ABSTRACTS OF RECENT DECISIONS.

AGENCY.

Advances made by agent, for the purpose of aiding his principal in effecting a combination to raise the price of wheat by buying all the wheat in the market, and then making contracts for the purchase of wheat for future delivery, cannot be recovered by the former; such combination is unlawful at common law. *Samuel* v. *Oliver*, S. Ct. Ill., Oct. 31, 1889.

Real estate agent is entitled to his commission, if a sale is effected through his agency as its procuring cause, although the sale may be actually made by the owners of the property, if by the agent's exertions the purchaser and owner are brought together, and the sale results therefrom; it makes no difference that the owner sold for a sum less than the price at which the agent was authorized to sell. *Plant* v. *Thompson*, S. Ct. Kan., Dec. 7, 1889.

ANIMALS.

Owner of dog, when he looses it for his own advantage, must see that it does not injure innocent passers on the public street, and to that end is held to the greatest possible care, and must repair any damage that is caused by his neglect to properly restrain his dog. *McGuire* v. *Ringrose*, S. Ct. La., Dec. 2, 1889.

ATTORNEY-AT-LAW.

Act committed by an attorney, whether in the discharge of the duties of his office or not, which shows such a want of professional or personal honesty, as renders him unworthy of public confidence, makes it not only the province, but the duty, of the court, upon a proper representation of the case, to strike the name of the offender from its roll, but the bad character which will justify this action, must be such as to indicate that the attorney is an unsafe and unfit person to be intrusted with the powers of his profession. *State* v. *McClaugherty*, S. Ct. App. W. Va., Nov. 21, 1889.

BANKS AND BANKING.

Bank president is not such a trustee of the bank's funds as to give a court of equity jurisdiction of a suit against him for the alleged misappropriation of such funds. *Mullin's Appeal*, S. Ct. Pa., Jan. 6, 1890.

"*Banker*," as used in the United States statute, which imposes a tax "on the capital employed by any person in the business of banking," includes one whose business is buying and selling stocks for his customers, and who employs capital in his business and has a regular place for transacting it. *Richmond* v. *Blake*, S. Ct. U. S., Jan. 6, 1890.

BILLS AND NOTES.

Blank for name of payee in a promissory note authorizes any *bona fide* holder to fill in his own name within a reasonable time after coming into possession of the note, but he must make himself a party to such note by writing his name in the blank, before he can

recover upon it from the maker. *Thompson* v. *Rathbun*, S. Ct. Or., Dec. 3, 1889.

Indorser, who voluntarily pays a note from which he has been discharged by the negligence of the bank which held it for collection, in not making presentment for payment until a month after its maturity, during which time the makers had become insolvent, cannot recover back from the bank the amount paid. *Oil-Well Supply Co., Ltd.* v. *Exchange Nat. Bank*, S. Ct. Pa., Jan. 6, 1890.

Note made in one State, and payable in another, receives its legal character and effect from the laws of the latter State. *Stevens* v. *Gregg*, Ct. App. Ky., Jan. 23, 1890.

Payment of note, by its terms made payable at the convenience of the maker, of which he is to be the sole judge, must be made within a reasonable time; the language used does not contemplate that the money shall be due only at the pleasure of the maker, without regard to lapse of time or the rights of the payee. *Smithers* v. *Junker*, U. S. C. Ct., N. D. Ill., Dec., 1889.

Request by indorser that the holder of a promissory note will extend it for another year, made before the maturity of the note and coupled with an agreement to let his name remain upon it, constitutes a waiver of demand and notice on the part of the holder. *Cady* v. *Bradshaw*, Ct. App. N. Y., 2d Div., Oct. 8, 1889.

Common Carriers.

Agreement between rival steamboat owners to cease competition and share their net profits in a certain specified proportion, or, if either should sell his boat with a view to going out of the business, to give notice thereof to the other and not come back into the business either directly or indirectly, within one year after such sale, is void, as against public policy, and will not be enforced. *Anderson* v. *Jett*, Ct. App. Ky., Dec. 12, 1889.

Destruction by mob of rioters of goods in the custody of an interstate carrier, renders such carrier liable to the consignor, in the absence of any contract limiting the liability. *Gulf C. & S. F. Ry. Co.* v. *Levi*, S. Ct. Tex., Dec. 17, 1889.

