The Supreme Court of Pennsylvania declares as follows:

"The contract of subscription is not only with the company, but also with all the other shareholders; hence, the subscriber may not set up even fraud of the directors, in order to defeat his contract:" *Caley* v. *R. R. Co.* (1876), 80 Pa. 363, 368; *Graff* v. *R.R. Co.* (1858), 31 Id. 489.

JAMES O. PIERCE.

Minneapolis, Minn.

ABSTRACTS OF RECENT DECISIONS.

ADMIRALTY.

Contract to stow, or load, a vessel, is not a maritime contract, and cannot be enforced in admiralty. *Danace* v. *The Magnolia*, U. S. C. Ct. E. D. La., Jan. 22, 1889.

Stevedore's claim for services in loading or unloading a vessel is a maritime contract, within the principles of admiralty jurisdiction, but no lien on the vessel is allowed for such services rendered in the home port. *Mygatt* v. *The Gilbert Knapp*, U. S. D. Ct. E. D. Wis., Jan. 7, 1889.

AGENCY.

Commission broker, who, with knowledge of its unlawful character, negotiates a gambling contract, becomes a *particeps criminis*, and cannot recover for services rendered or losses incurred by him in forwarding the illegal undertaking. *Kahn* v. *Walton*, S. Ct. Ohio, Jan. 8, 1889.

Commissions are earned by a real estate broker, where the agreement of sale provides that the land is to be conveyed within fifteen days, on condition that one holding a mortgage thereon shall release the vendor from liability, and that, if the vendee shall fail to pay the purchase money at the end of the fifteen days, any money paid in advance shall be forfeited, although the mortgage is not released nor the purchase money paid. *Ward* v. *Cobb*, S. Jud. Ct. Mass., Feb. 28, 1889.

Undisclosed principal, for whom one in reality carries on business, although in the latter's own name, is liable for goods sold to the agent on credit, notwithstanding the fact that secret orders had been given not to buy on credit. *Hubbard* v. *Tenbrook*, S. Ct. Pa., Feb. 25, 1889.

ATTORNEY-AT-LAW.

Lien upon judgment recovered in favor of his client, for the fees of an attorney, does not extend to property purchased by the client with the proceeds of such judgment; and when the attorney consents that the amount of the judgment shall be paid to the client, stating his willingness to look to the latter alone for his fees, he thereby waives any lien he might have had on the proceeds. *Goodrich* v. *McDonald*, Ct. App. N. Y., Jan. 15, 1889.

BANKS AND BANKING.

Collection of checks was made by one bank for another under an agreement, by which no debt was to be created until such checks had actually been paid to the collecting bank; a check was sent by the latter to a third bank for collection, and, before the proceeds had been remitted, the second bank became insolvent; the first bank was thereupon entitled to recover from the third bank the amount of the check. *Manufacturers' Nat. Bank* v. *Continental Bank*, S. Jud. Ct. Mass., Feb. 28, 1889.

Increase of capital stock by national bank, made without obtaining the consent of two-thirds of the stock, the payment in full of the amount of such increase, or the certificate and approval of the comptroller of the currency, as required by statute, is invalid, and preliminary subscriptions to such increase cannot be enforced. *Winters* v. *Armstrong*, U. S. C. Ct. S. D. Ohio, Jan. 28, 1889.

Note of depositor, made payable at a bank where he deposits, is not equivalent to a check, and the bank has no authority to pay such note to a third party, in the absence of a usage or of instructions from the maker to that effect. *Grissom* v. *Commercial Nat. Bank*, S. Ct. Tenn., Feb. 23, 1889.

BICYCLES.

Riding a bicycle against a pedestrian, who is facing the other way, the walk being fourteen feet wide and the view unobstructed, is an assault and battery, although the injury is unintentional, and the rider is liable in damages. *Mercer* v. *Corbin*, S. Ct. Ind., Feb. 23, 1889.

BILLS AND NOTES.

