tenants for years, may assign, or sub-let, at pleasure unless restrained by express covenants: 1 Cruise Dig. 277. If the assignee assigns, he loses all connection with the reversioner: *Grundin* v. *Carter* (1868), 99 Mass. 15; *Dengler* v. *Michelssen* (1888), S. Ct. Cal., unless he remains in possession: *Negley* v. *Morgan* (1863), 46 Pa. 281; or unless his assignment is merely colorable; *Beattie* v. *Parrot S. & C. Co.* (1888), S. Ct. Mont. If the sub-lessee assigns, he remains bound to the lessee by privity of contract. If either of them sub-lets, it does not change his relations to the land, or his landlord: *Carter* v. *Hammett* (1854), 18 Barb. (N. Y.) 608, 611.

Should the assignee assign to the reversioner, the estate for years merges in the fee, though any rents, reserved on the different assignments, would still remain charged upon the land: *Smiley* v. *Van Winkle* (1856), 6 Cal. 606. Should the sub-lessee assign to the reversioner, there would be no merger: *Benson* v. *Bolles* (1831), 8 Wend. (N. Y.) 175, 180.

The lessee cannot, by surrendering to the reversioner, destroy the estate of either assignee or sub-lessee: *Adams* v. *Goddard* (1859), 48 Me. 212; *Krider* v. *Ramsey* (1878), 79 N. C. 354; *Baker* v. *Pratt* (1854), 15 Ill. 568; *Bailey* v. *Richardson* (1885), 66 Cal. 421; but if the reversioner enter upon the land, for condition broken, both assignee and sub-lessee lose their estates: *Arnsby* v. *Woodward* (1827), 6 B. & C. 519.

Rent is annexed to both estates, by law: *Port* v. *Jackson* (1819), 17 Johns. (N. Y.) 239, 243; and may also be, by contract. On the first ground, each must pay rent to his own landlord, the sub-lessee to the lessee: *Gray* v. *Rawson* (1850), 11 Ill. 528; *Giddings* v. *Felker* (1888), 70 Tex. 176; the assignee to the reversioner: *Pingry* v. *Watkins* (1843), 15 Vt. 479; *Babcock* v. *Scoville* (1870), 56 Ill. 461; *Salisbury* v. *Shirley* (1884), 66 Cal. 223. On the second ground, both must of course pay to him with whom they are in privity of contract,—the lessee.

These contrasted qualities of assignments and sub-leases, follow naturally from the distinction between the two, and the basis on which that distinction rests. In order to distinguish between them, and determine the qualities of each, it is only necessary to remember that a sub-lease is a hiring, while an assignment is a sale.

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ABSTRACTS OF RECENT DECISIONS.

ACCIDENT INSURANCE.

Suicide, while insane, is not within the meaning of an accident policy, which excepts death "caused by suicide," nor is it within an exception of death resulting from bodily disease, but is an injury happening "through external, violent and accidental means," for which recovery may be had. *Blackstone* v. *Standard Life and Accident Ins. Co.*, S. Ct. Mich., April 24, 1889.

ADMIRALTY.

Limitation of year and day, fixed by the Statute of Westminster, within which the owner of a wreck is bound to make his claim, be-

gins to run from the time when the goods are actually taken and seized by the finder. *Murphy* v. *Dunham*, U. S. D. Ct., E. D. Mich., April 15, 1889.

Sunken cargo is not by the common law a wreck of the sea, which term is confined to goods cast upon the shore, or to jetsam, flotsam or ligan. *Id.*

Tug, which undertakes to tow a raft to a certain place, and which leaves it before arriving at the destination, without ascertaining whether it is made fast or not, and without giving any order in relation to it, is responsible for the loss of the raft, if carried away by the wind and tide. *Stokes* v. *The Henry Buck*, U. S. D. Ct., D. S. C., April 9, 1889.

Attorney-at-Law.

