ABSTRACTS OF RECENT CASES.

[Selected from the current of American and English Decisions.]

BY
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APPEARANCE—BY UNAUTHORIZED ATTORNEY.—When a defendant is absent from the State, and has no notice of the action, he is not affected by the appearance of an attorney-at-law for him, without his knowledge or authority: McNamara *v.* Carr, Supreme Judicial Court of Maine, LIBBEY, J., February 10, 1892 (24 Atl. Rep., 856, 84 Me., 299).—*A. S.*

ATTACHMENT—PRIORITY TO DEED.—When a deed is lodged with a broker to be delivered when encumbrances on the land are cleared and the consideration paid, subsequent attachments sued out before the recording of the deed are prior thereto, even though the attorney of the claimants had knowledge of the negotiations for the sale of the land: Stevens *v.* King, Supreme Judicial Court of Maine, PETERS, C. J., February 4, 1892 (24 Atl. Rep., 850, 84 Me., 291).—*A. S.*

CARRIERS—ERRONEOUS TICKETS.—The face of a railroad ticket is conclusive evidence to the conductor of the terms of the contract of carriage between the passenger and the company, and where the ticket agent delivers an erroneous ticket to the passenger the latter must submit to the inconvenience of paying his fare or ejection from the train, and must rely upon his remedy in damages against the company for the negligent mistake of the ticket company. Where the passenger before taking passage discovers that an erroneous ticket has been delivered to him he cannot recover damages for the ejection in an action sounding in tort, as by the exercise of due care he might have avoided the injury. If his action sounds in contract he can recover nominal damages only, as it is his duty to use due diligence to reduce the damages from the breach, and the failure to do so prevents recovery for any damage which might be avoided by due diligence: Pouilin *v.* Canadian Pac. Rwy. Co., Circuit Court of Appeals of the United States, Sixth Circuit, October 11, 1892, TAFT, J.—BROWN, J., dissenting—(52 Fed. Rep., 197).—*H. L. C.*

CONFLICT OF LAWS—BILLS OF EXCHANGE.—Where a bill of exchange was drawn in Indiana, and accepted in Michigan, to be discounted in Indiana and to be paid in Michigan, it was *held:* That it was an Indiana contract, the liability on which was to be determined by the law of Indiana: Farmers' National Bank *v.* Sutton Manufacturing Co., Circuit Court of Appeals of United States, Sixth Circuit, October 11, 1892, TAFT, J. (52 Fed. Rep., 191).—*H. L. C.*

CONSTITUTIONAL LAW—AUSTRALIAN BALLOT LAWS—PARTY DESIGNATIONS ON TICKET.—The ballot laws of California provide that the names of all political parties which have filed certificates of nomination of candidate in accordance with the statutory requirements shall be printed in separate lines at the head of the official ballot, and that an

elector who desires to vote any such party ticket straight may do so by putting a cross opposite the name of such party; but a ballot so marked shall not be counted if marked in any other place, except to indicate a vote on a constitutional amendment or other question. *Held* (1) That such provision was unconstitutional, as resulting in the partial or total disenfranchisement of any elector so voting unless his party had a full State and local ticket; (2) that Section 1197, which provided that only parties polling three per cent. of the entire vote cast at the last general election should have a heading upon the ticket, was unconstitutional because discriminating against a certain class of electors and is therefore lacking in that uniformity required by the Constitution of the State: Eaton *v.* Brown *et al.*, Election Commissioners, Supreme Court of California, October 15, 1892, BEATTY, C. J. (31 Pacific Rep., 250).—*J. A. McC.*