Assignment of judgment obtained against the maker of a promissory note by the holder, estops the latter from bringing suit upon the note against an indorser. *Moorman* v. *Wood*, S. Ct. Ind., Jan. 29, 1889.

Indorser in blank, under the name of the payee, *prima facie* assumes the obligation of a maker. *Nat. Bank* v. *Dorset Marble Co.*, S. Ct. Vt., Feb. 1, 1889.

CHATTEL MORTGAGE.

Machinery in factory, when mortgaged by the purchaser for the purchase price, an oral agreement being made that it shall be treated as personalty until paid for, and when the realty, to which it is afterwards attached, will not be injured by its removal, will be considered as personal property, as between the chattel mortgagee, and a prior mortgagee of the realty. *Binkley* v. *Forkner*, S. Ct. Ind., Jan. 30, 1889.

CHECKS.

Revocation of check may be made by the drawer at any time before its presentation for payment, unless it has been accepted or certified by the bank, and an affirmative answer by the bank to a

question whether a check of a person named, for a specified sum, is good, does not constitute an acceptance or certification of such check. *Kahn* v. *Walton*, S. Ct. Ohio, Jan. 8, 1889.

CONSTITUTIONAL LAW.

Statute imposing liability upon every railroad corporation which shall damage and kill any horse by running against it with an engine, is unconstitutional and void, as imposing such liability without any negligence or breach of duty on the part of the corporation. *Bielenberg* v. *Montana Union Ry. Co.*, S. Ct. Mont., Feb. 2, 1889.

COPYRIGHT.

Form for application for a license to sell liquor, composed of three blanks—a "petition," a "bond and warrant," and a "justification"—all intended to be filled up and signed by the applicant, is a subject of valid copyright. *Brightly* v. *Littleton*, U. S. C. Ct. E. D. Pa., Nov. 24, 1888.

Photograph, artistically designed to illustrate a musical composition, is infringed by stamping an imitation in raised figure on leathern chair bottoms and backs. *Falk* v. *Howell*, U. S. C. Ct. S. D. N. Y., Dec. 20, 1888.

CORPORATIONS.

Contract with subscriber to the organization stock of a corporation that, for every share subscribed, he shall receive interest bearing bonds to an equal amount, secured by mortgage on the plant of the corporation, is void, not only as against creditors, but also as between the subscriber and the corporation; the agreement to issue bonds is not a condition precedent and the stock subscription stands absolute, although the agreement is void. *Morrow* v. *Nashville Iron and Steel Co.*, S. Ct. Tenn., Feb. 5, 1889.

Stock subscription creates a debt against the subscriber, and upon his assignment for the benefit of creditors and the insolvency of the corporation, a creditor of the latter may enforce his claim against the assigned estate of the subscriber, although no calls on the subscription had been made at the time of the assignment. *Samainego* v. *Stiles*, S. Ct. Ariz., Feb. 13, 1889.

DEED.

Prior contract to convey to a university, upon the performance of certain acts by the latter, a tract of land "for the sole and exclusive use of the university, inalienable for any other use or purpose forever," does not restrict the effect of a subseqnent deed to the university for the same land, absolute on its face, with the usual covenants and containing no condition against alienation nor reference to the contract, even though the acts stipulated in the contract have not been performed. *Douglas* v. *Union Mut. Life Ins. Co.*, S. Ct. Ill., Jan. 25, 1889.

DONATIO CAUSA MORTIS.

Gift by husband to wife, on the day of his death, of a savings bank book, unaccompanied by actual delivery, is invalid, though at the time of the gift the book was already in the possession of the donee. *Drew* v. *Hagerty*, S. Jud. Ct. Me., Jan. 18, 1889.

EMINENT DOMAIN.

Mortgagor in possession gave his consent to a railroad's entering upon and constructing its line across the mortgaged premises, without the payment of any damages; after a foreclosure of the mortgage, and a purchase of the land by the mortgagee, the latter was not entitled to claim the *corpus* and improvements of the railroad as his own, nor to compensation for the taking of the land. *St. Johnsbury & L. C. R. R. Co.* v. *Willard.* S. Ct. Vt., Feb. 1, 1889.

