ABSTRACTS OF RECENT DECISIONS.

ADMIRALTY.

Damage by bridge over navigable waters to a vessel passing through the draw, is within the jurisdiction of an admiralty court. *City of Boston* v. *Crowley*, U. S. C. Ct., D. Mass., March. 21, 1889.

Scow platform, a floating structure designed to be moored alongside a wharf, so that carts containing refuse to be dumped into boats can be driven over it, is not a vessel within the meaning of the maritime law, and no lien for wharfage attaches to it. *Ruddiman* v. *A Scow Platform*, U. S. D. Ct., S. D. N. Y., March 30, 1889.

Steamship at wharf was given the key-berth previously occupied by another vessel, and the latter was moored outside, with no means of communication with the wharf, except across the deck of the inner vessel; negligence in permitting this deck to be in a condition unsafe for passing over it, whereby personal injuries were sustained, was a marine tort, and within admiralty jurisdiction. *Anderson* v. *The E. B. Ward Jr.*, U. S. C. Ct., E. D. La., Feb. 15, 1889.

Tug, contracting to convey a tow to its destination, must do so expeditiously, by the most direct customary route, exercising proper care and skill in doing so, and, if a disaster occur while the tug is violating her duty in this respect, the burden is on her to prove that it was unavoidable and did not result from her disregard of duty. *Phillips* v. *The Sarah and The Tucker*, U. S. D. Ct., E. D. Pa., March 19, 1889.

ARREST.

Assault and battery may be recovered from an officer of the law who has inflicted serious injuries upon a person whom, in the course of his official duty, he is called upon to take into custody, no resistance having been made to the arrest and there being no necessity for the use of violence. *Schwenke* v. *Union Depôt and R. R. Co.*, S. Ct. Colo., March 8, 1889.

ATTORNEY-AT-LAW.

Contract between certain attorneys-at-law and certain persons engaged in the illegal sale ot intoxicating liquors, providing that the former shall, during one year, for a monthly compensation of $80, payable on the first of each month, defend all cases brought against the liquor sellers for violation of the prohibitory liquor laws, is against public policy and void. *Bowman* v. *Phillips*, S. Ct. Kan., April 5, 1889.

Professional misconduct, so far as the power of the court to discipline an attorney is concerned, is not subject to the bar of the statute of limitations, either expressly or by analogy. *In re Rowenthal*, S. Ct. Cal., March 21, 1889.

Banks and Banking.

Banking firm was mailed checks for collection by a correspondent bank, but before their receipt the firm was dissolved by the death of one of its members; the surviving partner paid the checks by charging them to the accounts of the drawers and gave the bank credit on the books of the firm for the total amount; he subsequently made an assignment for the benefit of creditors, transferring the moneys realized from the checks to his assignee; the bank was entitled to recover such moneys, which were easily traceable on the firm books, from the assignee. *First Nat. Bank of Alexandria* v. *Payne's Assignees*, S. Ct. App. Va, March 21, 1889.

Collections made by one bank for another, although the paper was marked "For collection and immediate return," were mingled with other funds of the collecting bank which became insolvent before any remittance had been made; the forwarding bank was entitled to no preference for such collections over the claims of other creditors. *Philadelphia Nat. Bank* v. *Dowd*, U. S. C. Ct., E. D. N. C., Feb. 16, 1889.

Payment of check drawn by a trustee upon the trust fund, is conclusive upon a bank, even though it were given for a debt which had no connection with that fund, but was against another estate, of which the drawer was also trustee, and which had no funds to its credit, and the bank cannot recover back the amount of the check from a payee, who received it in good faith and without any notice of the misappropriation. *Manufacturers' Nat. Bank* v. *Swift*, Ct. App. Md., March 27, 1889.

Bills and Notes.

Accommodation note was sold to a private person instead of to a bank, as was "understood and agreed upon" between the maker and the accommodation endorser; this fact constituted no defence to an action by the purchaser of the note against the indorser, although the former had express notice of the understanding. *Parker* v. *Sutton*, S. Ct. N. C., March 18, 1889.

Alteration by the payee of an accommodation note for $50 by inserting before the word "fifty" the words "five hundred and," the body of the note being entirely in the payee's handwriting, does not render the maker liable to a holder for value for the raised amount, although upon signing he had left a blank space sufficient to admit the subsequent insertion of the fraudulent words. *Burrows* v. *Klunk*, Ct. App. Md., March 27, 1889.