Release by shipper of a common carrier from all liability on account of loss or damage to goods in course of transportation, is void, as against public policy, and recovery may be had for the full value of the goods lost. *Woodburn* v. *Cincinnati, N. O. & T. P. Ry. Co.*, U. S. C. Ct., E. D. Tenn., Dec. 20, 1889.

Constitutional Law.

Telegraph companies, which have accepted the provisions of the United State statutes in regard to the use of the public domain, cannot be taxed by a State on messages, and the receipts therefrom, between points within and points without the State, as this is interstate commerce, but they may be so taxed on messages carried wholly within the State. *Western Union Tel. Co.* v. *Seay*, S. Ct. U. S., Dec. 16, 1889.

CONTRACTS.

Agreement with the United States Government to furnish it with a number of articles at stipulated prices, among which are shucks at sixty cents per pound is not enforceable as to that article, where the evidence shows that shucks were worth from twelve to thirty-five dollars per ton, that it was the custom to buy them by the hundred weight, and that the error occurred by failing to strike out the word "pounds" in the printed form on which the proposal was made, and insert "hundred weight" instead, and the contractor can only recover the market value. *Hume* v. *U. S.*, S. Ct. U. S., Dec. 16, 1889.

CORPORATIONS.

After expiration of charter, while a corporation exists solely for the purpose of winding up its affairs, a majority in interest of its stockholders cannot sell its property to a new corporation, of which also they are directors and stockholders, at a valuation estimated by themselves, against the will of the minority, and compel the dissenting stockholders either to receive shares of stock in the new corporation in return for their old shares, or to be paid therefor on a basis of the estimated valuation of the property, but the minority may require that the property be publicly sold. *Mason* v. *Pewabic Mining Co.*, S. Ct. U. S., Jan. 13, 1890.

Forfeiture of franchises of a corporation, by reason of a breach of the condition on which it was created, can be taken advantage of only by the sovereign power which created the corporation. *Elizabethtown Gas-Light Co.* v. *Green*, Ct. Ch. N. J., Dec. 10, 1889.

Savings bank managers are bound to such circumspection of the actions of officers and committees appointed by them as a reasonably prudent man would exercise in his own business, and are personally liable for losses occasioned by the omission of such circumspection. *Williams* v. *McKay*, Ct. Ch. N. J., Dec. 12, 1889.

CRIMINAL LAW.

Pardon of convict upon conditions which are afterwards broken, will authorize his being remanded to the penitentiary to serve out the balance of his sentence, although the time for which he was originally sentenced has expired. *State* v. *Barnes*, S. Ct. S. C., Jan. 7, 1890.

DEBTOR AND CREDITOR.

Payment by check of a pre-existing indebtedness is conditional merely and defeasible on the dishonor of the check; and when the check is drawn by a third party, the burden is upon the debtor to show that it was given and accepted as absolute payment. *Holmes* v. *Briggs*, S. Ct. Pa., Jan. 6, 1890.

DEEDS.

Insanity of the original grantor does not affect the title of a purchaser for value of real estate, who buys from the grantee of the lunatic, without notice, and the heirs of the latter cannot take

advantage of his incapacity at the time of the first conveyance. *Odom* v. *Riddick*, S. Ct. N. C., Jan. 14, 1890.

EVIDENCE.

Communications to law student, employed by a party to litigation to advise and assist in the suit, are not privileged. *Dierstein* v. *Schubkagel*, S. Ct. Pa., Jan. 6, 1890.

FIRE INSURANCE.

Husband has no insurable interest in his wife's separate property, under the laws of Indiana. *Traders' Ins. Co.* v. *Newman*, S. Ct. Ind., Oct. 31, 1889.

Joint policy to husband and wife on property of the husband provided that any change in the title, unless with the consent of the company at the home office, should vitiate the policy; a transfer from the husband to the wife through a third person of the property insured, rendered the policy void, and evidence was not admissible, in an action on the policy, to show that, when it was issued, the local agent who solicited the insurance, was informed of the proposed transfer and orally agreed that it should be made. *Walton* v. *Agricultural Ins. Co.*, Ct. App. N. Y., 2d Div., Oct. 22, 1889.

