

tract where, because of the general character of the offer, there can be no implied previous request to any definite person, and where want of knowledge by the plaintiff of the proposal excludes the idea of assent, the *vinculum juris* which alone can bind the minds of the contracting parties.

In most of the cases cited, the action was upon an offer where the proposer had no pecuniary interest in the performance of the condition, but in *Howland v. Lounds, supra*, the suit was on an offer of a reward by public advertisement by the owner for the return of

stolen property. The same principle was properly applied. *Hayden v. Souger, supra*, was a case where a wounded man offered a reward and was compelled to pay it to the parties who heard of it and fulfilled its terms. No recovery can be had upon the ground of a contract where there is no assent, nor independent of contract, where the defendant could not reject the services without repudiating his property.

SHERREED DEPUE.

Newark, N. J.

ABSTRACTS OF RECENT DECISIONS.

ACCIDENT INSURANCE.

No recovery can be had on policy which excepts liability if the death "may have been caused by intentional injuries inflicted by the insured or any other person," where the insured was shot and killed by a third person, though without provocation and while peaceably and lawfully engaged in his ordinary business: *Fischer v. Travelers' Ins. Co.*, S. Ct. Cal., Oct. 23, 1888.

ADMIRALTY.

Claim barred at law by the statute of limitations is barred in admiralty, by analogy, on the ground of laches: *Southard v. Brady*, U. S. C. Ct. S. D. N. Y., Oct. 15, 1888.

English law governs a proceeding *in rem* by a seaman for personal injuries received on board an English vessel while within English waters, though the seaman is a naturalized American citizen: *Roberts v. Egyptian Monarch*, U. S. D. Ct. D. N. J., Nov. 17, 1888.

AGENCY.

Ship's husband cannot, without express authority from owners, render them liable for money borrowed on the vessel's account, nor can the owners be held to have impliedly ratified such unauthorized borrowing from the mere fact that they received benefits therefrom in repairs made upon the vessel: *Arey v. Hall*, S. Jud. Ct. Me., Dec. 8, 1888.

ARBITRATION.

Boundary line was settled by award of arbitrators, but one of the parties subsequently entered upon the disputed land and erected a fence

several rods beyond the line designated in the award; this action did not constitute such a breach of the agreement, "to abide by and perform the award," as would sustain an action for the penalty stipulated in such agreement: *Weeks v. Trask*, S. Jud. Ct. Me., Dec. 27, 1888.

Fraud in the decision of an arbiter may be set up in a suit on the contract in avoidance of his decision, even though it does not appear that the party who would derive benefit from the fraud has colluded: *Chism v. Shipper*, S. Ct. N. J., Dec. 10, 1888.

ATTORNEY-AT-LAW.

Admission to practice is a judicial, not a ministerial act, and the Legislature has no power to control a Court in its exercise: *In re Splane*, S. Ct. Pa., Jan. 21, 1889.

Lien of attorney upon the funds, documents and securities of his client, which come into his hands professionally, for the general balance due him from his client, is merely a right to hold and retain until he is satisfied, and is not such a lien as can be enforced by a judicial proceeding: *Woods v. Dickinson*, S. Ct. D. C., Jan. 1889.

Lien of solicitor, who, at the request of his client, for whom he has filed a bill to redeem a mortgage owned by her and pledged for a debt, pays the amount fixed by the decree as necessary to redeem, gets possession of the mortgage and takes an assignment as security for the amount advanced by him and his costs, is superior to the rights of a third party having a prior assignment of the mortgage: *Osborne v. Dunham*, Ct. Ch. N. J., Dec. 26, 1888.

BANKS AND BANKING.

Directors of national bank are not liable for acts done in violation of the banking laws by an officer, whom they have every reason to believe is competent and honest, without their participation, knowledge or connivance: *Clews v. Bardon*, U. S. C. Ct. E. D. Wis., Nov. 22, 1888.

Forged mortgage was given as security for a loan, which was paid by a check drawn to order of the supposed borrower; the person procuring the loan also forged the indorsement of the payee of the check, added his own indorsement and collected the money from the bank; the bank was not protected by payment, though the last indorsement was genuine: *Atlanta Nat. Bank v. Burke*, S. Ct. Ga., Oct. 8, 1888.