Communications made by a client, while consulting his attorney upon business matters, and the advice and counsel given by the later, may be received in evidence after the client's death, in a contest over his will, when the object is to lay a foundation for the admission of the attorney's opinion as to the sanity of the testator, and when such communications do not reflect in any manner upon the testator's character or reputation. *In re Layman's Will*, S. Ct. Minn., April 22, 1889.

Statute of limitations begins to run against a claim for money collected by an attorney, who has used no fraud or falsehood to his client in regard to its receipt, from the time the collection is made. *Douglas* v. *Corry*, S. Ct. Ohio, March 26, 1889.

Banks and Banking.

Certification of check of a depositor by a national bank, who has not on deposit the amount of money specified in such check, while it subjects the bank to the statutory penalties, nevertheless renders it liable upon the certified check. *Thompson* v. *St. Nicholas Nat. Bank*, Ct. App. N. Y., April 16, 1889.

Fraudulent receipt of deposits by officers of a bank, which they know to be insolvent, gives the depositor no preference over other creditors, unless he can actually trace and recover the identical funds so deposited. *Atkinson* v. *Rochester Printing Co.*, Ct. App. N. Y., 2d Div., April 23, 1889.

Promise to honor a depositor's checks, when presented by anticipated holders, to the amount of certain collateral pledged to the bank, is not such certification as is forbidden by the Act of Congress. *Thompson* v. *St. Nicholas Nat. Bank*, Ct. App. N. Y., April 16, 1889.

Bills and Notes.

Acceptance of draft drawn upon the acceptor as executor of a will, under which the drawer is a legatee, and indorsed by him as executor, does not charge the acceptor personally, when he shows

that the understanding of all the parties was that the draft was to be paid only out of the drawer's interest in the estate, and that the acceptance was intended to bind the acceptor only in his official capacity. *Schmittler* v. *Simon,* Ct. App. N. Y., 2d Div., April 23, 1889.

Accommodation paper may be rescinded at any time before passing into the hands of a third party for value, and if an accommodation indorser notifies a person who is about to purchase the note which he has indorsed, that he withdraws his indorsement and will not be responsible upon the paper, and the latter, notwithstanding such notice, purchases the note, he cannot hold the indorser, upon its non-payment. *Second Nat. Bank of St. Paul* v. *Howe,* S. Ct. Minn., April 24, 1889.

Negotiability of a promissory note is taken away by a stipulation, making the instalments of interest, and the principal, when due, payable at a certain place, "with exchange on New York," as it cannot be known until the times of payment arrive, what the rates of exchange will be, and the amount necessary to discharge such note is, therefore, uncertain. *Windsor Savings Bank* v. *McMahon,* U. S. C. Ct., S. D. Iowa, April 6, 1889.

Note given for patent-right, in violation of a statute which makes it a misdemeanor to sell a patent-right without first filing copies of the letters patent, and not containing the words "given for a patent-right," as required by statute, is, nevertheless, good in the hands of one who purchases such note in good faith, without notice, and before maturity. *Tescher* v. *Merea,* S. Ct. Ind., May 7, 1889.

Notice of protest, under a statute providing that such notice may be given by depositing it in the postoffice, with the postage prepaid and addressed to the indorser, at his regular place of business, is sufficient, where the notice was addressed to the indorser and left by a messenger, in his absence, in a conspicuous place in his office, which was his regular place of business. *Hobbs* v. *Straine,* S. Jud. Ct. Mass., May 10, 1889.

Parol evidence is not admissible to show that, when a promissory note was delivered to the payee, he agreed to procure the signature of another person, and had failed to do so; nor that the payee had promised, the note having been given by a member of a church society for moneys advanced to pay a church debt, that he would collect subscriptions from other members of the church and apply them to its payment, and had not done so. *Clanin* v. *Esterly Harvesting Machine Co.,* S. Ct. Ind., April 23, 1889.