Alteration of note by the maker, by substituting a different amount, date and rate of interest, without the consent of the indorser, releases the latter from all liability, and the note will not be reformed by restoring it to its original state, for the purpose of holding the indorser. *Ruby* v. *Talbott*, S. Ct. N. M., Feb, 1889.

"*Credit the drawer,*" written on the face of a note by an indorsee, implies no promise nor undertaking on his part, but the words are merely a direction to all persons to whom the note may be presented, to treat with the maker as the owner, notwithstanding the apparent title of the indorsee. *Temple* v. *Baker,* S. Ct. Pa., April 29, 1889.

Indorsement before maturity of a promissory note payable to order, is necessary, to clothe the transferree with the rights of an innocent holder for value, and to prevent the maker from setting up equities between himself and the payee in defence to such note. *Calvin* v. *Sterrit,* S. C. Kan., March 9, 1889.

Indorsement in blank and delivery of note to a collector for a firm to whom the payee was indebted, may be shown by parol to have been a transaction in which such collector was to act as agent for the payee to get the note discounted and then apply a portion of the proceeds in payment of the debt due his firm, and if, instead of so doing, he transferred the note to the firm, the latter acquired no interest in it. *Avery* v. *Miller,* S. Ct. Ala., April 16, 1889.

Indorser, who obtains possession of a note after indorsing it, is relegated to his original position and cannot hold subsequent indorsers upon the note, who could look to him again, nor can a purchaser of the note from him hold such indorsers. *Adrian* v. *McCaskill,* S. Ct. N. C., March 18, 1889.

Joint maker of a note payable "to the order of myself" may be shown by parol evidence to have been intended as sole payee, to the exclusion of his co-maker. *Jenkins* v. *Bass,* Ct. App. Ky., March 23, 1889.

Bills of Lading.

Station agent, having authority to sign bills of lading, by collusion with a pretended shipper, issued a bill of goods which were not delivered for transportation and had no existence, and the shipper negotiated the bill for value to a third person, who was ignorant of the facts; the railroad company was not liable upon the bill to the latter, the fraud of the agent being outside the scope of his employment, which was only to issue bills for property delivered. *Friedlander* v. *Texas & P. R'y Co.,* S. Ct. U. S., April 15, 1889.

Canals.

Injury from escaping water was sufficiently shown, in an action against a canal company for damages, when there was evidence that, when the basin was high, water flowed into the flooded premises, and, when low, it did not; that the swell of the water caused by a passing boat was followed by an increased flow; and that the water first appeared in the premises about the time that an old wall of the canal basin fell in, and continued until the cellar was drained by a new sewer. *Delaware & H. Canal Co.* v. *Goldstein,* S. Ct. Pa., April 8, 1889.

CHATTEL MORTGAGE.

Lien of livery stable keeper on horse is subject to a recorded chattel mortgage, where the horse is placed in the stable after the making of the mortgage, without the knowledge of the mortgagee, though the stable-keeper had no notice in fact of the mortgage. *McGhee* v. *Edwards*, S. Ct. Tenn., April 16, 1889.

CONSTITUTIONAL LAW.

Collateral inheritance tax, imposed by State statute upon the value of property passing by will or the intestate laws to any person not within certain degrees of consanguinity to the decedent, is not in conflict with the Fourteenth Amendment to the Constitution of the United States. *Wallace* v. *Myers*, U. S. C. Ct., S. D. N. Y., March 28, 1889.

Statute imposing absolute liability upon a corporation for injuries done to property in the prosecution of its lawful business, without negligence on its part, when, under the general law of the land, no one else is so liable, does not provide "due process of law," and is void. *Cottrel* v. *Union Pacific Ry. Co.*, S. Ct. Id., March 18, 1889.

Statutory prohibition, forbidding "any agent traveling with one or more horses" to "sell any lightning rod, sewing machine, or organ, or other musical instrument, without a State license," is not unconstitutional, as applied to such agents selling sewing machines manufactured outside of the State. *State* v. *Richards*, S. Ct. App. W. Va., March 7, 1889.

Title of statute was "An Act fixing the time for the opening and closing of saloons and gaming houses;" such statute is not repugnant to a constitutional provision that each act of the legislature "shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title." *Ex parte Livingston*, S. Ct. Nev., April 13, 1889.

CONTRACTS.