Pledgee of stock of national bank, who does not appear by the books of the bank, or otherwise, to be the owner, is not liable as a shareholder to an assessment upon the shares, on the insolvency of the bank: *Welles v. Larrabee*, U. S. C. Ct. N. D. Iowa, Dec. 11, 1888.

Purchase of bank stock, levied upon and sold under execution against the former owner, who had transferred the shares on the books as collateral security for his debt due and unpaid at the date of the levy, and greater than the market value of the stock at the time, does not render the purchaser liable for the unpaid subscription to the stock, as the sale passes no title: *Simmons v. Hill*, S. Ct. Mo., Dec. 20, 1888.

BILLS AND NOTES.

Condition of giving a promissory note, made in contemplation of a proposed transaction, was that it was to be valid only when the transaction had been approved by a certain attorney; upon the attorney's advising the maker to have nothing to do with the transaction, the note became void: *Ware v. Allen*, S. Ct. U. S., Dec. 17, 1888.

Holder for value is constituted where one takes a promissory note in part satisfaction of an existing debt and in consideration thereof releases valuable liens: *Fitzgerald v. Barker*, S. Ct. Mo., Dec. 20, 1888.

CHATTEL MORTGAGE.

Good-will of a newspaper company, included in a mortgage of its "machinery, type, presses, cases, furniture, paper, forms and tools," cannot be sold under foreclosure proceedings, after all the tangible property covered by the mortgage has been alienated, worn out or destroyed, and the company has become consolidated with another newspaper corporation: *Metropolitan Nat. Bk. v. St. Louis Dispatch Co.*, U. S. C. Ct. E. D. Mo., Nov. 21, 1888.

Lease of piano, valued at a fixed sum, with an agreement for monthly payments thereon, provided that, if the lessee should default in the stipulated payments, the piano should be returned, or interest paid on the deferred instalments, at the lessor's option, that the instrument should not be removed from the premises, and that no agreement of sale should be implied and no sale be valid without the lessor's receipt; the transaction was a conditional sale and not a chattel mortgage: *Gerow v. Castello*, S. Ct. Col., Oct. 26, 1888.

CITIZENSHIP.

Birth in the United States from Chinese parents residing therein, and not engaged in any diplomatic or official capacity under the government of China or other foreign power, makes the child a citizen of the United States, and he is not subject to the provisions of the Chinese restriction and exclusion acts of 1882, 1884 and 1886: *In re Wy Shing*; *In re Wong Gau*, U. S. C. Ct. N. D. Cal., Nov. 8, 1888; *In re Yung Sing Hee*, U. S. C. Ct. D. Or., Oct. 10, 1888.

CONSTITUTIONAL LAW.

Chinese Exclusion Act of Oct. 1, 1888, is not unconstitutional, either as a law divesting rights vested under the several treaties between the United States and China and the prior restriction acts, or

as an *ex post facto* law: *In re Chae Chan Ping*, U. S. C. Ct. N. D. Cal., Oct. 15, 1888.

Fourteenth Amendment to the Constitution of the United States, providing that no State shall "deprive any person of life, liberty or property without due process of law," is violated by a municipal ordinance, authorized by State statute, which appropriates land for a public street and requires the remaining land of the owners to be assessed for the entire costs and expenses, without requiring compensation to be first made to the owners for the land so taken: *Scott v. City of Toledo*, U. S. C. Ct. N. D. Ohio, Sept. 28, 1888.

Imposition of punitive damages upon railway companies, by State statute, for the failure to pay within thirty days for stock killed by reason of the company's neglect to fence its track, is not a denial of the equal protection of the law, nor a deprivation of property without due process of law, within the meaning of the Fourteenth Amendment: *Minneapolis & St. L. Ry. Co. v. Beckwith*, S. Ct. U. S., Jan. 7, 1889.

CONTEMPT.

Commitment without notice, and without giving the offender an opportunity to be heard, may be made, where a contempt has been committed in the presence of the Court: *In re Terry*, S. Ct. U. S., Nov. 12, 1888.