Renewal note will not be regarded as a satisfaction of the original note, unless there is an express or implied agreement to that effect. *Williams* v. *Chisholm,* S. Ct. Ill., April 5, 1889.

Bills of Lading.

Limitation of liability, in case of loss of goods shipped, will not control, where there has been negligence on the part of the carrier

and no lower rate of freight has been charged on account of such limitation. *Adams Express Co.* v. *Harris,* S. Ct. Ind., May 9, 1889.

Stipulation in bill of lading, the provisions of which are not extended to any other carrier than the one receiving the goods shipped, does not inure to the benefit of an intermediate carrier. *Id.*

CHATTEL MORTGAGES.

Constructive notice of a mortgage upon grain in a crib or bin is not given by a recorded mortgage upon the same grain, while growing. *Gillilan* v. *Kendall,* S. Ct. Neb., May 2, 1889.

Defective description in a mortgage designed to cover crops to be raised on certain land, does not prevent its being binding upon one who has had actual notice of its existence. *Luce* v. *Moorehead,* S. Ct. Iowa, May 13, 1889.

Description of mortgaged property as "all my crop of corn and cotton for the year 1884, in Faulkner County, Arkansas," is sufficiently definite and certain to render the record of the mortgage constructive notice to third persons. *Johnson* v. *Grissard,* S. Ct. Ark., May 11, 1889.

CONSTITUTIONAL LAW.

Opinion of Supreme Judicial Court, under a provision of the Constitution of Massachusetts, may be required by the Legislature, or Governor and Council, "upon important questions of law and upon solemn occasions;" the power thus conferred cannot be exercised by the Legislature for the purpose of ascertaining the proper construction of a statute, which the Legislature has full power to alter or amend as it may see fit. *Opinion of the Justices,* S. Jud. Ct. Mass., May 4, 1889.

State statute, making it a criminal offense to solicit or take orders for spirituous liquors in the State, to be delivered at a place without the State, knowing or having reasonable cause to believe that, if so delivered, the same will be transported into the State and sold in violation of the State law, is not unconstitutional, as being a restriction upon inter-state commerce. *Lang* v. *Lynch,* U. S. C. Ct., D. N. H., April 19, 1889.

CORPORATIONS.

Contract with a *de facto* corporation cannot be repudiated by one who has received the benefit of such contract, upon the ground that the corporation was never legally organized, or that the law under which it was organized is unconstitutional. *Winget* v. *Quincey Building and Homestead Asso.,* S. Ct. Ill., April 5, 1889.

CRIMINAL LAW.

Former acquittal cannot be pleaded against a prosecution for perjury for swearing falsely upon a preliminary examination before a United States Commissioner that the accused had not sold liquors

without payment of the special tax required by law, when the accused has already been acquitted of the offense charged, but such acquittal may be shown as matter of defense and will effectually estop the prosecution from showing that the oath was false. *U. S.* v. *Butler*, U. S. D. Ct., E. D. Mich., April 29, 1889.

Jury must determine, under instructions from the court as to the words used in the statute, whether a particular publication, sent through the mails, is of a description prohibited in the postal laws. *U. S.* v. *Clarke*, U. S. D. Ct., E. D. Mo., April 16, 1889.

Unchastity of prosecutrix may be shown in a prosecution for rape, when the defense is consent, as affecting the question of the probability of such consent. *Carney* v. *State*, S. Ct. Ind. April 27, 1889.

DAMAGES.

Loss of both legs by a young boy, through the negligence of a railroad company, will not warrant a verdict of $30,000; such damages would be excessive. *Heddles* v. *Chicago and N. W. Ry. Co.*, S. Ct. Wis., April 25, 1889.

EVIDENCE.

Judicial notice will be taken, in a prosecution for violation of the Sunday laws, that tobacco and cigars sold by a tobacconist are not drugs and medicines, within the meaning of those words as used in the statute. *Comm.* v. *Marzynski*, S. Jud. Ct. Mass., May 6, 1889.