CONTRACTS IN RESTRAINT OF TRADE.—The defendant entered into an agreement with the plaintiff, as his employer, that he would not accept another situation, or establish himself in any business, within fifteen miles of London, without the written consent of the plaintiff, for a period of three years after leaving the plaintiff's service; but such permission was not to be withheld if it could be proved to the satisfaction of the plaintiff that the situation sought, or the business established, was not for the sale of the same class of goods as those sold by the plaintiff. *Held* (affirming the decision of KEKEWICH, J.) on a motion for an injunction to restrain the defendant from breaking the agreement, that the clause providing that the plaintiff's permission was not to be withheld unless the business in which the defendant engaged was in the same class of goods as the plaintiff's, showed that the restrictive clause was intended to apply to all kinds of business whatsoever, and was therefore wider than was necessary for the protection of the plaintiff and void: Perlo *v.* Saalfeld., High Court of Justice, Chancey Division, Ap. 12, 1892, (2 Ch., 149.—*G. S. P.*

CRIMINAL LAW—SENTENCE - TERM OF IMPRISONMENT TO BE FIXED FOR FAILURE TO PAY FINES.—Where by statutory provision, a sentence imposing a fine and costs must set a period for which the defendant shall be imprisoned in the county jail for default in payment, in reversing the judgment because of the omission to fix the term of imprisonment, a new trial will not be awarded, but the cause will be remanded for a proper sentence: Roberts *v.* State, Supreme Court of Florida, August 15, 1892, RANEY, C. J. (11 Southern Reporter, 536).

ELECTION LAWS—OFFENCES AGAINST—REWARD.—Where a reward is promised by the chairman of a political meeting for the conviction of any one violating the election laws at a certain election, a citizen who procured a verdict of guilty against an offender of such laws becomes entitled to the reward, although the sentence of the prisoner is indefinitely suspended. It cannot be objected that there is want of consideration for the offer, because of the duty of every citizen in preserving the purity of elections, of the arrest and conviction of the offender, and time and money used by the party to obtain the result of that which he is under no obligation to do, are a substantial consideration. Such an offer is not against public policy, for the reason that the offences are afterward

to be committed. The offer is intended to deter persons from committing the crimes, not to induce them to do so: Wilmoth *v.* Hensel, Supreme Court of Pennsylvania, October 3, 1892, PAXSON, C. J. (25 Atlantic Reporter, 86).

GAMING STATUTES.—On a trial for violating a statute prohibiting gambling in a tavern, where the uncontradicted evidence shows that the room in which the gaming occurred was a room of a tavern, it is immaterial whether or not it was a private bedroom: McCalman *v.* State Supreme Court of Alabama, June 23, 1892, COLEMN, J. (11 So., 408).—*G. S. P.*

GARNISHMENT—CHECK DEPOSITED AS CASH.—When the payee of a check deposits it in bank, and, according to a custom assented to by him, it is credited on his bank book as so much cash, the title to the check vests in the bank, and the drawer cannot be garnished as debtor of the payee in respect to the debt for which the check was given: National Park Bank *v.* Levy *et al.*, Supreme Court of Rhode Island, TILLINGHAST, J., June 20, 1892 (24 Atl. Rep., 777).—*A. S.*

INTOXICATING LIQUORS — SUBJECTING PREMISES TO PAYMENT OF DAMAGES FROM SALE—LIABILITY OF ESTATE IN REMAINDER.—Where the lessor of the premises against which an action is maintained for damages arising from the unlawful sale of intoxicating liquors by his lessee, has but a life estate, the estate in remainder cannot be held liable for the damages caused by the sale. Mullen *v.* Peck, Supreme Court of Ohio, June 24, 1892, WILLIAMS, J. (31 Northeastern Reporter, 1077).