CONTRACT.

Entire contract, such that the contractor cannot recover upon a *quantum meruit* for a part of the work done, the balance being defective, does not result from an agreement to build a cement sidewalk, "to be not less than 10 feet wide and — feet long:" *Katz v. Bedford*, S. Ct. Cal., Nov. 1, 1888.

COPYRIGHT.

Official reporter, under authority of a State statute, reported and prepared for publication the decisions of the Supreme Court of the State, receiving from the State a stated compensation and securing a copyright for the State upon each volume, as published; such copyright did not protect the *syllabi*, statements of cases and opinions, which were the work of the judges: *Banks v. Manchester*, S. Ct. U. S., Nov. 19, 1888.

State is not a citizen within the meaning of the copyright law: *Id.*

CORPORATIONS.

Payment of interest on bonds of a corporation cannot be refused on the ground that forgeries of the bonds, so executed as not to be distinguishable from the genuine, are in circulation, and that all the bondholders, except the claimant, have accepted new bonds so prepared as to prevent the possibility of fraud or loss, but that the claimant has not accepted the same: *Wood v. Consolidated Electric Light Co.*, U. S. C. Ct. S. D. N. Y., Nov. 8, 1888.

CRIMINAL LAW.

Conspiracy is a crime triable by jury at common law and cannot be tried summarily by a police court, even though a jury trial can be had by appealing; such procedure is forbidden in the District of Columbia by Art. III. Const. U. S.: *Callan v. Wilson*, S. Ct. U. S., May 14, 1888.

DAMAGES.

Spreading of embankment, caused by the original filling sinking in marshy ground, and material being deposited on top to preserve the grade, is a damage not contemplated in the original grant of a right of way, and an action may be brought for any injury done to the adjoining land. *Roushlange v. C. & Alt. R. R. Co.*, S. Ct. Ind., May 29, 1888.

DEED.

Irrigating ditch and water-right were necessary to the use and enjoyment of premises conveyed by a deed, granting the land with its "appurtenances;" the grantor's interest in such ditch and water-right passed by the deed: *Tucker v. Jones*, S. Ct. Mont., Sept. 15, 1888.

EXEMPTION.

Homestead right will be allotted entirely out of the husband's interest, as against his debt, although the homestead property is owned jointly by husband and wife: *Johnson v. Kessler*, Ct. App. Ky., Oct. 9, 1888.

FIRE INSURANCE.

Limitation of suit to twelve months after loss, where the last day of the twelve months falls upon Sunday, does not bar an action commenced on the Monday following: *Owen v. Howard Ins. Co.*, Ct. App. Ky., Dec. 4, 1888.

INTERSTATE COMMERCE LAW.

Discrimination in passenger fares is not established by proof of the issuance of pass to a person who is assumed not to be entitled to a pass, when it is also proved that the pass was not used and had expired by its terms: *Griffee v. B. & M. R. R. Co.*, The Commission, Oct. 8, 1888.

Jurisdiction of the United States Courts, over actions brought for violations of this law, is not dependent upon the fact of diverse citizenship, and under the Act of 1887 exists only in the Courts of the District in which a corporation defendant has been incorporated and has its chief office: *Connor v. V. & M. R. R. Co.*, U. S. C. Ct. E. Dist. Mo., Oct. 5, 1888.

Jurisdiction of the Commission extends to commerce between points in the same State, passing, in transit, through another State;

this is interstate commerce and subject to regulation under the provisions of the Act: *N. O. Cotton Exchange v. C. N. O. & T. P. R. R. Co.*, The Commission, November 26, 1888.

Rates which are just and reasonable from selected manufacturing points through the entire territory east of the Missouri River and west of the Atlantic seaboard, are *prima facie* just and reasonable from all other points in the same territory: *Re Tariffs of the Transcontinental Lines*, The Commission, Oct. 24, 1888.

JURISDICTION.

Federal Court has jurisdiction, where the parties are citizens of different States, to entertain a bill in equity to vacate an order of sale of real estate made by a State Probate Court and the proceedings thereon, upon the ground of fraud and collusion with the purchaser on the part of the guardian who made the sale: *Arrowsmith v. Gleason*, S. Ct. U. S., Jan. 14, 1889.

