rectly under the care of Congress. Who else could authoritatively decide upon the effect of such action as suitors would suppose to have been taken by Congress in coasting licenses, revenue laws and foreign treaties: for this authority lay at the foundation of the jurisdiction. The Court was almost compelled to decide that Congressional action and non-action alike were efficacious to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes.

JOHN B. UHLE.

ABSTRACTS OF RECENT DECISIONS.

ACTION.

An answer alleging that a note was executed in consideration of the extension of a street railroad by the payee, and deposited with a bank, with the stipulation that it was not to be delivered until the condition was fulfilled, is not demurrable, the road not having been extended. *McLaughlin* v. *Clausen*, S. Ct. Cal., Aug. 4, 1890.

ADMIRALTY.

A court of admiralty has only jurisdiction of a maritime tort where the damage has been done, and the injury consummated, upon the water. The fact that the wrongful act was done upon a ship is insufficient. Therefore, where libelant, was engaged in repairing a vessel lying in winter quarters at her wharf, access being gained by means of a ladder leading from the wharf to her bulwarks, which was secured at the bottom by a cleat, the removal of which, while the libelant was on the vessel and without his knowledge, caused injury, he cannot recover. *The H. S. Pickands*, D. Ct., E. D. Mich., March 17, 1890.

Lien is not lost by the fact that suit is brought by the master, who is also manager of the company to which the vessel belongs, for the engineer's wages, in the latter's absence, although the claim be knowingly brought for less than is due, and although the manager inform the engineer he could afterwards claim the balance, provided the engineer does not admit the claim as for the full amount, except by ratifying the suit. *The Lillie. Crosby* v. *The Lillie*, C. Ct., S. D. Fla., March 26, 1890.

APPEAL.

Failure to file the record at the term succeeding the allowance of an appeal, causes the appeal to have no operation or effect. *Small* v. *Northern Pac. R. Co.*, S. Ct. U. S., March 31, 1890.

But, such failure is not a bar to another appeal within the prescribed time. *Evans et ux.* v. *State Nat. Bank of New Orleans*, S. Ct. U. S., March 17, 1890.

Filing the transcript of the record, although no citation is obtained or bond given until after the time prescribed for appeal, will give the Supreme Court of the United States jurisdiction of an appeal from a circuit court. *Id.*

BANKS AND BANKING.

An acceptance of a draft will be established by a telegram promising to pay. *In re Armstrong*, C. Ct., S. D. Ohio, Jan. 18, 1890.

CARRIERS.

Equity has no power, either at common law or under the interstate commerce act, to compel a railroad company to enter into a contract with another company for a joint through rate and joint through routing of freight and passengers: *Little Rock & M. R. Co.* v. *St. Louis, I. M. & S. Ry. Co. et al.*, C. Ct., E. D. Ark., March 20, 1890.

Ladies' jewelry carried by a man, traveling alone, in his trunk for transportation is not passengers' baggage, and the carrier will not be liable therefor. *Metz* v. *California South R. Co.*, S. Ct. Cal., Aug. 4, 1890.

The condition of the cattle at the time of shipment must be looked at, in an action for damages, and the defendants will not be liable where the damage resulted from the condition of the animals. *Missouri Pac. Ry. Co.* v. *Texas & P. Ry. Co.* (*Williams*, Intervenor), C. Ct., E. D. Ind., April 12, 1890.

The duty to feed and water, imposed upon a carrier by Rev. St. Texas, Art. 284, does not arise where there is a special contract that plaintiff shall water and feed the cattle, and the carrier is to stop at a given place for the purpose, provided the carrier was not requested to stop before reaching such place. *Id.*

And under Rev. St. U. S. §4386, which provides that no railroad shall confine live-stock in cars for more than twenty-eight consecutive hours without unloading them, for rest and feeding, for at least five consecutive hours, where there is such a special contract and no specific evidence of damage from failing to feed and water, the carrier will not be liable. *Id.*

CHARITIES.

The validity of a charitable gift for educating two persons for the ministry is not affected by a condition, that they shall, after entering, pursue a certain course, which is not optional with the minister, but subject to the control of the bishop, such condition being subsequent. *Field et al.* v. *Drew Theological Seminary*, C. Ct., D. Del., February 10, 1890.

A bequest to a corporation not in existence at the testator's death, but to be subsequently created by legislative enactment, is valid. *Id.*

A charitable use is created by a bequest for the education of "two young men, for all coming time," for the Christian ministry; and is valid. *Id.*

CONSTITUTIONAL LAW.

Jurisdiction is not conferred upon the circuit courts, in actions against a State which involve questions arising under the Constitution of the United States, by Art. 3, Sec. 2 of the Constitution of the United States or by the act of Congress of March 3, 1875. *Hans* v. *State of Louisiana*, S. Ct. U. S., March 3, 1890.