FIRE INSURANCE.

By-law of a mutual insurance company, which provides that no insurance shall be binding until the cash premium shall have been actually paid to some "duly authorized and commissioned" agent of the company, may be waived by an officer of such company, and a provision in the policy that a waiver of "any printed or written condition or restriction therein" must be in writing and endorsed on the policy, does not apply to the waiver of a by-law, although the by-laws are made, by the terms of the policy, part of the contract. *Susquehanna Mut. Fire Ins. Co.* v. *Elkins*, S. Ct. Pa., March 11, 1889.

Marriage contract, by which a wife has waived all her rights of dower and homestead, and in lieu thereof is to have a life estate, from the death of her husband, in a dwelling-house and tract of land, does not entitle her, after her husband's death, to the proceeds of a fire policy on such house, issued to the latter, payable to himself, his executors or administrators, and to be void "in case any change shall take place in title or possession, except by succession by reason of the death of the assured"; her title is not by succession, but by purchase. *Quarles* v. *Clayton*, S. Ct. Tenn., Feb. 12, 1889.

Other insurance, when prohibited, renders a policy void only at the option of the insurer, and a policy issued in violation of such a prohibition will constitute "other insurance," so as to avoid another policy upon the same property. *Saville* v. *Aetna Ins. Co.*, S. Ct. Mont., Feb. 2, 1889.

FRAUD.

False representations that a railroad bond, offered for sale, is "A No. 1" bond, and that the security is good, will not sustain an action for deceit, when the party making such representations was known by the purchaser to stand in the position of a seller and the market price could have been readily ascertained. *Deming* v. *Darling*, S. Jud. Ct. Mass., Feb. 28, 1889.

GAMBLING CONTRACT.

Contract for sale of personal property, to be delivered at a future day, if it is intended that the goods shall be delivered and paid for, is valid, though the seller has no such goods, nor any means of getting them, except by going into the market and buying; but when the real intention is merely to speculate on the rise and fall in prices, and the goods are not to be delivered, only the difference between the contract price and the market price at the time specified for executing the contract, being paid, the transaction is against public policy and void. *Kahn* v. *Walton*, S. Ct. Ohio, Jan. 8, 1889.

Profits, arising from an illegal and speculative deal in wheat, paid by one of the parties to the broker who negotiated the transaction, to be paid over by him to the other party, can be recovered in an action by the latter against the broker, notwithstanding the fact that original contract was not enforceable. *Floyd* v. *Patterson*, S. Ct. Tex., Dec. 4, 1888.

HUSBAND AND WIFE.

Lottery prize, received on a ticket purchased with the separate money of a married woman, is community property, under a statute which provides that all property acquired by either husband or wife during marriage, except by gift, devise or descent, shall be deemed the common property of both. *Dixon* v. *Sanderson*, S. Ct. Tex., Dec. 21, 1888.

INTERSTATE COMMERCE LAW.

"*To*," in the first and second sections of the Act to regulate commerce, means the destination of the property into, or at any place within the State or foreign country, reached by the continuous carriage or shipment, and the regulation intended is from the origin to the destination of the carriage. *In re Grand Trunk Ry. Co.* The Commission, April 18, 1889.

JUDGMENT.

Validity of decree against lunatic, who was insane when process was served upon him and was not represented in the suit by a conservator or guardian, the suit having been brought in ignorance of his insanity, cannot be questioned in a collateral proceeding. *Maloney* v. *Dewey*, S. Ct. Ill., Jan. 25, 1889.

JURISDICTION.

Action for penalty imposed by a State statute upon railroad companies guilty of extortion, "to be recovered in a civil action by ordinary proceedings instituted in the name of the State," cannot be removed to the Federal courts; it is, in effect, a criminal action, and the nature, not the form, of an action determines the question of removal. *State of Iowa* v. *Chicago, B. & Q. R. R. Co.*, U. S. C. Ct. S. D. Iowa, Jan. 22, 1889.

