ABSTRACTS OF RECENT CASES.

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BY

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ADMIRALTY — CONTRIBUTORY NEGLIGENCE — RES ADJUDICATA — COMMON LAW JUDGMENT.—A judgment in favor of the defendant, in an action at law against the owner of a vessel, does not operate as a bar to a subsequent proceeding in admiralty against the vessel, unless it appears that the judgment was based, not upon the contributory negligence of the plaintiff, but upon the absence of fault upon the part of the defendant: City of Rome, District Court of the United States, Southern District of New York, November 21, 1891, BROWN, J. (49 Fed. Rep., 392.)—*H. L. C.*

ADMIRALTY—MARITIME LIEN—INSURANCE PREMIUMS.—Under the general maritime law no lien exists upon a vessel for the amount of premiums due upon a policy of marine insurance issued to the owner of such vessel: The Hope, District Court of the United States, District of Washington, February 11, 1892, HANFORD, J. (49 Fed. Rep., 279).—*H. L. C.*

BANK—INSOLVENCY—SET-OFF—DEPOSITOR.—In a suit by the receiver of an insolvent national bank against the endorser of a promissory note, held by the bank and maturing after the insolvency thereof, the defendant may set-off the amount of his deposit in the bank at the time of its insolvency: Yardley *v.* Clothier, Circuit Court of United States, Eastern District of Pennsylvania, January 5, 1892, BUTLER, J. (49 Fed. Rep., 337.)—*H. L. C.*

BANK—INSOLVENCY OF DEPOSITOR—SET-OFF.—In a suit against a bank, by the assignee of an insolvent, to recover the amount of a deposit of the insolvent, the bank may set-off the amount of a note held by them, upon which the insolvent is liable, but which was not due at the time of the insolvency: Nashville Trust Company *v.* Fourth National Bank, Supreme Court of Tennessee, March 8, 1882, PITTS, J. (18 S. W. Rep., 822).—*H. L. C.*

CARRIERS—LIEN FOR FREIGHT—MISTAKE IN CHARGE.—A railroad company had hung in its freight office a tariff-sheet of freight rates for the information of shippers. None of the employees had authority to give any rates other than those contained in the tariff-sheet. A shipper asked the freight cashier, in the company's freight office in W., the rate of freight to B.; the cashier did not know, nor was it his duty to know, the rate, and asked the way-bill clerk, upon whom such duty devolved. On account of noise caused by trains, the question was misunderstood, and the clerk erroneously gave the rate of freight to M. This the shipper paid, and requested shipment of his goods to B. Shortly afterward the

error was discovered, and as the shipper could not be found, the goods were forwarded to B., with instructions to the agent at B. to hold them for additional charges based on the correct rate, which was fair and reasonable. Payment of the additional rate was refused, and upon suit brought against the railroad company for conversion of the goods. Held: That there was no contract of shipment, as there was no meeting of the minds of the parties on account of the misunderstanding, and the defendant was entitled to hold the goods until it received its reasonable charge for transportation: Rowland *v.* New York, N. H. & H. R. Co., Supreme Court of Errors of Connecticut, August 5, 1891, per TORRENCE, J. (23 Atl. Rep., 755).—*H. N. S.*

CONSTITUTIONAL LAW—ASSESSMENTS FOR LOCAL IMPROVEMENTS AGAINST PROPERTY BENEFITED—JUDGMENTS AGAINST OWNERS OF.—An ordinance of Raleigh provided for the assessments to meet the expense of local improvements upon abutting properties, and that personal judgments could be rendered against the property owners. Held: That the assessments were a valid exercise of the taxing power; but that allowing a personal judgment against the property owner, subjected property not benefited by the improvements to be taken and violated the prohibition against taking property without compensation: Raleigh *v.* Peall, Supreme Court of North Carolina, February 16, 1892, SHEPERD, J.; MERRIMON, C. J. and DAVIS, J., dissenting as to first proposition (14 Southeastern Rep., 521).—*W. W. S.*

CONSTITUTIONAL LAW—STATE TAXATION—OBLIGATION OF CONTRACTS.—The fact that a city sells to a street railway, for a large sum of money, the franchise to run street-cars, does not prevent the city, in the absence of an express stipulation, from subsequently taxing the company in the form of a gross sum, for a license to run cars: New Orleans City Cab Co. *v.* New Orleans, February 29, 1892; Mr. Justice GRAY (143 U. S., 193).—*W. D. L.*

CORPORATIONS—OFFICERS OF—WHEN THEIR KNOWLEDGE IS THE KNOWLEDGE OF THE CORPORATION—PROMISSORY NOTE.—Plaintiff, a bank and an endorsee, sued on a promissory note, as to which defendant, the maker, had a good defence as against the payee. The person presenting the note was vice-president, a director and member of the discounting committee of the plaintiff, president of the payee, and knew of the defence on the note. Held: That his knowledge was not the knowledge of the bank, as it did not appear that he acted for the bank in the transaction: Commercial Bank of Danville *v.* Burgoyn, Supreme Court of North Carolina, SHEPERD, J., February 23, 1892 (14 Southeast. Rep., 623). —*W. W. S.*

