DIGEST OF IMPORTANT DECISIONS.

EDITED BY

ALFRED ROLAND HAIG.

CARRIERS AND TRANSPORTATION COMPANIES.

Cases selected by OWEN WISTER.

CARRIERS.

1. *Ejection of Passenger.*

A passenger, occupying more than one seat in a railroad train, contrary to the rules of the company, and who resists any attempt of the trainmen to confine him to a single seat by displaying a pistol, may be removed from the train, whether other passengers were inconvenienced or not: Gulf, C. & S. F. Ry. Co. *v.* Moody, Court of Appeals of Texas, STOREY, Special Judge, June 28, 1893, 22 S. W. Rep., 1009.

2. *Injury to Passenger—Burden of Proof.*

Where, in an action for personal injuries, plaintiff alleged that by reason of his bruises and hurts he was rendered delirious at times, and defendant had the cause continued for a year, the latter was not entitled to a continuance to take the deposition of absent witnesses who would testify that plaintiff was not rendered delirious, on the ground of surprise occasioned by the deposition of a witness for plaintiff, wherein he stated that plaintiff was rendered delirious by his injuries.

While a railroad company owes a very high degree of care to its passengers, to protect them from injury, yet the company is not an insurer of their safety; and it is error to instruct the jury that if a train in which a passenger was traveling left the track, and was derailed, and the passenger was injured thereby, the company would be liable for such injuries as were the direct and proximate result of such accident, unless the derailment could not have been guarded against by human skill and foresight, and was caused by a defect unknown to the company.

The fact that a passenger was injured without fault on his part raises no presumption of negligence of the carrier, and does not place upon the latter the burden of proving that the injury was not caused by its negligence: Texas & P. Ry. Co. *v.* Buckalew, Court of Appeals of Texas, PLEASANT, J., May 11, 1893, 22 S. W. Rep., 994.

3. *Limitation of Liability.*

The plaintiff shipped a car-load of goods, including some horses, from Redding, Ill., to Chicago, over the C., S. F. & C. R. R., which terminated in Chicago. He intended to have the property transported to Lakefield, in Minnesota, and verbally agreed with the C., S. F. & C. R. R. Co. as to what the charge should be to that point. He, however, entered into a written contract with that company merely for transportation to Chicago for a specified price, and that a person, in behalf of the plaintiff, should have passage with the car to take care of the property. Plaintiff

sent a man with the car, giving him money to pay the freight, but gave him no express authority to enter into any contract in his behalf. At Chicago this agent, in behalf of his principal, contracted with the defendant for the further transportation from there to Lakefield, in which contract it was provided that no claim for loss or damage to the stock should be valid, unless made in writing within thirty days after the same should have occurred. After the car reached its destination, the defendant retained possession a few days for non-payment of freight. In an action for alleged negligence in the care of one of the horses after the transportation had ceased, *held:* (1) The above condition as to notice was applicable in respect to the carrier's conduct as a warehouseman, that relation being properly incident to that of carrier. (2) Such a contract, if made by the owner, or if authorized by him, is reasonable and valid. (3) From the circumstances it must be inferred that the agent in charge of the property was authorized to make any necessary and reasonable contract, as he did do, for its transportation from Chicago to Lakefield. For that purpose he stood in place of the owner: Armstrong *v.* Chicago, etc., R. R. Co., Supreme Court of Minnesota, DICKINSON, J., May 5, 1893, 54 N. W. Rep., 1062.

4. *Who is a Passenger—Ejection.*

A person who gets on the platform of an express car without having purchased a ticket, and remains thereon, in violation of the company's rules, for the purpose of being carried from one station to another, is not a passenger.

The fact that a brakeman of such train, on discovering such person, accepts from the latter the required fare from the station where he got on to his place of destination, does not constitute such person a passenger, since the former cannot waive the rules of the company.

Where, in an action against a railroad company for wrongfully ejecting plaintiff while a passenger, the gist of the complaint is the violation of the contract to carry, plaintiff cannot recover on the theory of the use of unnecessary violence in effecting a rightful ejectment: Chicago & E. R. Co. *v.* Field, Appellate Court of Indiana, REINHARD, J., June 10, 1893, 34 N. W. Rep., 406.

CONNECTING LINES.

5. *Liability for Stolen Baggage.*

When a passenger buys a ticket from a carrier to a point beyond its line, which limits the carrier's liability to its own line, and the passenger procures her baggage to be checked, and pays for the excessive weight over 100 pounds, the carrier is not liable for property stolen from the baggage before reaching its destination, but while on a connecting line: Gulf, C. & S. F. Ry. Co. *v.* Ions, Court of Appeals of Texas, STOREY, Special Judge, June 28, 1893, 22 S. W. Rep., 1011.

TELEGRAPH COMPANIES.

6. *Failure to Deliver Message—Special Damages.*

An attorney wired his clients: "Have you claim against P. L. D.?" The latter replied: "Yes; one hundred and sixty-one dollars and fifteen

cents." The delivery of the message and answer thereto was delayed through negligence over four days, during which time plaintiffs' debtor converted his property into cash and fled to parts unknown, thereby preventing collection of the debt by legal attachment In an action against the telegraph company it was *held:* (1) That the message, when read in the light of well-known usage in commercial correspondence, reasonably informed the operator of its importance and disclosed the transaction so far as was necessary to accomplish the purpose for which it was sent, and that the measure of damages was the loss occasioned to the plaintiffs by reason of the failure to deliver the message. (2) That it was no defence to the action that at the time the message was received by the defendants a violent storm was raging at the other end of the line, which prevented transmission, if the sender was not informed at the time of the company's inability to transmit: Bierhaus *v.* Western Union Tel. Co., Appellate Court of Indiana, June 20, 1893, LOTZ, J., 34 N. E. Rep., 581.