LIBEL.

Extract from newspaper, indicating that a neighboring ticket broker was not a safe and reliable person from whom to buy tickets, was conspicuously posted for a period of forty days in the ticket-office of a railroad company, which was in charge of the company's agent; under these circumstances a finding that the company had knowledge of the publication and that it was made by the agent in the course of the company's business, is sustained by the evidence. *Fogg* v. *Boston & L. R. Co.*, S. Jud. Ct. Mass., Feb. 28, 1889.

LIFE INSURANCE.

Creditor, who takes out insurance certificates, amounting to $6,500, on the life of a debtor, who owes him $1,000, in mutual aid associations, where the sum to be realized depends on the number and solvency of the members, and, upon the debtor's death, actually realizes only $2,124.82 from the certificates, is entitled to retain the whole amount thus received. *Rittler* v. *Smith*, Ct. App. Md., Feb. 21, 1889.

LIQUOR LAWS.

Recovery of damages cannot be had under a statute giving a right of action to persons injured in person or means of support in consequence of intoxication, against "any person who shall by selling or giving intoxicating liquors have caused the intoxication," from one who gives liquor to a friend, in his own home or elsewhere, as a mere act of courtesy and politeness, without any purpose of pecuniary gain; such statute applies only to persons engaged, either directly or indirectly, in the liquor traffic. *Cruse* v. *Aden*, S. Ct. Ill., Jan. 26, 1889.

MARINE INSURANCE.

General average expenses incurred in rescuing a vessel from a peril brought about by negligence in her navigation, cannot be recovered under a policy, which exempts the underwriter from liability for "all perils, losses, misfortunes or expenses, consequent upon, or arising from, or caused by, the want of ordinary care and skill in navigating;" the negligent navigation was the proximate cause of the loss. *The Ontario*, U. S. D. Ct. E. D. Mich, Jan. 2, 1889.

MARRIAGE.

Solemnization of marriage, according to the customs of an Indian tribe, need not take place within the territory of such tribe, in order to constitute a valid marriage. *La Riviere* v. *La Riviere*, S. Ct. Mo., Feb. 18, 1889.

MASTER AND SERVANT.

Foreman of bridge gang upon railroad is a fellow servant with employés operating a train on the road, in the sense which precludes the former from recovering from the railroad company for injuries

resulting from the negligence of the latter; and such foreman is "on duty," while asleep in a car provided for the purpose by the company, being liable to be called out for duty at any moment. *St. Louis, A. & T. Ry. Co.* v. *Welch,* S. Ct. Tex. Dec. 14, 1888.

Overseer of slashing-room in a cotton mill is a fellow-servant with the second foreman of the machine-shop department, whose duty it is to oversee the repairing of machinery in any of the departments on the report of the overseer of that department, subject to the orders of the immediate foreman and the general superintendent, and the mill-owner is not liable for an injury to the foreman caused by a barrel thrown negligently from a window by the overseer. *Brodem* v. *Valley Falls Co.*, S. Ct. R. I., Feb. 9, 1889.

Municipal Corporations.

Falling of walls of burnt building, nine days after a fire, does not render a municipality liable for damages caused thereby to adjoining property, although notice had been given of the dangerous condition of the walls, and the city marshal told the owner that he would take charge of the walls, and have them taken down, if necessary. *City of Anderson* v. *East,* S. Ct. Ind., Jan. 25, 1889.

Negligence.

Blind person, who walks unattended in the public street, is not, as matter of law, chargeable with negligence, and such person is bound to use ordinary care only, in determining which a jury should consider his blindness and other infirmities, together with all the circumstances bearing on the question as to what care was reasonably necessary to insure his safety. *Neff* v. *Town of Wellesley,* S. Jud. Ct. Mass., Feb. 28, 1889.