CORPORATION—ULTRA VIRES ACT—ESTOPPEL.—The maker of a note, given to a corporation for money loaned, is estopped from setting up that the corporation had no power to make the loan: Bond *v.* Turrell Cotton Company, Supreme Court of Texas, November 21, 1891; TARLTON, J. (18 Southwest. Rep., 691).—*H. L. C.*

CRIMINAL LAW—ILLEGAL SALE OF INTOXICATING LIQUOR—EVIDENCE OF SALE—SUFFICIENCY.—In a trial on an indictment for the illegal sale of intoxicating liquor, a witness for the State testified to numerous sales by the defendant, but could not fix the date of any sale. The Court refused to compel counsel for the State to elect on which particular sale he would demand a conviction. Held: That this was not error: Sanders *v.* State, Supreme Court of Georgia, per Curiam, January 11, 1892 (14 Southeast. Rep., 570).—*W. W. S.*

DEDICATION OF STREETS.—The use of a private street by the public for three years, without objection on the part of the owner of the fee, is sufficient to show a dedication: Mason *v.* Sioux Falls, Supreme Court of South Dakota, April 5, 1892 (CORSON, J., 51 Northwestern Reporter, 770). —*J. A. McC.*

INTERNATIONAL LAW—MARITIME SEIZURES—WRIT OF PROHIBITION.—At a time when a diplomatic correspondence was going on between the United States and Great Britain, respecting the extent of the jurisdiction of the former in the waters of Behring Sea, a libel in admiralty was filed in the District Court of Alaska, alleging a seizure by the United States authorities of a vessel "within the limits of Alaska Territory, and in the waters thereof and within the civil and judicial District of Alaska," for the offence of killing fur seals, in violation of Section 1956, Revised Statutes. The seizure was effected fifty-nine miles from land. After the condemnation of the vessel, the owner applied to the Supreme Court of the United States for a writ of prohibition to prevent the Alaska Court from executing its sentence. Leave was granted to file the petition, but the Court held, that prohibition will not issue after judgment and sentence, unless want of jurisdiction appears on the face of the proceedings, although, before judgment, the Superior Court can examine not only the process and pleadings technically of record, but also the facts and evidence upon which action was taken; and since, in this case, the pleadings stated that the seizure was effected "within the limits of Alaska and the waters thereof," and hence within the jurisdiction of the Alaska Court, the Supreme Court could not go behind the record to ascertain any facts which might operate to render the seizure illegal because in violation of international law. Held, also, that the writ of prohibition might, in this case, be rightly refused, because to grant it would be to review the action of the political department of the government, upon a question pending between it and a foreign power, and to determine whether the government was right or wrong while negotiations were still going on: *In re* Cooper, Chief Justice FULLER, February 29, 1892 (143 U. S., 472).—*R. D.*

MALICIOUS PROSECUTION—PROBABLE CAUSE—EVIDENCE.—Iron was shipped to a vendee with the understanding that the iron was not to be removed from the cars until paid for. Through an error, the iron was delivered by the railroad before it was paid for, and was used by the vendee, who allowed the owners of the iron and their agent to remain in ignorance of the fact that the iron was no longer on the cars. Vendees

repeatedly promised to pay for the iron, but never did so. When at last the owners of the iron learned that the vendees had used it, they caused their arrest for fraudulently contracting a debt. In an action brought by the vendees for malicious prosecution. Held: That probable cause for such prosecution was shown, both by the above facts, and by the fact that the writ for the plaintiff's arrest was issued by a judge having full jurisdiction, who, on a subsequent hearing of testimony, ordered plaintiff's commitment: Cooper *v.* Hart, *et al.*, Supreme Court of Pennsylvania, March 21, 1892, per GREEN, J. (23 Rep., 833).—*H. N. S.*

NEGLIGENCE—CONFLICT OF LAWS—WHERE THE LAW OF THE STATE IN WHICH AN ACCIDENT OCCURS DIFFERS FROM THE LAW OF THE STATE WHERE SUIT IS BROUGHT.—Plaintiff, an employee of a railroad company, the defendant, was injured while working in Pennsylvania, where the contract of employment was made, and was to be executed. He brought a suit for damages in Ohio, where he could have recovered, though in Pennsylvania he could not have done so. Held: That under such circumstances he could not recover in Ohio: Alexander *v.* Penna. R. R. Co., Supreme Court of Ohio, BRADBURY, J., December 8, 1891 (30 Northeast. Rep., 69).—*W. W. S.*

NEGLIGENCE—CONTRIBUTORY—TRESPASSERS ON THE TRACK OF A RAILROAD COMPANY—WHEN FOR THE JURY.—Defendant's train killed a child between 4 and 5 years old on its track. Plaintiff's evidence tended to show a want of ordinary care on the part of defendant in keeping a reasonable look-out for obstructions on the track, and that the child could have been recognized as such for a distance twice that necessary for stopping the train. Held: That the case should have been left to the jury. Green *v.* Ohio River R. R. Co., Supreme Court of Appeals of West Virginia, HOLT, J., February 12, 1892 (14 Southeast. Rep., 465).—*W. W. S.*