Jurisdiction cannot be conferred upon the circuit courts of the United States, in actions against a State with such State's consent in questions arising under the Constitution of the United States. *State of North Carolina et al.* v. *Temple*, S. Ct. U. S., March 3, 1890.

Shipping merchandise from one State to another is interstate commerce, and any statute, the requirements whereof are in conflict with those of the interstate commerce act, is not valid: *Baird* v. *St. Louis, I. M. & S. Ry. Co.*, C. Ct., E. D. Ark., March 18, 1890.

CONTRACT.

Any act of ratification after knowledge of facts which would be sufficient to rescind a contract on the ground of fraud, will amount to an affirmance, and will terminate the right to rescind. *Crooks* v. *Nippolt*, S. Ct. Minn., Aug. 8, 1890.

CUSTOM DUTIES.

Gun blocks not "rough-hewn or sawed only," but planed on two sides, are subject to an *ad valorem* duty under Act of Congress, March 3, 1883, which prescribes the rates of duty on wood, and wooden wares. Unless "rough-hewn or sawed only" they fall within the classification of "manufactures of wood not specifically enumerated or provided for." *U. S.* v. *Windmuller et al.*, C. Ct., S. D. N. Y., April 29, 1890.

EJECTMENT.

An action in ejectment can only be had in the Federal Courts upon the strict legal title; therefore, one holding a State certificate of purchase, which is but a contract for the sale of land, to be followed by a patent conveying the legal title, cannot maintain such an action in those courts, whatever effect may be given in the State courts to the State Statute making such certificates *prima facie* evidence of title. *Sweatt* v. *Burton*, C. Ct., S. D. Cal., April 28, 1890.

EVIDENCE.

Knowledge of the profits of a business and of the books of account is admissible in an action by a manager against his master on a contract whereby the former is to receive half the profits of the business for his services, and the books are not the only evidence of profit. *Schurtz* v. *Kerkow*, S. Ct. Cal., Aug. 4, 1890.

FIRE INSURANCE.

Condition, in a policy making it void in case inflammable materials are kept or used on the premises but excepting certain oils used for lamps if drawn and filled during the day, applies where the oil is drawn at dusk near a lighted lamp, even though the lamps are not then filled. *Gunther et al.* v. *Liverpool L. & G. Ins. Co.*, S. Ct. U. S., March 3, 1890.

FOREIGN JUDGMENTS.

A foreign judgment is, in the absence of fraud, conclusive, if rendered by a court of competent jurisdiction in a suit between the same parties, defendant appearing by counsel, although rendered in his absence and without his knowledge, where he does not deny counsel's authority to appear. *McMullen et al.* v. *Richie*, C. Ct., N. D. Ohio, February 17, 1890.

FRAUDULENT CONVEYANCE.

Actual or constructive notice of the vendor's financial position must be brought home to the purchaser, where the sale is at a fair price for a new consideration, part whereof is paid down and the balance in the future, in order to invalidate the sale as a fraud upon creditors. *Kellar et al.* v. *Taylor*, S. Ct. Ala., May 27, 1890.

Mortgage by one of the partners of a firm of his own property in order to carry on the business of the firm is not a fraudulent conveyance. *Rio Grande R. Co.* v. *Vinet*, S. Ct. U. S., Dec. 29, 1889.

GUARDIAN AND WARD.

Compound interest may be charged where a guardian collects and uses his wards' money, and does not attempt to account for it until compelled to do so. *In re Eschrich's Estate*, S. Ct. Cal., July 30, 1890.

INJUNCTION.

An injunction to restrain the enforcement of a judgment will not be granted merely upon the ground that the attorney has been guilty of negligence in defending the suit; the proper remedy is against the attorney to recover damages. *Barhurst et ux.* v. *Armstrong et al.*, C. Ct., S. D. Ohio, March 29, 1890.

Injunction will not be granted, in the absence of negligence, and of wanton or unnecessary disregard of the rights of others, where the defendants are making lawful use of the franchise conferred upon them by the State, in a manner contemplated by the statute. *Cumberland Telephone and Telegraph Co.* v. *United Electric Ry. Co. et al.*, C. Ct., M. D. Tenn., May 19, 1890.

JUDGMENT.

A temporary stay of execution, may be granted by a federal circuit court, upon its own judgments. *Eaton* v. *Cleveland, St. L. & K. C. Ry. Co. et al.; Shrop* v. *Same*, C. Ct., E. D. Mo., February 21, 1890.

LIBEL.

Libel per se is not sustained by a statement that the plaintiff was not prompted to obtain subscriptions for the World's Fair by patriotism or love of his guild, but by the stimulus of a compensation of two dollars and a half *per diem*. *Goldberger* v. *Philadelphia Grocer Pub. Co.*, C. Ct., S. D. N. Y., April 15, 1890.

NUISANCE.