Agreement by barber, in consideration of another barber furnishing him with everything necessary to conduct a barber-shop in a certain town, to transfer to the former his own patronage, and not to work for any one else or open a shop for himself in such town at any time, the profits of the business to be equally divided between the two, is unreasonable and will not be enforced in equity. *Carroll* v. *Giles*, S. Ct. S. C., March 23, 1889.

Commercial fertilizers were ordered by a farmer, by letter written in Georgia, to be sent to him from South Carolina by a dealer resident in that State; the goods were shipped by railroad, according to order, from South Carolina to Georgia, and notes for the price were made in Georgia and mailed back to South Carolina; the laws of Georgia in relation to the inspection of fertilizers had no application to the transaction, the contract of sale having been consummated in South Carolina. *Atlantic Phosphate Co.* v. *Ely*, S. Ct. Ga., March 18, 1889.

Competing firms may agree not to handle certain goods in competition with each other in a specified district, and such an agreement will be enforced in equity; but where members of one of such firms, and others, form a corporation for carrying on the same general business, and after a time such corporation announces its intention to handle the same goods that were formerly sold by the firm, and in the district where the firm had agreed not to sell, the corporation will not be enjoined from selling such goods, unless it be shown that it was fraudulently created with intent on the part of the stockholders to evade their obligations as individuals. *Moore & Handley Hardware Co.* v. *Towers Hardware Co.*, S. Ct. Ala., April 30, 1889.

Machinery of a certain description and quality was to be furnished, set up and put in operation in the mill of the purchaser; if such machinery, when put in, does not work in a satisfactory manner, the mill owner is not compelled, in order to avoid payment of the entire contract price, or to recover damages for breach of contract, to take out the machinery, but the measure of damages is the reasonable cost of altering the construction and setting of the machinery, so as to make it conform to the contract. *Stillwell & Bierce Mfg. Co.* v. *Phelps*, S. Ct. U. S., April 15, 1889.

Corporations.

Deed to corporation was signed and acknowledged by the grantor before the charter had been granted, but after the corporators had signed an agreement to become a corporation, and was placed in the hands of a third party to hold until the charter should be obtained, and then to deliver to the proper officer, and such delivery was subsequently made; the deed operated as a valid conveyance to the corporation from the date of its delivery. *Spring Garden Bank* v. *Hulings Lumber Co.*, S. Ct. App. W. Va., March 7, 1889.

Judgment against corporation is conclusive upon a stockholder in a suit to enforce the collection of such judgment out of unpaid instalments upon stock. *Powell* v. *Oregonian Ry. Co.*, U. S. C. Ct., D. Or., March 18, 1889.

Criminal Law.

Burglary is constituted by breaking into a cellar under a dwelling house, having no internal communication with the house. *Mitchell* v. *Commonwealth*, Ct. App. Ky., March 12, 1889.

Embezzlement of letter by a post-office employé is constituted, although the letter embezzled was a decoy, addressed to a fictitious person and place, was made up so as to attract attention and indicate that it contained money, and was not intended to be delivered. *U. S.* v. *Wight*, U. S. D. Ct., E. D. Mich., March 10, 1889.

Former jeopardy may be pleaded in defence upon a second trial of a prosecution for bigamy, where, after the accused had been placed on trial the first time and part of the evidence for the Commonwealth had been received, the Court of its own motion, the

accused neither consenting nor objecting, but remaining silent, dismissed the jury, because of an immaterial error in the indictment. *Robinson* v. *Commonwealth*, Ct. App. Ky., March 23, 1889.

Juror is competent to serve on a capital case, who has formed an opinion as to the guilt of the accused from what he has read in the newspapers, but who says that he can render a verdict according to the evidence, uninfluenced by his previous opinion. *Rizzolo* v. *Commonwealth*, S. Ct. Pa., April 29, 1889.

DEED.

Delivery in escrow to a third person was made, the deed to be held until the grantee should have paid a specified debt; the deed was delivered, however, to the grantee before the debt was fully paid, but payment of the balance was subsequently made; the delivery was operative and the deed valid from the time of the last payment. *Connell* v. *Connell*, S. Ct. App. W. Va., March 12, 1889.

Satisfactory proof of fraud is all that is required in an action to cancel a deed alleged to have been obtained by false and fraudulent representations, and it is error for the Court to charge that a jury must be "satisfied beyond all reasonable question" that fraudulent representations were made, in order to set aside such deed. *Harding* v. *Long*, S. Ct. N. C., April 9, 1889.