State Courts have jurisdiction to enjoin the removal and destruction of anchors, moorings, and buoys appurtenant to a wharf on navigable waters: *Crescent City Wharf & Lighter Co. v. Simpson*, S. Ct. Cal., Oct. 26, 1888.

State Courts have exclusive jurisdiction over an action between residents of the same State on a contract to pay royalties for the use of a patented invention: *Hubbard v. Palmer's Admr.*, S. Ct. Pa., Jan. 7, 1889.

State Legislature may authorize the building of a bridge or other structure, tending to obstruct the navigation of a navigable river altogether within its own border, provided Congress does not interfere: *G. & B. R. Nav. Co. v. C. O. & S. W. R. R. Co.*, Ct. App. Ky., Dec. 11, 1888.

LANDLORD AND TENANT.

Building with defective walls was leased to a tenant who had full opportunity to observe and ascertain its condition, which was clearly apparent, there being no express warranty, nor any fraud or misrepresentation; the landlord was not liable to the tenant for damages caused by the falling of the walls: *Davidson v. Fisher*, S. Ct. Col., Nov. 16, 1888.

LIBEL AND SLANDER.

Communication to wife by husband of slanderous words in regard to a woman is a publication: *Sesler v. Montgomery*, S. Ct. Cal., Dec. 3, 1888.

Publications of mercantile agencies, informing their subscribers generally, and not simply in confidence to one interested therein, as to the pecuniary standing of merchants, are not privileged communications: *Bradstreet Co. v. Gill*, S. Ct. Tex., Nov. 27, 1888.

LIFE INSURANCE.

Mutual Company, organized on assessment plan, issued policies or certificates of membership, agreeing, in case of death, to make an assessment upon members in good standing within ninety days from date of proof of death of insured and to pay the sum collected, less ten per cent., to the beneficiary named in the certificate, provided that such payment should not exceed \$5000; where at the date of death there were policies or certificates in force upon which, had the assessments been made and collected as stipulated, the full amount named in the certificate could have been realized, but where no assessments were made within the time provided for, the beneficiary named in the policy was entitled to a judgment against the company for the maximum amount named in the certificate: *Kaw Valley Life Asso. v. Lamke*, S. Ct. Kan., Oct. 6, 1888.

LIMITATION.

Inclosure of land is not necessary to constitute such adverse possession as will ripen into title; there are other ways of holding possession of land besides inclosing it by a fence: *Beecher v. Galvin*, S. Ct. Mich., Oct. 5, 1888.

Res adjudicata by decree in another action may be introduced into a depending cause as conclusive evidence of amount to be decreed; having arisen after the institution of the latter proceeding, it is properly new matter, to be set up by a supplemental bill, but it is not a new cause of action, and the statute of limitations cannot apply: *Jenkins v. International Bank*, S. Ct. U. S., May 14, 1888.

LIQUOR LAWS.

Sale of liquor within three miles of church, when prohibited by statute, does not cover a contract to sell, made within the prohibited distance and accompanied by payment, when the liquor sold was actually more than three miles from the church, in the stock of the vendor, who was a licensed dealer, and was to be delivered by express to the vendee, at the latter's charges: *Herron v. State*, S. Ct. Ark., Dec. 15, 1888.

MARRIED WOMEN.

Conduct in pais may operate to estop a married woman in a controversy relating to her real estate, notwithstanding her coverture and the fact that no fraud is shown: *Galbraith v. Lunsford*, S. Ct. Tenn., Oct. 18, 1888.

MORTGAGE.

Agreement to reconvey on payment of a stated sum within one year was made contemporaneously with a conveyance of land, such agreement being signed by the vendees only and no agreement being made by the vendor, nor any loan being referred to; two days afterwards the vendees leased the land to the vendor for one year at a stated

rental; the transaction did not constitute a mortgage: *Gassert v. Bogk*, S. Ct. Mont., Sept. 15, 1888.

NEGLIGENCE.