FIRE INSURANCE.

Condition against incumbrances will be held to have been waived, when the assured informed the agent of the insuring company of the existence of incumbrances, but the agent wrote the application, stating that there were no incumbrances, and the assured signed it at his request; the agent having also stated in the application that he had inspected the property, was satisfied that the answers were correct, and recommended the risk as free from all moral or financial hazard. *Reiner* v. *Dwelling-House Ins. Co.*, S. Ct. Wis., April 25, 1889.

Violation of condition in policy, prohibiting alteration in use of insured premises, so as to increase the risk, does not merely suspend the policy, but renders it absolutely void, although such use ceased before the occurrence of the loss. *Kyte* v. *Commercial Union Assr. Co.*, S. Jud. Ct. Mass., May 9, 1889.

Waiver of proofs of loss is not constituted by a letter written the assured by the secretary of the insuring company, after the loss and before the expiration of the time for furnishing proofs, in which he states that, after investigation, he considers the claim invalid, but that the assured may re-open the matter and make proofs of loss, specifying the facts which the assured must establish by such proofs. *Walsh* v. *Des Moines Ins. Co.*, S. Ct. Iowa, May 14, 1889.

HOMESTEAD LAWS.

Mortgage upon land entered under the United States homestead laws may be made by the person making the entry, before submitting final proof or receiving the final certificate. *Lang* v. *Morey*, S. Ct. Minn., April 24, 1889.

LIBEL.

List of discharged employes of a railroad company, giving the reasons for their discharge, and placed in the hands of persons whose duty it is to employ servants on behalf of the company, is a privileged communication. *Missouri Pacific Ry. Co.* v. *Richmond*, S. Ct. Tex., April 26, 1889.

LIQUOR LAWS.

Taxation, imposed by State statute upon persons manufacturing or selling, either at wholesale or retail, spirituous liquors within the State, subject, however, to the provision that no person paying a manufacturer's tax shall also pay a wholesale dealer's tax, makes no discrimination between the citizens of the taxing State and those of other States, or between local and foreign products, and an agent of a foreign manufacturer, who sells at wholesale, within the State, imported liquors in the original packages, without paying the prescribed tax, is subject to the penalties provided by the statute. *People* v. *Lyng*, S. Ct. Mich., April 19, 1889.

MARINE INSURANCE.

Cargo of sunken vessel, abandoned to the underwriters, may be sold by such underwriters to a third person. *Murphy* v. *Dunham*, U. S. D. Ct., E. D. Mich., April 15, 1889.

Unseaworthiness was exempted from the risks insured against by a marine policy upon a canal-boat, which was old and subjected to heavy strains, and which suddenly sprang a leak and sank in fair weather and smooth water; the boat was presumptively unseaworthy, and it was incumbent upon the assured to rebut this presumption, or to show that the loss was occasioned by some other cause, in order to recover upon the policy. *Berwind* v. *Greenwich Ins. Co.*, Ct. App. N. Y., 2d Div., April 23, 1889.

NEGLIGENCE.

Absence of railing and trap-door to an elevator opening, in violation of a State statute which provides for such railings and trap-doors "as may be directed and approved by the superintendent of buildings," whereby an injury results, is *prima facie* evidence of negligence on the part of the owner, although the elevator may have been in the same condition for several years, without objection or direction by the building superintendent. *McRickard* v. *Flint*, Ct. App. N. Y., 2d Div., April 23, 1889.

NUISANCE.

Land may be cultivated by the owner in the usual and reasonable manner, without liability to a lower proprietor, whose mill-pond is injured by the soil being drained into it by reason of such cultivation. *Middlesex Co.* v. *McCue*, S. Jud. Ct. Mass., May 6, 1889.

PUBLIC OFFICERS.

Power to remove a public officer does not include the power to suspend. *Gregory* v. *Mayor, etc., of N. Y.*, Ct. App. N. Y., April 16, 1889.

