets, the charges for transportation; the authority preparing the classification sheet must leave them speak for themselves, and terms of art, etc., must be construed as understood in their particular trades, and not as construed by the railroad authorities: *Hurlburt* v. *Lake Shore, etc. R. Co.*, The Commission, July 20, 1888, 2 I. S. Com. Rep. 82.

Franchises conferred by Congress upon railroads across the States and Territories of the Union, are valid, under the power to regulate commerce, and cannot be taxed by the States, without permission of Congress: *California* v. *Central P. R. R. Co.*, S. Ct. U. S., April 30, 1888, 127 U. S. 1.

Oil should be carried by the hundred pounds and not by the barrel, and at the same price for the same weight, in carload lots, without distinction between tank cars and stock cars loaded with barrelled oil: *Scofield* v. *L. S. & M. S. R. R. Co.*, The Commission, July 19, 1888, 2 I. S. Com. Rep. 67.

Traffic originating in the State of New Jersey and intended for the city of New York, but delivered at Jersey City, to which point the freight is paid, and not to New York City, is not interstate traffic and not within the Act: *New Jersey Fruit Exchange* v. *Central R. R. Co. of N. J.*, The Commission, July 23, 1888, Id. 84.

Through and continuous lines, operated by companies under one control or ownership, must make reasonable through rates, without regard to the portions of the through rates credited to the different companies, though such portions will be examined in determining the reasonableness of the through rate: *Brady et al.* v. *Penna. R. R. Co. et al.*, The Commission, July 23, 1888, Id. 78.

Land.

Refusal to convey according to contract, and taking the rents and profits until the decree to convey, will prevent the allowance of interest

on the purchase-money, although the rents were less in amount: *Crocket et al.* v. *Gray*, S. Ct. Kansas, July 7, 1888.

Life Insurance.

Accident policy which did not extend to any bodily injury of which there should be no external and visible sign upon the body of the assured, means any injury not fatal: the dead body, in fatal cases, is external and visible sign enough that an injury was received: *McGlinchey et al.* v. *Fidelity and Casualty Co.*, S. Jud. Ct. Me., March 8, 1888.

Policy of life insurance in favor of a wife or her legal representatives, was fully paid up in 1871, and remaining in full force was transferred by the wife as collateral security for a debt of husband, such assignment, with the concurrence of her husband, is binding upon the wife after her husband's death: *Ford* v. *Travellers' Ins. Co.*, S. Ct. Dist. Columbia, May 14, 1888.

Mortgage.

Parol evidence is admissible to convert a deed, absolute on its face, into a mortgage; the testimony must be clear, unequivocal, and convincing: *Walker, admrx.* v. *Farmers' Bank*, Ct. Err. & App. Del., June 21, 1888.

Mining Law.

Support for the surface is an absolute right in Pennsylvania not to be taken away by implication; hence a conveyance of underlying coal by one who owns both the minerals and the surface, does not waive the right to support, by containing a proviso that the grantee of the mineral right shall do as little damage to the surface as possible: *Williams* v. *Hay*, S. Ct. Penna., May 21, 1888.

Partnership.

Chattel mortgage may be made by a partner of all the firm assets to secure a firm debt, without the assent of his partner, if done in good faith: *Hembree et al.* v. *Blackburn et al.*, S. Ct. Oregon, March 19, 1888.

Patents.

Celluloid patent is not defeated by the fact that experiments with the whole list of essential oils would have revealed the cheapness of fusel oil as a solvent of camphor in conjunction with nitro-cellulose; the use of the more expensive menstruum, alcohol, for many years is inconsistent with a mere exercise of judgment in selecting the substitute: *Celluloid M'f'g Co.* v. *American Zylonite Co. et al.*, U. S. Circ. Ct. S. Dist. N. Y., April 18, 1888.

Practice.

Non-resident may be served with a summons in another suit, while attending Court in the prosecution of the former suit: *Baldwin* v. *Emerson*, S. Ct. R. Isl., July 14, 1888.

Railroads.

Contributory negligence cannot be charged against one who is killed by a railroad train, while riding in a private team by the invitation of the driver; the doctrine of *Thorogood* v. *Bryan*, 8 C. B. 115 denied: *State* v. *Boston & M. R. R. Co.*, S. Jud. Ct. Me., June 19, 1888. (So, *ante*, p. 117, *Noyes* v. *Town of Boscawen*, and note.)

Driving in front of a locomotive which is standing on a part of a street crossing and making the usual noises, when the next street crossing is clear, is contributory negligence: *Union P. R. R. Co.* v. *Hutchinson*, S. Ct. Kan., June 9, 1888.

Invitation to a passenger, by a person in the known uniform of the railroad company, to enter a train stopped away from a station, is sufficient to rebut a presumption of negligence from not entering at the station: *B. & O. R. R. Co.* v. *Kane*, Ct. App. Md., April 12, 1888.

Locomotive engineers are fellow-servants, and the company is not liable to one for personal injuries resulting from the negligence of another: *Van Avery* v. *U. P. R. R. Co.*, U. S. Circ. Ct. Dist. Colorado, May 7, 1888, 35 Fed. Rep. 40.

To stop, look, and listen is not necessary at the crossing of a constantly travelled street in a populous city by a railroad upon which numerous trains are constantly passing and repassing, and where the railroad company maintains gates and flagmen: if the gates are open, this is an invitation to cross, and as the gates are liable to be closed at any moment, to cross promptly, even with horses at a trot: *C. C. C. & I. R. R. Co.* v. *Schneider*, S. Ct. Ohio, May 1, 1888.