Contributory negligence on the part of the driver of a vehicle will not be imputed to one who rides on the highway in such vehicle by invitation, neither exercising nor assuming any control over its movements, and who is injured by an accident occasioned by a defect in the highway: *Nesbit v. Town of Garner*, S. Ct. Iowa, Oct. 3, 1888.

Employé of corporation, having full control of the latter's timber-yard, and who employs and discharges men, is to be regarded as a vice-principal, and the person upon whom the care and management of the yard devolve in his absence is to be regarded as a temporary vice-principal; consequently, the negligence of the latter, causing injury to the yard-employé, is not the negligence of a fellow-employé: *Baldwin v. St. Louis, K. and N. W. Ry. Co.*, S. Ct. Iowa, Oct. 2, 1888.

NUISANCE.

Proposed cemetery near residences which have been occupied for years, when it appears that the cemetery will be upon higher ground than the residences, and that the drainage therefrom will poison the wells and the odors injuriously affect the health of the neighborhood, will be enjoined as a nuisance: *Jung v. Neraz*, S. Ct. Tex., Oct. 16, 1888.

PATENTS.

Bill to cancel a patent obtained through fraud may be maintained by the United States: *U. S. v. American Bell Tel. Co.*, S. Ct. U. S., Nov. 12, 1888.

PRINCIPAL AND SURETY.

Surety on guardian's bond took a mortgage on the guardian's land as indemnity; the ward lived with his guardian from childhood, was ignorant, dissipated, and of weak mind, and was not aware of the suretyship; on his reaching his majority, his guardian fraudulently obtained his signature to a full receipt and release, by means whereof the guardian secured a final discharge from the Court, although he had never paid his ward a dollar; the guardian then procured from the surety a release of his mortgage, the latter looking only to the Court record, and making no inquiry of the ward; under these circumstances the ward was not estopped from asserting the surety's liability on his bond: *Gillette v. Wiley*, S. Ct. Ill., July 18, 1888.

PUBLIC OFFICES.

Sureties on bond of clerk of Court for his second term are not released from liability for a defalcation occurring after the approval of their bond, by the failure of the board of supervisors, as directed by

the Iowa Code, to require the clerk to produce and account for the public funds in his hands before entering upon his second term, nor by the false representation by the supervisors that their duty in this respect had been performed: *Palmer v. Woods*, S. Ct. Iowa, Oct. 8, 1888.

RAILROADS.

Intoxication does not excuse want of ordinary care and prudence on the part of a passenger, and a railroad company is not bound to exercise a higher degree of care towards a person partially intoxicated than is required in the case of persons not intoxicated: *Miss. Pac. Ry. Co. v. Evans*, S. Ct. Tex., Oct. 12, 1888.

SALE.

Delivery of grain to elevator owner under a contract that the latter could return the same on paying the highest market price therefor, and, if he refused to do so, the grain might be withdrawn upon payment for the weighing, but not the storage, the grain being mixed with other grain from which the warehouseman was from time to time making shipments, constitutes a sale, not a bailment: *Barnes v. McCrea*, S. Ct. Iowa, Sept. 10, 1888.

Reasonable time within which an unsound horse may be returned to a seller, who has warranted his soundness, is a question for the jury, even though he is retained by the purchaser for as long a period as ten weeks without an offer to return him: *Gridley v. Globe Tobacco Co.*, S. Ct. Mich., October 12, 1888.

TAXATION.

Post trader on Indian reservation is an agent of the National Government in the performance of its treaty obligations to the Indians, and therefore his stock in trade is exempt from taxation by the authorities of the Territory in which the reservation is situated: S. Ct. Wy., Sept. 1888.

TELEGRAPH COMPANIES.

Failure to deliver message sent to a family physician calling upon him to attend a woman in her confinement, renders the company liable in damages at the suit of the husband, and the increased suffering of the wife and the injury to her feelings are proper elements of damages: *West. Un. Tel. Co. v. Cooper*, S. Ct. Tex., Oct. 23, 1888.

WILLS.

After-acquired personalty will pass under a prior will: *Nichols v. Allen*, S. Ct. Tenn., Nov. 1, 1888.

JAMES C. SELLERS.