Wrongful destruction of an unregistered deed by the grantor, who has regained possession of it after delivery, does not divest the title of the grantee, who may compel a re-execution of the deed; but the grantee cannot waive the tort and sue upon an implied promise to restore the consideration. *Edwards* v. *Dickenson*, S. Ct. N. C., April 15, 1889.

DOWER.

Fraudulent conveyance, made by husband and wife, was set aside upon application of the creditors of the former; thereupon the wife's right of dower in the estate conveyed was revived and restored to her. *Bohannon* v. *Combs*, S. Ct. Mo., March 18, 1889.

Merger of dower right takes place, when a married woman acquires, during coverture, the fee in her husband's lands, and her subsequent conveyance to a third person passes the title free from the incumbrance of her dower. *Youmans* v. *Wagener*, S. Ct. S. C., March 7, 1889.

EASEMENTS.

Owner of pasture which is subject to the easement of a ditch for the drainage of neighboring lands, is not liable for damage done to the ditch by his cattle in crossing over it and feeding on its banks; the burden of keeping the ditch in repair rests upon the owner of the easement. *Durfee* v. *Garvey*, S. Ct. Cal., March 30, 1889.

EMINENT DOMAIN.

Non-resident owner of land is bound to take notice of a published advertisement of the proposed taking of land for a railroad,

and of a meeting of commissioners to lay off the route and assess damages; such publication is "due process of law," and it is his duty to take measures to be represented when his property is called into requisition. *Huling* v. *Kaw Valley R'y & Imp. Co.*, S. Ct. U. S., April 22, 1889.

EQUITY.

Injunction will be granted to prevent the erection of a fence along the side of an alley-way, adjoining the complainant's premises, the effect of which would be to entirely close the windows of her house, excluding both light and air and rendering the house unfit for habitation. *Sankey* v. *St. Mary's Female Academy*, S. Ct. Mont., Feb. 2, 1889.

ERROR.

Trial by consent of parties in the Circuit Court, before the judge at chambers, under an order providing that the cause should be so tried, and that "if it shall appear to the judge upon such trial that there are questions of fact arising upon the issues therein, of such a character that the judge would submit them to the jury, if one were present," such questions should be submitted to a jury at the next term, was neither a trial by jury nor a trial by the court, but was merely a trial by the judge as referee, and the rulings of the judge at such trial cannot be reviewed by the Supreme Court. *Town of Andes* v. *Slauson*, S. Ct. U. S., April 15, 1889.

EVIDENCE.

Admissions by conductor of railroad train that an accident was caused by his negligence, made more than ten minutes after the accident and after the train had left the place where it occurred, are not admissible in evidence as part of the *res gestae*. *Chesapeake & O. Ry. Co.* v. *Reeves*, Ct. App. Ky., April 25, 1889.

Physical examination of one suing for personal injuries, by physicians selected by the person sued and at the charge of the latter, may be compelled by the trial court, which has full discretionary powers in the premises. *Richmond & D. R. R. Co.* v. *Childress*, S. Ct. Ga., April 13, 1889.

FIRE INSURANCE.

Condition precedent to recovery for loss by fire, under the terms of a policy, was the production of "the certificate under seal of the magistrate or notary public living nearest the place of fire" as to the amount of loss, etc.; the production of the certificate of such magistrate, which stated some of the facts required and that he was not competent to state others, and also the certificate of another magistrate who did not live as near as the first, but whose office was nearer, stating all the facts required, is a sufficient compliance with the condition. *Agricultural Ins. Co.* v. *Bemiller*, Ct. App. Md., March 26, 1889.

Keeping set of books, showing a record of all business transacted, was required by the covenants of a policy which also provided that the books should be kept locked in a fire-proof safe at night and at all times when the assured's store was not actually open for business, and that the books should be produced in case of loss, otherwise the policy would be void; this covenant did not require the books to be kept in the safe from sunset to sunrise, but only from the time that the business of the day was ended and the store closed for the night. *Jones* v. *Southern Ins. Co.*, U. S. C. Ct., E. D. Ark., Feb. 3, 1889.

Premium note was given by the assured under a policy which provided that, if the note should not be paid at maturity, the policy should become void, and so remain until payment was made, when it should be revived; after a default, part payment of the note would not revive the policy, and the insurer would not be liable for a loss occurring before the total amount of the note had been paid. *Curtin* v. *Phonix Ins. Co.*, S. Ct. Cal., April 19, 1889.