Set Off.

Equitable set off may be invoked as a complete defence, where a firm of brokers file a bill against railroad mortgage trustees for an accounting, on averments of having advanced money on the security of the bonds, for the only purpose of finishing and equipping the road, which was not done by the trustees; the trustees could show in defence that the brokers were the agents of the railroad company for the negotiation of this mortgage loan, that they had negotiated the bonds secured by this mortgage, but did not communicate this fact to the company, and afterwards advanced less than the proceeds on the security of these bonds, which the brokers had bought back on their own account, but had led the company to believe had been repurchased for the company's account to sustain the loan; the defence establishes a larger sum due from the brokers than that which was advanced: *Bischoffsheim* v. *Brown*, U. S. Circ. Ct. S. D. N. Y., March 19, 1888.

Shipping.

Contributory negligence is not a bar to a suit in the admiralty for damages arising from personal injury; the fault of the seaman must not be overlooked and may deprive him of general damages, but under the circumstances of each case, partial or special compensation will be allowed; hence, when a mate was coaling a tug in the usual way with a barrow which was liable to make him lose his balance and fall from the gang plank, and this occurred with the result of a fracture of his leg, the injured man was awarded his wages for the time he was in the Marine Hospital, being gratuitously treated: *Olson* v. *Flavel*, U. S. Dist. Ct. Oregon, March 31, 1888.

Maritime lien for supplies furnished to a vessel at her home port, cannot be implied, as such supplies are presumed to be furnished on the credit of the owner in the absence of a contract for an express lien: *Mayo et al.* v. *The Chelmsford*, U. S. Dist. Ct. E. D. Penna., February 27, 1888.

Trademark.

Accounting will be refused, in an equity suit for an infringement of a trademark, where there is no fraud and the trade generally have used the trademark for nearly four years: *Low et al.* v. *Fels*, U. S. Circ. Ct. E. D. Penna., April 20, 1888.

Telegraphs.

Printed agreement on a night message blank, "that the sender will agree that he will not claim damages for errors or delays, or for non-delivery of such messages, happening from any cause, beyond a sum equal to ten times the amount paid for transmission," is void, as against public policy: *Fowler et al.* v. *West. U. T. Co.*, S. Jud. Ct. Me., June 6, 1888.

Fire, at a repeating station, caused by atmospheric conditions, short circuiting the currents on the switch-board, being impossible to prevent, is a sufficient excuse for the non-delivery of a message; here, the operating-room was destroyed before anything could be rescued, and the message was never delivered, but no recovery could be had against the company: Id.

Trusts.

Mortgagor styled in the bond and mortgage as "trustee," and signing with that addition to his name, is, nevertheless, personally responsible for a deficiency on a sale of the mortgaged premises, unless there are facts which show a waiver of the mortgagee's right: *McDowall* v. *Reid*, 28 S. C. 466.

Power of appointment over an estate, real and personal, in remainder, given by a testatrix, domiciled in South Carolina, to be exercised by her daughter's will, "duly executed," can only be exercised by a will executed according to the requirements of the South Carolina

law; the daughter's will being executed according to the laws of another State, where she was domiciled, and duly admitted to probate, and an exemplification filed in South Carolina, was not a valid exercise of the power unless the laws of the daughter's domicile and those of South Carolina were alike in their requirements for due execution of a will: *Blount* v. *Walker*, 28 S. C. 545.

Turnpikes.

Toll-gate keeper may close the gate to prevent a threatened passage of the gate, without paying toll, by a team lashed by its driver, unless the rapidly approaching team is so near as to render the closing of the gate a reckless disregard for the safety of the parties trying to evade payment of the toll: *Brannen* v. *K. G. & J. G. R. Co.*, S. Ct. Ind., May 29, 1888.

U. S. Courts.

Claims against the United States, over which the U. S. Circuit Courts are given jurisdiction by Act of 1887 (24 Stat. 505), include claims by a purchaser of timber lands, under Act of 1878 (20 Stat. 89), or his assignee, to have a patent issued for the same: *James* v. *United States*, U. S. Circ. Ct. Dist. Oreg., July 16, 1888, 35 Fed. Rep. 561.

Non-resident alien has the personal privilege, under § 1, Act of March, 1887, to plead in abatement in an original, or move to remand on a removal, that he is not a resident of the district where the civil action has been brought; but his opponent may not use this objection to procure a remand to the State Court after the alien has removed the case; residence is not a jurisdictional fact: *Cooley* v. *McArthur et al.*, U. S. Circ. Ct. E. Dist. Mich., July 2, 1888.

Removal papers of an action from a State Court, on the ground of citizenship, must show the ground of jurisdiction in the Circuit Court, as there is no precedent known which would authorize the showing, after removal, of grounds for jurisdiction not presented to the State Court: *Cameron* v. *Hodges*, S. Ct. U. S., April 30, 1888, 127 U. S. 322.

Writing.

Printing is writing in the legal sense of the term, and an instrument whose words are printed, either wholly or in part, is equally valid with a paper written with a pen: *In re Benson*, U. S. Circ. Ct. S. Dist. N. Y., April 9, 1888.

Signature by impression from a stamp is valid at common law: Id.

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