RECENT DECISIONS.

From the current of American and English Cases.

BY

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ATTORNEY AND CLIENT—NEGLIGENCE OF ATTORNEY—REDRESS OF CLIENT.—A., a mortgagee, filed a bill to foreclose the mortgage. B., the mortgagor, employed an attorney to defend the suit. The attorney entered an appearance, but did not file an answer, and the bill was taken *pro confesso*. B. then filed a petition to vacate the judgment on the ground of accident or mistake. Held: That the attorney, as an officer of the Court, was supposed to know about the proceedings of the Court; that there was no such accident or mistake as to entitle B. to have the judgment vacated; and that his only redress was against his attorney: Butler *v.* Morse, Supreme Court of New Hampshire, July 31, 1891 (23 At. Rep., 90).—*W. W. S.*

ARBITRATION—BY-LAWS OF CORPORATION.—Where the by-laws of an incorporated board of trade provide for the appointment of a board of arbitrators to settle all disputes between its members as to sales, etc., and for the appointment of a committee of appeals, who are to determine all appeals from the decision of the arbitrators, which decision is to be final in the controversy, the decision of the committee of appeals that the evidence offered is not sufficient to substantiate a claim, is conclusive, if no offer of further testimony is made: Vaughn *v.* Herndon, Supreme Court of Tennessee, Dec. 19, 1891 (17 S. W. Rep., 793).—*H. L. C.*

CONSTITUTIONAL LAW—MUNICIPAL CORPORATIONS—PROPERTY.—A municipality is a creature of government, and there can be no such thing as contracts between it and a State legislature, but it may be that a municipality cannot be deprived of its property without due process of law. But it was held in this case that the right to tax is not such a vested right of property as is beyond the control of the legislature: New Orleans *v.* N. O. Water Works, Supreme Court of the United States, Dec. 14, 1891 (142 W. S., 79).—*W. D. L.*

CONTRACTS—FACTS EXCUSING PERFORMANCE.—Plaintiff offered by letter to furnish defendants with coal for their line of steamboats for one year at a stated price per ton. Defendants accepted the offer by letter. Before the year expired defendants sold their steamboats and received no more coal. Action was brought to recover damages for breach of contract. Held: that the contract was not for successive deliveries of coal, to be made only upon notice given by the defendants; and though the amount of coal to be delivered was indefinite, yet by the terms of the contract it was determinable, and therefore certain, and the contract was complete and valid for the entire year: Wells *v.* Alexander *et al.*, New York Court of Appeals, Dec. 1, 1891 (29 N. E. Rep., 142). —*H. N. S.*

CORPORATIONS—ACTION BY STOCKHOLDER—POWER OF ONE TO SUE IN HIS OWN NAME TO ENFORCE A RIGHT OF THE CORPORATION.—Complainant owned stock in the S. Co., of which A. was the president and B. the treasurer. A. also owned stock of the company for which he had not paid. Complainant sued the S. Co.; together with A. and B. to compel A. to pay into the treasury of the company the value of the stock issued to him. It appeared that a majority of the directors were hostile to complainant and partisans of A., and would have refused to enforce the right of the corporation in the present case, or opposed any litigation brought for that purpose. Held: That under such circumstances one stockholder could bring suit in his own name to enforce a right of the corporation without first requesting the directors to sue: Knoop *v.* Bolimrich *et al.*, Court of Chancery of New Jersey, Nov. 24, 1891 (23 At. Rep., 118).—*W. W. S.*

DISCOVERY—PHYSICAL EXAMINATION OF PARTY.—The statutes which confer upon common law courts the power to compel discovery and inspection of books and papers, do not confer upon the courts power, at the instance of the defendant, to compel the plaintiff, in an action for personal injuries, to submit, in advance of the trial, to an examination by surgeons appointed by the Court: McQuigan *v.* Delaware, L. & W. R. R. Co., New York Court of Appeals, Dec. 1, 1891 (29 N. E. Rep., 235).—*H. N. S.*

HUSBAND AND WIFE—DIVORCE—ALIMONY.—Complainant brought an action of divorce against his wife, the bill alleging that when he married her she was already married to another man. The defendant admitted this fact. In the course of the trial defendant made an application for alimony and counsel fees, *pendente lite*. Held: That a woman cannot be the wife *de facto* or *de jure* of two husbands at the same time, and, therefore, defendant was not the wife of the complainant; and that an order for alimony and counsel fees could only be made in favor of a wife, and, therefore, defendant was not entitled to such an order: Freeman *v.* Freeman, Court of Chancery of New Jersey, Dec. 15, 1891 (23 At. Rep., 113).—*W. W. S.*

JUDGMENTS—EFFECT OF IN COLLATERAL ACTION.—A. assigned a note held by him to B., guaranteeing its payment. B. transferred it to D. as collateral security, and then made an assignment for the benefit of creditors. D. brought suit against A. on his guarantee, and secured a judgment for the full amount of the note, which was considerably more than B.'s indebtedness to him. Execution was had on the judgment and *nulla bona* returned. D. then filed a bill against A. for the discovery of his property and the appointment of a receiver, making the assignee B. one of the defendants. A. subsequently transferred his interest in the note to R., another defendant on the record. R. filed a cross bill against D., asserting his title to the note. Held: That the suit of D. against A., though judgment was recovered for the full amount of the note, was only conclusive to the amount of the debt due by A. to B., and, therefore, R., who offered to pay this amount, could show that the consideration for the transfer of the note to B. was illegal; and, in spite of the previous

action, the equitable title to the note was vested in him: Pearce *v.* Rice, Supreme Court of the United States, December 7, 1891 (142 U. S., 28).—*W. D. L.*