Warranty by the assured that he has not omitted to state any information material to the risk, coupled with a provision in the policy, declaring that it shall be void, unless consent is indorsed thereon, if the assured is not the sole and unconditional owner of the insured property, or if his interest, whether as owner, trustee, agent, mortgagee, lessee, etc., or otherwise, is not truly stated, renders such policy void, if the property insured is actually subject to an undisclosed mortgage or is held by the assured under a conditional sale. *Westchester Fire Ins. Co. of N. Y.* v. *Weaver*, Ct. App. Md., April 16, 1889.

Husband and Wife.

Power of attorney may be given by wife to husband to convey her inchoate interest in his real estate. *Munger* v. *Baldridge*, S. Ct. Kan., March 9, 1889.

Jurisdiction.

Embezzlement of funds of national bank by an officer is within the exclusive jurisdiction of the Federal courts. *U. S.* v. *Buskey*, U. S. C. Ct., E. D. Va., Jan. 25, 1889.

Federal courts, having once acquired jurisdiction by reason of diverse citizenship, do not lose such jurisdiction by a subsequent transfer of the cause of action, by which the controversy becomes one between citizens of the same State. *Jarboe* v. *Templer*, U. S. C. Ct., D. Kan., March 18, 1889.

Perjury committed before a notary public in the taking of testimony in a contest for a seat in the House of Representatives of the United States, is within the exclusive jurisdiction of the Federal courts. *In re Lovey*, U. S. C. Ct., E. D. Va., Feb. 19, 1889.

LAND PATENTS.

Stone quarry may be located and patented as a placer claim under the provisions of Revised Statutes of the United States, Sec. 2329, which apply to "claims usually called 'placers,' including all forms of deposit, excepting veins of quartz or other rock in place," and the owner of a placer claim is entitled to all mineral deposits found therein. *Freezer* v. *Sweeney*, S. Ct. Mont., Feb. 2, 1889.

LIMITATION.

Moneys received for investment are subject to the running of the statute, and, if there is such a trust relation as to avoid the bar, the remedy is in equity, not by an action of *assumpsit*. *Sanford* v. *Lancaster*, S. Jud. Ct. Me., April 8, 1889.

LIQUOR LAWS.

Incorporated association purchased beer outside of the State, brought it into the State, and then sold chips to its members, each chip representing a glass of beer, which was furnished by the association upon surrender of the chips and was drank as a beverage by the purchaser, neither the association nor any of its members having a permit to sell intoxicating liquors; the member who sold the chips, the member who delivered the beer upon the return of the chips, and the president of the association, who was present and knew what was done, were all liable to prosecution, conviction and punishment for selling intoxicating liquor in violation of law. *State* v. *Horacek*, S. Ct. Kan., March 9, 1889.

Selling to minor of intoxicating liquors on the order of and for delivery to his father, the son being simply a messenger for the father, will not sustain a conviction under a statute prohibiting the sale or gift of intoxicants to minors. *State* v. *Walker*, S. Ct. N. C., May 6, 1889.

MARRIED WOMEN.

Passive acquiescence by a married woman in a deed executed by herself and husband, while she was an infant and covert, will not, however long continued, amount to ratification, while coverture still exists, but, to annul such a deed, she must pay the grantee, her former guardian, for necessaries supplied her during minority, which constituted part of the consideration for the deed; she will not, however, be required to refund money paid her husband, also as part consideration, but which never came into her hands. *Stull* v. *Harris*, S. Ct. Ark., March 16, 1889.

MASTER AND SERVANT.

Rude and reprehensible conduct by the overseer of a plantation towards persons who are sent by the owner to inspect the property, by which conduct the interests of the latter are jeopardized, is sufficient cause for the discharge of the overseer before the expiration of the term of his employment. *Lalande* v. *Aldrich*, S. Ct. La., March 6, 1889.

NEGLIGENCE.

Concurrent negligence of a carrier and a third person, by which a passenger of the former is injured, does not relieve the latter from liability to the person injured, the negligence of the carrier not being imputable to its passenger. *New York P. & N. R. R. Co.* v. *Cooper*, S. Ct. App. Va., April, 1889.

PARTNERSHIP.

Good will of an insurance agency business does not belong to either partner exclusively after an unconditional dissolution, and if one of the former partners continues to carry on the business at the firm office, he cannot be compelled to account to his co-partner for the value of the good-will. *Rice* v. *Angell*, S. Ct. Tex., March 19, 1889.