Negotiable Instruments.

Bottomry bills are not negotiable in the United States. *Salmon* v. *The Serapis,* U. S. D. Ct. S. D. N. Y., Jan. 9, 1889.

Nuisance.

Public nuisance will not be enjoined at the instance of a private individual, unless the latter suffers some private, direct and material damage, beyond that which is suffered by the public at large, and which, without such interference, will be an irreparable injury to him. *Van Wagenen* v. *Cooney,* Ct. Ch. N. J., Feb. 12, 1889.

Parent and Child.

Father of boys participating with others in the ducking of a school master, who countenanced and encouraged the unlawful purpose of his sons, though not himself personally present, is liable in a civil action for the damages inflicted. *Sharpe* v. *Williams,* S. Ct. Kan., Feb. 9, 1889.

PATENTS.

False oath that an applicant for a patent is a citizen of the United States, when made innocently, through mistake, and without improper design, will not affect the validity of the patent. *Tondner* v. *Chambers*, U. S. C. Ct. W. D. Pa, Jan. 10, 1889.

Infringement of invention, before patent has been issued, although an application has been made and is pending, will not be enjoined. *Rein* v. *Clayton*, U. S. C. Ct. E. D. Mich., Jan. 12, 1889.

Promissory note, given in the United States for an English patent, is subject to the English rule that a promise to pay for a patent void for want of novelty, is not without consideration, although the American rule is different. *Chemical Electric Light and Power Co.* v. *Howard*, S. Jud. Ct. Mass., Jan. 4, 1889.

PRIVILEGE.

Non-resident, who comes from another State for the sole purpose of attending and testifying in a case to which he is a party, cannot be served with process in another suit. *Wilson* v. *Donaldson*, S. Ct. Ind., Feb. 16, 1889.

RAILROADS.

Contributory negligence will not be inferred where the deceased, with others, was riding slowly at ten o'clock at night towards a railroad crossing, and heard a whistle, but were uncertain whether it proceeded from the road ahead of them or from another quite near, the gate at the crossing, though usually attended when trains were passing, being open, and no flagman near; the train, by which the deceased was killed, was moving at the rate of twenty-five miles an hour, and the view of its approach was obstructed; a State statute forbade greater speed than six miles an hour at such a place, unless gates or flag-men were maintained. *Hooper* v. *Boston & M. R. R. Co.*, S. Jud. Ct. Me., Jan. 18, 1889.

Freight train, which ran regularly on week days as a mixed freight and passenger train, was running specially on Sunday; although the railroad was not bound to carry passengers upon such train, if it permitted them to ride, even though paying no fare, it assumed the same duties towards them, as if they had been regular passengers on a train of that character. *Wagner* v. *Missouri Pac. Ry. Co.*, S. Ct. Mo., Feb. 4, 1889.

Intoxicated passenger, who entered the ladies' car and by violence and indecent language alarmed the other passengers, and, when locked out of the car, pulled the bell-rope, stopping the train, and threatened the conductor with an open knife, was ejected from the train, after ten o'clock at night, two miles from the nearest station, and was killed by a later train going in the opposite direction; the place of ejection was two hundred yards from a farm house and the night was warm and not very dark; there was no negligence on the part of the railroad company. *Louisville & N. R. R. R. Co.* v. *Logan*, Ct. App. Ky., Feb. 12, 1889.

Limitation of liability of railroads to persons sustaining personal injuries or death by reason of the former's negligence, fixed by a statute which provides that, "upon the acceptance of the provisions hereof by any carrier or corporation, the same shall become a part of its act of incorporation," does not constitute a contract between the State and an accepting railroad company, having a previously granted charter, and whose road was not constructed, nor money expended, on the faith of it, but is simply the grant of a new franchise, which may be taken away by repeal. *Pennsylvania R. R. Co.* v. *Bowers*, S. Ct. Pa., Feb. 11, 1889.

SHIPPING.