INNKEEPERS.

Baggage of guest was lost under the following circumstances: at the depot he was directed to an omnibus which was to carry him to a certain hotel, by a porter who cried out the name of the hotel and wore it on his cap, and he thereupon delivered the check for his baggage to the porter, telling him that he was anxious to have it promptly, to which the latter replied that it would come right along in another wagon; the porter then gave the check to another man, whom the guest did not know was not an attaché of the hotel; he recognized the porter, however, as the same one who on a former occasion had performed similar services for him, but he was not aware that the wagon which brought the baggage, was run by another person than the hotel proprietor; the omnibus and the wagon were the usual mode of conveyance from the depot to the hotel by agreement between their owner and the hotel proprietor, and the former bore the name of the hotel; the baggage was lost after its delivery by the railroad company to the person who presented the check. The proprietor of the hotel was liable for the loss of the baggage and was not relieved of such liability by the fact that the porter was not authorized to receive baggage or checks therefor from guests at the depot, but merely to advertise and solicit custom for the hotel. *Coskery* v. *Nagle*, S. Ct. Ga., Nov. 18, 1889.

JURISDICTION.

Alien, only temporarily within the district, cannot be sued in the Federal Court by citizens of the district. *Meyer* v. *Herrera*, U. S. C. Ct., W. D. Tex., Dec. 31, 1889.

Levy upon property to satisfy a judgment in a Federal Court brings it within the jurisdiction of such Court, and the subsequent death of the debtor does not confer upon the State Court probate

jurisdiction to administer on such property as part of the decedent's estate. *Rio Grande R. R. Co.* v. *Vinet*, S. Ct. U. S., Dec. 9, 1889.

National bank may be sued, or bring suit, in the Federal Courts by or against a citizen of another State from that in which the bank is located, where the amount involved reaches the statutory limit. *First Nat. Bank* v. *Forest*, U. S. C. Ct., N. D. Iowa, Dec. 26, 1889.

LIBEL.

Publication by mercantile agency, organized for the purpose of ascertaining and reporting the financial standing and ability of merchants, traders and other business men, in reports issued and sent to the agency's subscribers, that a judgment had been obtained against a merchant, is not libelous *per se*. *Woodruff* v. *Bradstreet Co.*, Ct. App. N. Y., 2d Div., Oct. 8, 1889.

LIMITATION.

Demand note is subject to the running of the statute from its date, although no actual demand has been made. *O'Neil* v. *Magner*, S. Ct. Cal., Dec. 5, 1889; *Jones* v. *Nicholl*, S. Ct. Cal., Dec. 12, 1889.

LIQUOR LAWS.

Druggist, when authorized by law to sell intoxicating liquors upon a proper application, has a discretion to refuse to sell under such authority and is not liable in an action of damages for such refusal. *Treahey* v. *Holliday*, S. Ct. Kan., Jan. 11, 1890.

License to sell liquors in a city for a year, on the payment of a certain sum, is not a contract, but a police regulation, and before the end of the year the city may by ordinance raise the fee for the unexpired term. *Moore* v. *City of Indianapolis*, S. Ct. Ind., Oct. 30, 1889.

MASTER AND SERVANT.

In a dangerous business, such as the generation and distribution of electricity, the employer is bound to know the character and extent of the danger, and to warn his servant specially and unequivocally, so as to be clearly understood; the servant is not required to know latent, but only patent, defects, and has a right to assume superior knowledge in his employer, and to rely upon the latter's prudence and judgment. *Myhan* v. *Louisiana Electric Light and Power Co.*, S. Ct. La., Dec. 2, 1889.

MUNICIPAL CORPORATIONS.

Interest on bonds of a municipal corporation ceases when the bonds fall due and the means are provided for their payment; the corporation is not bound, like an individual debtor, to seek out the holders of its obligations and tender them the amounts due, in order to stop the running of interest. *Friend* v. *City of Pittsburgh*, S. Ct. Pa., Jan. 6, 1890.

RAILROADS.

Bridge watchman is not a fellow-servant with the engineer and

conductor of a train, so as to exempt the railroad company from liability to the former for injuries sustained through the negligence of the latter. *Pike* v. *Chicago & A. R. R. Co.*, U. S. C. Ct., E. D. Mo., Jan. 15, 1890.