RAILROADS.

Brakeman on a railroad train may recover for injuries resulting from an accident caused by a bull on the railroad track, even though he knew that the engine was without a cow-catcher and that the fences along the track were defective. *Magee* v. *North Pacific C. R. R. Co.*, S. Ct. Cal., March 21, 1889.

Crossing highway on trestle does not exempt a railroad company from the duty of giving warning of the approach of its trains to such crossing. *Rupard* v. *Chesapeake & O. R. R. Co.*, Ct. App. Ky., Feb. 21, 1889.

No recovery can be had for the death of a person who was killed while walking upon a railroad track, where he had no right to be, although the engineer, who could have seen him at a distance of two hundred yards, did not blow the whistle nor give any warning of the approach of the train. *Barker* v. *Hannibal & St. J. R. R. Co.*, S. Ct. Mo., March 18, 1889.

RECEIVERS.

Claim against railroad company, which has been placed in the hands of a receiver, for the value of goods of a consignee lost by fire while in possession of the company and before the receivership, is not entitled to priority over the claims of bondholders. *Easton* v. *Houston & T. C. Ry. Co.*, U. S. C. Ct., E. D. Tex., March 15, 1889.

RELEASE.

Settlement of claim for damages by one who has been injured in a collision between two cars of different railway companies, by which he accepts a certain sum in full of all claim for his injuries against one of the companies, and in consequence of which he executes a release, in which he agrees to prosecute his claim against the other company, reimbursing the former company out of the amount to be recovered, will constitute a bar to the second action, the cause of action being thereby satisfied. *Seither* v. *Philadelphia Traction Co.*, S. Ct. Pa., April 8, 1889.

REMOVAL OF CAUSES.

Action by shore inspector to recover the penalty imposed by a State statute for depositing prohibited materials in the waters of a bay and harbor within the State, which penalty, when recovered, goes into the State treasury, cannot be removed to the Federal Courts on the ground of diverse citizenship, both for the reason that it is in effect an action by the State, and because it is in its nature penal, to enforce a police regulation, and not a suit "of a civil nature, at law or in equity." *Ferguson* v. *Ross*, U. S. C. Ct., E. D. N. Y., March 20, 1889.

Corporation created under the laws of Kentucky, being sued in a Texas Court, filed its petition for removal to the Federal Court, alleging that the plaintiff was a citizen of Texas and the defendant a citizen of Kentucky, with the necessary allegations as to the amount in controversy and a bond with the requisite security; the facts alleged being true and the bond sufficient, the State Court had no power to proceed further with the cause, and the fact that the corporation did business and had an office and agents in Texas did not deprive it of the right to a trial in the Federal Court. *Southern Pacific Co.* v. *Harrison*, S. Ct. Tex., Feb. 26, 1889.

Joint cause of action against a resident of the district and a non-resident, cannot be removed by the latter to the Federal Courts, even though the resident has not been served with process. *Patchin* v. *Hunter*, U. S. C. Ct., E. D. Wis., March 19, 1889.

Local prejudice is not a sufficient ground for removal of a case to the Federal Courts, where such prejudice is confined mainly, if not entirely, to a single county, and there is a State statute allowing the removal of a cause, on the ground of local prejudice, to some other court of competent jurisdiction in some other convenient county. *Robison* v. *Hardy*, U. S. C. Ct., N. D. Ill., March 18, 1889.

State Court cannot refuse to allow the removal to the Federal Courts of a suit on foreign attachment, where the defendant files a petition alleging that the amount involved is sufficient to give jurisdiction, and that the plaintiffs are citizens of Georgia, while the petitioner is a citizen of England, and the record, down to the time of filing the petition, does not show the residence of the parties, nor the amount involved, to be otherwise than as alleged in the petition; and if any issue of fact is made on the petition it must be determined in the Federal Court. *Horan* v. *Strachan*, S. Ct. Ga., March 25, 1889.

REPLEVIN.

Defendant in attachment suit, whose goods are seized by an officer in obedience to the writ, cannot maintain replevin against the officer for the goods so taken into legal custody. *Hawk* v. *Lepple*, S. Ct. N. J., March 25, 1889.

REVENUE LAWS.

Action for a forfeiture or penalty under the United States revenue laws, is abated by the death of the defendant, and such action is not affected by the laws of the State where the cause of action arose. *U. S.* v. *De Goer*, U. S. D. Ct., S. D. N. Y., Feb. 21, 1889.