RAILROADS.

Improper loading of a freight car upon a railroad, which has provided a proper car and competent servants for the inspection of loaded cars, by reason of which an employe is injured, does not render the railroad company liable, such injury being the result of the negligence of the servants whose duty it is to inspect cars, and who are fellow-servants of the injured person. *Byrnes* v. *New York, L. E. & W. R. R. Co.*, Ct. App. N. Y., April 16, 1889.

No recovery can be had by one who was struck and injured by a passenger train, while attempting to drive a four-horse team across a railway track, when he was familiar with the crossing and knew that the regular west-bound train was due, but, being stopped by an east-bound freight train, delayed until the latter had passed, and then, without waiting a moment, drove his team in front of the train approaching on the other track, which he might easily have seen. *Fletcher* v. *Fitchburg R. R. Co.*, S. Jud. Ct. Mass., May 9, 1889.

REMOVAL OF CAUSES.

Local prejudice is sufficient ground for removal of a cause to the Federal Court, without regard to the amount in controversy. *McDermott* v *Chicago & N. W. Ry. Co.*, U. S. C. Ct., N. D. Iowa, May 3, 1889.

Resident defendant, who has been sued in a State Court by a citizen of another State, may remove the cause to the Federal Court under the Act of Congress of August 13, 1888. *Stanbrough* v. *Cook*, U. S. C. Ct., N. D. Iowa, April 20, 1889.

TAXATION.

Exemption from taxation of "every building for public worship," with the lot on which it is situated and the furniture belonging to it, rendered by another statute inapplicable to any such building, unless used exclusively for such purpose and exclusively the property of a religious society, does not cover the building owned and occupied exclusively by a Young Men's Christian Association, formed for the improvement of the spiritual, mental and social condition of young men, by means of sermons, libraries, reading rooms, social meetings and other means, such as lectures, gymnasium, concerts

and entertainments, one room only, out of twenty-two in such building, being used for public worship, and that not exclusively. *Young Men's Christian Asso.* v. *Mayor, etc., of N. Y.*, Ct. App. N. Y., April 16, 1889.

VERDICT.

Affidavits of jurors will not be received upon a motion for a new trial, for the purpose of impeaching their verdict as rendered. *McKinley* v. *First Nat. Bank of Crawfordsville*, S. Ct. Ind., April 23, 1889.

WILLS.

Bequest of bond, having an overdue interest coupon attached at the time of testator's death, carries such coupon also. *Ogden* v. *Pattee*, S. Jud. Ct. Mass., May 6, 1889.

Condition annexed to a devise in remainder, that the devisee, who was an infant when the will was made, should live with the testator's sister and be under her sole care and guardianship, until he should reach the age of twenty-one years, but in case he should not comply with such condition, the premises should vest in other persons, is valid. *Johnson* v. *Warren*, S. Ct. Mich., April 19, 1889.

Conversion of realty is not worked by a will, by which the testator, after certain legacies, gives to his executors all the residue of his estate in trust, with power to receive the rents and profits, to sell and convey the property, to invest both the rents and profits and the proceeds of sales, and to "divide and apply the same and the income thereof" as directed. *Scholle* v. *Scholle*, Ct. App. N. Y., April 16, 1889.

Lapse of devise to one, "to have and to hold the same to him, his heirs and assigns, forever," occurs upon the death of the devisee in the testator's life time. *In re Wells*, Ct. App. N. Y., April 16, 1889.

Real estate, owned by the testator, does not pass under a will which directs: "I do order that all my property, consisting of bonds, mortgages, ground-rents, stocks and personal effects, in the State of Pennsylvania, be sold," and the proceeds divided among certain beneficiaries named, but such real estate vests in the testator's heirs, in accordance with the inter-state laws. *Howe's Appeal*, S. Ct. Pa., May 6, 1889.

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