A nuisance is not created *per se* where the defendants are making a lawful use of the franchise conferred upon them by the State, in a manner contemplated by the statute. *Cumberland Telephone and Telegraph Co.* v. *United Electric Ry. Co. et al.*, C. Ct., M. D. Tenn., May 19, 1890.

PARTNERSHIP.

A dissolution may be sued for at once in equity where a party has been induced to enter into a partnership through deceit, or where the business cannot be conducted at a profit. *Rosentein et al.* v. *Burns et al.*, C. Ct., S. D. Mass., Oct. 24, 1882.

An executor of a deceased partner carrying on the partnership business with the testator's assets for the benefit of his estate, in compliance with the terms of the will with the surviving partner, is not personally liable for the debts of the firm contracted during the testator's life, and the surviving partner cannot bind him therefor. *Mattison* v. *Farnham et al.*, S. Ct. Minn., July 17, 1890.

PATENTS AND INVENTIONS.

The expiration of letters patent between the date of service of the bill for infringement and the return day will bar relief in equity, where no special facts are shown. *American Cable Ry. Co.* v. *Chicago City Ry. Co. et al.*, C. Ct., N. D. Ill., February 10, 1890.

PRINCIPAL AND SURETY.

Contribution will be refused in equity to an administrator of the paying surety after an unaccounted delay of nearly eighteen years, the legal action being barred after three years. *Pickering* v. *Leiberman*, D. Ct., D. Del., January 8, 1890.

Insanity of a surety does not excuse delay on the part of his co-surety who has paid the debt, where a trustee has been appointed who has sufficient assets to pay the surety's debts. *Id.*

Sureties are liable on their bond, for the misappropriation of money paid to the clerk of a district court as clerk, where the condition is that he shall "properly account for all money coming into his hands," even though the order is not based upon direct statutory authority but upon the practice of the court. *In re Finks.*, D. Ct., W. D. Va., September 7, 1889.

RAILROAD.

Negligence can only be rebutted in an action for damages caused by sparks from a locomotive, by showing not only that proper appliances were used to arrest the sparks, but also that the same were operated in a careful manner by a skillful engineer. *Missouri Pac. Ry. Co.* v. *Texas & P. Ry. Co.*, *Boss et al.*, *Intervenors*, C. Ct., E. D. La., April 1, 1890.

REAL ESTATE.

Recovery on a quantum meruit will not be allowed for services rendered by a real estate agent under a contract to make him the sole agent to sell lots on commission, "which shall be in full for

any service he may render in surveying and laying out the land," even where the agent has made no sales. *Gilbert* v. *Judson*, S. Ct. Cal., July 30, 1890.

SET-OFF.

Counter-claim for loss of trade occasioned by selling inferior articles will not be sustained in an action for the price of goods sold, where the quantity and quality of the goods sold is easily ascertainable by the senses, defendant having elected to dispose of and pay for them, not the contract price, but their real value. *Stewart et al.* v. *Townsend*, C. Ct., D. S. C., January 25, 1890.

SHIPPING.

Neglect of duty owed by the owner of a ship to the seamen is not sustained by the failure of a freighting vessel to provide a physician or nurse during a voyage. *McCormack* v. *The Wensleydale*, D. Ct., E. D. N. Y., March 10, 1890.

TRESPASS.

Seizure by a mortgagee of the property under a chattel mortgage which is void on the ground of usury or fraud, without the mortgagor's consent is a trespass for which action lies, and exemplary damages may be allowed where the property is taken and carried away. *Kemmitt* v. *Adamson*, S. Ct. Minn., July 18, 1890.

USURY.

Action lies to recover back the difference between the usurious interest actually paid, and the amount that would be due for interest at the highest legal rate, even where there is no statute giving such right, and although the payment be voluntary. *Bexar Building & Loan Ass'n.* v. *Robinson*, S. Ct. Texas, June 17, 1890.

A note given for seventeen dollars with interest at ten per cent. per annum, only fifteen dollars being loaned, the two being added as additional interest, is void as usurious. *Kemmitt* v. *Adamson*, S. Ct. Minn., July 18, 1890.

VENDOR AND VENDEE.

Improvements made by a party upon property which he has contracted to buy from husband and wife, and upon which he has entered without consent, the contract being silent as to possession, and the wife subsequently refusing to convey, cannot be recovered as damages in an action for breach of contract. *Cartin* v. *Hammond*, S. Ct. Mon., July 22, 1890.

WARRANTY.

An implied warranty, that goods are of a certain quality, and known to the trade by certain names, does not exist where the contract states "These goods to be exactly the same quality as we make for other persons," "and as per sample bbls. delivered." "Turpentine copal varnish at 65 cts. per gallon; turpentine japan dryer at 55 cts. per gallon," the last clause being merely a regulation of the price. *DeWitt et al.* v. *Berry et al.*, S. Ct. U. S., March 17, 1890. ERNEST WATTS.