SLANDER.

"*Prostitute*," when used of a married woman, imputes the crime of adultery, and is actionable *per se*. *Davis* v. *Sladden*, S. Ct. Or., March 14, 1889.

Words spoken of butcher, charging that he slaughtered "condemned and diseased cattle" and sold the meat, are actionable *per se*. *Blumhardt* v. *Rohr*, Ct. App. Md., March 26, 1889.

STATUTE OF FRAUDS.

Contract to sell stock at the end of three years, with an option to the purchaser to call it at any time, is not within the prohibition of a statute, which denies the right of action on any agreement "not to be performed within a year," "unless it be in writing." *Seddon* v. *Rosenbaum*, S. Ct. App. Va., March 28, 1889.

Telegrams, by an agent of the owner of town lots to the owner that he was offered a certain sum for the "balance of the M. town property" on certain terms mentioned, by the owner to his agent, accepting the offer for the "M. property," and by the agent to the purchaser, communicating the owner's reply, do not constitute such a memorandum in writing as will take the contract out of the statute. *Breckinridge* v. *Crocker*, S. Ct. Cal., March 29, 1889.

SUNDAY LAWS.

Judgment entered on Sunday is void at common law. *City of Parsons* v. *Lindsay*, S. Ct. Kan., April 5, 1889.

Right of trial by jury does not extend to the petty offence of laboring on Sunday, punishable by a small fine and cognizable by a justice of the peace. *Ex parte Marx*, S. Ct. App. Va., April 18, 1889.

TAXATION.

Collateral inheritance tax may be imposed by a State upon the value of United States bonds; such tax is not upon the bonds themselves, but upon the privilege of acquiring property by inheritance. *Wallace* v. *Myers*, U. S. C. Ct., S. D N. Y., March 28, 1889.

TELEGRAPHS.

Mental anguish is a proper element of damage in an action for breach of contract to transmit money by telegraph, where such anguish is a direct and natural result of the failure to perform the contract and the telegraph company was informed of the circumstances rendering prompt performance of more than ordinary importance. *Western Union Tel. Co.* v. *Simpson*, S. Ct. Tex., March 26, 1889.

Receiver of telegram may maintain an action against the telegraph company for negligence in its delivery. *Western Union Tel. Co.* v. *Longwill*, S. Ct. N. M., March 21, 1889.

Stipulation in the contract of a telegraph company that it will not be liable for damages on account of negligence in the delivery of a telegram, unless a claim in writing is presented within sixty days from the receipt of the message, is against public policy and void. *Id.*

TRUSTS.

Resulting trust does not arise out of an agreement between husband and wife, by which the former takes the title to land in his own name, paying part of the purchase money out of his own funds, and agrees to hold it for his wife's benefit, she subsequently paying the balance of the price. *Zeller* v. *Light*, S. Ct. Pa., April 8, 1889.

WATER-RIGHTS.

Private corporation, organized for the purpose of supplying the inhabitants of a borough with water from an adjacent stream, will be restrained from taking such quantity of water as will render the supply insufficient for the purposes of another borough situated lower down the stream, which latter borough, in the exercise of rights conferred by statute, is maintaining water-works connected with the same stream. *Haupt's Appeal*, S. Ct. Pa., April 8, 1889.

WILLS.

Bequest of money in trust for the testator's daughter for life, "and after her death" to be equally divided among "her surviving children and the issue of such as may be dead, such issue taking *per stirpes*, and not *per capita*," vests the remainders in the children referred to, or their issue, upon their surviving, not the life-tenant, but the testator, and therefore the administrator of one of such children, who died after the testator and before the life-tenant, is entitled to share in the distribution of the fund. *Jameson* v. *Major*, S. Ct. App. Va., April 18, 1889.

Devise, by will made in 1881, was to the "Board of Trustees for the Protestant Episcopal Church in the Diocese of North Carolina;" at that time the Diocese embraced the whole State, but in 1883 was divided by mutual consent into two dioceses, North Carolina and East Carolina; the testator died in 1885; the trustees of each diocese were entitled to receive one-half the property devised. *Diocese of East Carolina* v. *Diocese of North Carolina*, S. Ct. N. C., March 18, 1889.

Rule in Shelley's Case applies to leasehold as well as to freehold estates. *Hughes* v. *Nicklas*, Ct. App. Md., March 27, 1889.

JAMES C. SELLERS.