Failure to give signal on approaching a private farm crossing, is not negligence, though the train, which was running at the rate of fifteen miles an hour, was not on schedule time, and though the view of the track was obstructed by a bank within about thirty yards from the crossing. *Annapolis & B. S. L. R. R. Co.* v. *Pumphrey*, Ct. App. Md., Feb. 6, 1890.

Refusal to accept fare from a passenger, after a train has been stopped for the purpose of ejecting him for non-payment of the fare, may be made by a railroad company, and the passenger may be again put off if he return to the train after his first ejection. *Pickens* v. *Richmond & D. R. R. Co.*, S. Ct. N. C., Dec. 16, 1889.

Statute providing that the killing or injuring of cattle "by the engines or cars running upon any railroad shall be *prima facie* evidence of negligence on the part of the company," applies not only to cattle running at large, but where they are yoked to a cart, and in charge of a driver. *Randall* v. *Richmond & D. R. R. Co.*, S. Ct. N. C., Dec. 21, 1889.

Removal of Causes.

Creditor's bill, which seeks to set aside certain alleged fraudulent confessions of judgment and transfers of assets by a limited partnership, and to have the assets of the insolvent firm distributed among all the creditors ratably, as provided by statute, and which makes defendants all persons claiming an interest in the partnership property under the alleged fraudulent judgments and transfers, presents but a single controversy between the plaintiff and all the defendants, as they are all necessary parties, and where one or more of the latter are citizens of the same State with the plaintiff, the cause is not removable to the Federal Court on the ground of diverse citizenship. *Graves* v. *Corbin*, S. Ct. U. S., Jan. 6, 1890.

Sale.

No warranty will be implied that a specific article of a known and recognized kind and description, which is ordered from a manufacturer or dealer, shall answer the purpose for which it is intended to be used; it is sufficient that the article supplied conforms to the description, and is of good workmanship and materials. *Goulds* v. *Brophy*, S. Ct. Minn., Nov. 5, 1889.

Oleomargarine is sold within the meaning of a prohibitory statute, by serving it with a regular meal at a public restaurant, as a substitute for butter, although it was not eaten, but paid for as part of the meal and carried away by the customer. *Commonwealth* v. *Miller*, S. Ct. Pa., Jan, 6, 1890.

Taxation.

Debts due to a foreign corporation cannot be taxed in the State where the debtors reside. *Barber Asphalt Pav. Co.* v. *City of New Orleans*, S. Ct. La., Dec. 2, 1889.

TELEGRAPHS.

Delay in transmission and delivery of a telegraphic message, calling the person to whom it is addressed to a dying relative, is not excused by the fact that the telegraph company, at the time it contracted to deliver the message, was not informed by the contents, or otherwise, of the relationship of the parties. *Western Union Tel. Co.* v. *Adams; Same* v. *Feegles*, S. Ct. Tex., Dec. 20, 1889.

Railroad company may construct a telegraph or telephone line, over its right of way and for its own use and benefit in the operation of its road, without rendering itself liable to the land owners for additional compensation, but where such line is not constructed for this purpose, it will be considered a new easement, putting a new burden on the land, for which the land-owner will be entitled to additional compensation. *American Telephone and Telegraph Co.* v. *Smith*, Ct. App. Md., Dec. 17, 1889.

TRADE-MARKS.

Name of place, where goods are manufactured, may be used by the manufacturer as a trade-mark, in combination with other words, to distinguish the origin or ownership of the goods, and no other person will be permitted to use the name of the same place upon goods manufactured by him at another and a different place. *El Modelo Cigar Mfg. Co.* v. *Gato*, S. Ct. Fla., Jan. 7, 1890.

Right to trade-mark may be acquired by one in his own name, or the name of another, but not to the exclusion of the right of another person of the same name, and whose place of business is in the same place. *Id.*

WILLS.

Lead-pencil writing, signed by the writer's first name only and not in the form of a will, but reciting "a few little things I would love to have done," and addressed to no one by name, is properly admitted to probate as a will. *Knox's Appeal*, S. Ct. Pa., Jan. 6, 1890.

JAMES C. SELLERS.