JUSTICE OF THE PEACE—CONTINUANCE—JURISDICTION.—When, in a case in a justice court, a writ of attachment is made returnable at a certain hour, and neither party appears within one hour of the time fixed, but the plaintiff sends a written request to the justice to continue the case to a later hour, and the justice does so continue it, the justice has jurisdiction to act: Wagner *et al. v.* Kellogg *et al.*, Supreme Court of Michigan, GRANT, J., July 28, 1892 (52 N. W. Rep., 1017).—*A. S.*

MARITIME LIEN—STEVEDORE'S SERVICES.—A stevedore rendering services to a vessel in a port, other than its home port, has a maritime lien upon the vessel for such services: The Main, Circuit Court of Appeals of the United States, Fifth Circuit, June 20, 1892, PARDEE, J. (51 Fed. Rep., 954).—*H. L. C.*

NATIONAL BANKS—INSOLVENCY—SPECIAL DEPOSIT.—A treasurer of a county, in violation of law deposited certain county funds in a bank, which afterwards became insolvent. These moneys were not deposited as a special, as contradistinguished from a general deposit, and the moneys were mingled with the other moneys of the bank, but the officers of the bank knew that the moneys deposited were county funds, and the certificates of deposit were marked "special." It was held that the county was entitled to payment in full in preference to the other creditors of the bank: San Diego County *v.* California National Bank, Circuit Court of the United States, Southern District of California, October 3, 1892, ROSS, J. (52 Fed. Rep., 59).—*H. L. C.*

NEGLIGENCE—PERSONAL LIABILITY OF SELECTMEN OF A TOWN.—On an action for negligence by a man employed in constructing a sewer against the selectmen of a town by whom he was *directly* hired. In building the sewer the selectmen were performing a ministerial duty, belonging to them by virtue of their office. While the sewer when built belonged to the town, its construction was not the performance of a duty imposed by general laws upon it for general benefit, but a construction authorized by a town for its benefit and that of its inhabitants. The defendants employed the plaintiff. Whether they were acting as public officers or agents or not, did not alter their duty to him. The fact that the town might also be liable did not relieve them, nor can the case be compared to an agent following the directions of his principal as to hiring and setting a person to work without any control or direction himself in relation to the matter, as the defendants had full control over the work: Breen *v.* Field, Supreme Judicial Court of Massachusetts, October 21, 1892, MORTON, J. (31 Northeastern Reporter, 1075.

OBSTRUCTION OF JUSTICE—INTOXICATING WITNESS TO PREVENT HIS ATTENDANCE.—Any willful and corrupt attempt to interfere with and obstruct the administration of justice is an indictable offence at common law; and, therefore, to intentionally and designedly get a witness drunk, for the express purpose of preventing his attendance before the grand jury, or in open court, is a sufficient interference with the administration of justice to constitute an indictable offence: State *v.* Holt, Supreme Judicial Court of Maine, WALTON, J., June 2, 1892 (24 Atl. Rep., 951, 84 Me., 509).—*A. S.*

RAILROAD TICKET—REFUSAL TO ACCEPT.—A railroad company can be held liable in damages for the refusal of a conductor to accept the return coupon of a ticket, perfect in letters, figures and stamp, but having without the passenger's knowledge lost its blue color by being wet; and the humiliation and shame, suffered by being obliged to pay another fare or suffer ejection, are the subjects of damages: Chicago, etc., R. R, Co. *v.* Conley, Appellate Court of Indiana, October 26, 1892, NEW, J. (32 Northeastern Reporter, 96).

RIPARIAN RIGHTS.—One owning lands along a river does not part with his character as reparian owner so that a grant of land lying next under the water may not issue to him from the State, when he conveys to a railroad company the *right of way* over land partly above and partly below high water: New York Cent., etc., Rld. Co. *v.* Aldridge, Court of Appeals of New York, October 4, 1892, PECKHAM, J. (32 Northeastern Reporter, 50).

WIFE--LIABILITY OF, AS OCCUPIER OF HER REAL PROPERTY.—Where by statute a wife is given the same property rights as if unmarried, she may be made liable in damages to one injured by a vicious dog kept and harbored on her property by her husband with her consent, and which has been allowed to escape, and the husband should not be joined as party defendant: Quilty *v.* Battie, Court of Appeals of New York, October 4, 1892, MAYNARD, J. (32 Northeastern Reporter, 47).