Row-boat is not a "vessel," within the steering and sailing rule, requiring that every steamer, when approaching "another vessel," so as to involve risk of collision, shall slacken her speed, or, if necessary, stop or reverse; and a steamer is not bound to change her course for a row-boat. *Fischer* v. *Camden & P. Steam-boat Ferry Co.*, S. Ct. Pa., Feb. 4, 1889.

STATUTE OF FRAUDS.

Marriage alone is not such a partial performance as will take an ante-nuptial agreement between the parties, regarding their respective pecuniary rights, out of the Statute of Frauds. *Adams* v. *Adams*, S. Ct. Or., Jan. 15, 1889.

Parol gift of land, in pursuance of which the donee takes and holds possession for over twenty years, cultivating and making improvements to the land at his own expense, is a valid contract, though not in writing, and will be enforced in equity. *Young* v. *Young*, Ct. Ch. N. J., Feb. 26, 1889.

TELEGRAPHS.

Failure to deliver message received on Sunday does not render a telegraph company liable for the statutory penalty, unless there was a reasonable necessity for transmitting the message on that day and the company had notice of such necessity. *Western Union Tel. Co.* v. *Yopst*, S. Ct. Ind., Feb. 12, 1889.

Mental anguish is a proper element of damage in an action to recover for delay in the delivery of a telegram, announcing the death of the wife of the person to whom it was addressed and the train upon which her body would be shipped. *Western Union Tel. Co.* v. *Broesch*, S. Ct. Tex., Feb. 12, 1889.

Stipulation limiting the company's liability, unless the message is repeated, does not apply to an action for delay in delivering an unrepeated message. *Id.*

TRUSTS.

Absolute devise, made upon a private understanding with the devisee, either by the latter's express promise or his assent implied from his silence, that he will apply the devised estate to some pur-

pose designated by the testator, creates a trust, which, if lawful in itself, a court of equity will enforce. *Shields* v. *McAuley*, U. S. C. Ct. W. D. Pa., Dec. 24, 1888.

WILLS.

Bequest of library of testator to the mayor of a city, and the presidents of two medical colleges and their successors, in trust forever, for the purpose of founding a public library, to be forever kept separate from any other institution, coupled with a direction to the executors to convert testator's residuary estate into cash and to pay it to the trustees named, to be used by them in establishing such a library, is void under a statute prohibiting the suspension of the absolute ownership of property for a longer period than two lives in being at the death of the testator. *Cottman* v. *Grace*, Ct. App. N. Y., Jan. 29, 1889.

Cancelation of will, which expressly revoked all former wills, does not revive a prior will. *Hawes* v. *Nicholas*, S. Ct. Tex., Jan. 22, 1889.

Contingent remainders are given where the testator directed his estate to be divided into as many shares as he had children, and, as to the portions intended for his daughters, provided that a share be given to each, to be held by her in trust, receiving the income for her life, and, at her decease, to pay the same over to her children, or to their issue; in default of issue, the share to be held in trust, to be paid to testator's surviving children, or to the issue of such children as should be deceased. *Reiff's Appeal*, S. Ct. Pa., Feb. 4, 1889.

Devise of land to son in fee, followed by a provision that, if the devisee "should depart this life without leaving lawful issue to survive him," then "said property as would have fallen to my deceased son" shall vest in another son, contemplates death in the life-time of the testator, and, upon the first taker's surviving the testator, he takes an absolute fee. *Stevenson* v. *Fox*, S. Ct. Pa., April 22, 1889.

Fee-simple is given by a devise of land to testator's daughter, with the restriction that she shall not "have power to sell, but may leave the same to her children." *McIntyre* v. *McIntyre*, S. Ct. Pa., Jan. 7, 1889.

Probate in one State of a will devising land in another, is not binding upon the courts of the latter State as an adjudication of the validity or effect of such devise. *Keith* v. *Johnson*, S. Ct. Mo., Feb. 4, 1889.

JAMES C. SELLERS.