JURISDICTION—SUPREME COURT OF THE UNITED STATES.—The Supreme Court of the United States has no jurisdiction over an appeal from Circuit Court taken September 19, 1891, from a decree entered July 7, 1890, in a case where the jurisdiction of that Court depended upon the diverse citizenship of parties: Wauton *v.* DeWolf, Supreme Court of the United States, December 21, 1891 (141 U. S., 138).—*W. D. L.*

MORTGAGES—DECREE OF SALE.—In a proper case a Court of Equity has the power to so mould its decree as to order a sale of mortgaged premises to satisfy that part of the debt which is due, and preserve the lien upon the premises in the hands of the purchaser as to that part of the debt which has not matured: Penna. R. R. Co. *v.* Allegheny Valley R. R. Co., United States Circuit Court, Western District of Pennsylvania, August 31, 1891 (48 Fed. Rep., 139)—*H. S. C.*

PRINCIPAL AND AGENT—RATIFICATION—BENEFITS OF CONTRACT.—The defendant's husband, in consideration of one dollar, conveyed to her land subject to a mortgage that was about to be foreclosed. The plaintiff afterward advanced money to the husband to discharge this mortgage on the faith of his promise, which he made without defendant's knowledge or consent, that a mortgage should be executed to secure the plaintiff. The mortgage was paid off by the husband; but when the defendant was requested to execute a mortgage as security for the loan, she refused. She paid, nevertheless, the recording fees for the discharge of the mortgage, and obtained from the mortgagee a release. Held: That the defendant's acceptance of the benefits accruing from her husband's unauthorized promise was a ratification of his act, and equity would compel her to execute a mortgage to the plaintiff for the amount of his loan: New York Court of Appeals, October 27, 1891 (29 N. E. Rep., 228).—*H. N. S.*

PUBLIC IMPROVEMENTS—ESTOPPEL.—The plaintiff, having joined in a petition to grade and improve a street abutting upon his premises, and having paid the assessment without objection, is estopped from claiming damages on the ground that the improvement dammed a watercourse, and so overflowed his land: Hembling *v.* City of Big Rapids, Supreme Court of Michigan, December 21, 1891 (50 N. W. Rep., 741).—*J. A. McC.*

RAILROADS—PAYMENT BY RECEIVER FOR MATERIALS.—Where persons have furnished supplies and materials necessary for the running of a railroad, and interest has been paid on mortgage bonds or permanent improvements made out of the earnings of the road during the period when such debts were contracted, the Court which has appointed a receiver will order the amount so used for interest or improvements to be brought in for this class of creditors, either from the earnings in the hands of the receiver, or, failing these, from the *corpus* of the property: Finance Co. of Penna. *v.* Charleston C. & C. R. R. Co., U. S. Circuit Court, Dist. South Carolina (48 Fed. Rep., 188).—*H. L. C.*

RAILROAD—RIGHTS OF ABUTTING OWNERS—PARTIES.—A corporation built an elevated railroad without condemning the easements of an abutting owner in the highway. The owner leased his lot after the road was built. Held: That he could maintain an action for damages for the impairment of his easement by the existence and maintenance of the road during the time the lot was in the actual possession of his lessee. On the death of the lessor intestate, or after a devise of the land, the right to damages for injuries suffered between the death of decedent and the termination of the lease, goes, with the title, to his heirs or devisees, and not to his administrator: Kernochaw *v.* N. Y. El. R. R. Co., New York Court of Appeals, December 1, 1891 (29 N. E. Rep., 65).—*H. N. S.*

RAILROAD COMPANIES—LIBEL.—A railroad company may maintain an action of libel for a publication charging them with such negligence and incapacity in the conduct of their business as would induce shippers to refrain from employing the company as a common carrier. Such action may be maintained without proof of special damage: Ohio and M. Rwy. Co. *v.* Press Pub. Co., U. S. Circuit Court, Southern District of New York, November 17, 1891 (48 Fed. Rep., 206).—*H. L. C.*

RAILROAD COMPANIES—NEGLIGENCE.—A railroad company is not bound to exercise the same degree of care in maintaining its side tracks as its main tracks, and cannot be held liable for an injury which results to an employee through defects in their construction: O'Connell *v.* Duluth R. R. Co., Supreme Court of Michigan, December 21, 1891 (50 N. W. Rep., 801).—*J. A. McC.*

TELEGRAPH COMPANIES—NEGLIGENCE.—Where a telegram is sent to A., in care of B., at a certain place, and no such person as B. resides in that place, the telegraph company is not thereby relieved from making an attempt to deliver the message to A.; and, failing to make such effort, which, if made, would have been successful, the telegraph company is liable for damages sustained by A.: Western Union Telegraph Co. *v.* Houghton. Supreme Court of Texas, December 15, 1891 (17 S. W. Rep., 846).—*H. L. C.*