COMMERCIAL LAW.

Cases selected by FRANCIS H. BOHLEN.

BILLS AND NOTES.

1. *Note Dated on Sunday—Evidence.*

In an action on a note dated on Sunday, the burden is on plaintiff to show that it was in fact executed on a day which was not Sunday.

In an action by a bank on a note dated on Sunday, its "discount register" is not admissible in evidence to show that the note in suit was a renewal of a note which matured on Sunday, and that the renewal note was made on a certain week day after its date, and dated back to the date of the maturity of the first note, according to the custom of the bank: Hauerwas *v.* Goodloe, Supreme Court of Alabama, June 15, 1893, STONE, C. J., 13 So. Rep., 567.

CHECKS.

2. *Fictitious Payee.*

Where a check is drawn, payable to a person under a fictitious name, in payment for property which it afterwards appears he has stolen, and the bank at which it is payable certifies the check, a bank which subsequently cashes such check, on its being indorsed by the payee with his fictitious name, acquires a valid title thereto, which it can enforce against the certifying bank; it appearing that, though the payee acted all through under a fictitious name, yet the check was received by the identical person to whom its drawer intended to deliver it, and was by him indorsed in the name in which it was issued to him, and he, as was intended by the drawer, received the benefit of it: 33 N. E. Rep., 247, affirmed: Meridan National Bank of Indianapolis *v.* Shelbyville National Bank, Appellate Court of Indiana, June 24, 1893, GAVIN, C. J., 34 N. E. Rep., 608.

NEGOTIABLE INSTRUMENTS.

3. *Notice of Dishonor.*

In a city of less than 10,000 inhabitants, not having free mail delivery, and which is not within Code, § 1777, permitting notice of dishonor to be given by mail, although the indorser and holder live in the same town, personal notice must be given.

By the law merchant, personal notice of dishonor need not be given presently and directly to the indorser, but the notice may be left with any person in charge of his place of business, whether such person is his agent or not, or with any person found on and belonging to the place where he resides, apparently capable of transmitting the notice to the indorser. Hence, failure to give notice of the dishonor of a note at the indorser's residence is not excused by the fact that an agent of the bank in casually passing the indorser's house at 6 P.M. found no lights in the windows and saw no one in the house; such agent not stopping at the house or making any inquiry as to whether the indorser was in: Isabel *v.* Lewis, Supreme Court of Alabama, MCCLELLAN, J., June 7, 1893, 13 So. Rep., 335.

PRINCIPAL AND AGENT.

4. *Powers of Agents.*

Defendant transportation company adopted a resolution that F "is hereby authorized to take full charge of the company's business, and to enter into such negotiations and contracts as he thinks best for the company's interest." *Held*, that F was authorized to appoint a local agent with power to hire a barge for defendant, and agree that, if not returned in as good condition as when hired, defendant would pay the agreed value of the barge, as upon a purchase.

Where defendant's general agent introduced to plaintiffs its local agent, saying that any transactions had with him would be approved by defendant, defendant cannot relieve itself from liability on a contract made by such agent with plaintiffs by showing that it was in excess of his powers. Evidence that the alleged agent had made contracts of a similar character, as such agent, which were ratified by defendant, is admissible: Tennessee River Trans. Co. *v.* Kavanaugh, Supreme Court of Alabama, May 23, 1893, STONE, C. J., 13 So. Rep., 283.

CORPORATIONS.

Cases selected by LEWIS LAWRENCE SMITH.

ACTIONS AGAINST CORPORATIONS.

1. *By Stockholders.*

Before a stockholder in a corporation can maintain an action in his own name to obtain a remedy for wrongs committed against the corporation, it must appear that he has in good faith, but without success, attempted to secure action by the directors or managing officers of the corporation, or that demand for their action would be unavailing:

Atchison, T. & S. F. R. Co. *v.* Board of Commissioners, Supreme Court of Kansas, JOHNSTON, J., June 10, 1893, 33 Pac. Rep., 312.

A minority of stockholders will not be permitted to displace corporate authority and control by substituting therefor the policy, management and control of the courts, except in plain cases of such fraud and maladministration as work manifest oppression and wrong to them; and, before calling on the court to take into its hands the management of corporate affairs, it must be made clearly to appear, not only that such oppression and wrong is being done, but that every reasonable effort has been made to secure redress, and prevention of further mischief, within the corporation itself, citing Hawes *v.* Oakland, 104 U. S., 450: Roman *v.* Woolfolk, Supreme Court of Alabama, HEAD, J., May 16, 1893, 13 So. Rep., 212.

CONSOLIDATION.

2. *Who May Object to*

Where several railway companies have entered into articles of agreement for consolidation, and have observed the forms of the statute in such organization, and filed the articles of agreement with the Secretary of State, and the consolidated company has for a considerable time assumed to be and to act as a corporation, an inquiry into the validity or nonexistence of the consolidation can only be brought by the proper prosecuting officer in the name of the State: Atchison, T. & S. F. R. Co. *v.* Board of Commissioners, *supra.*

INSOLVENCY.

3. *Preference of Officers.*

The directors of an insolvent corporation, who are creditors of the same, cannot, while they continue in the control of its affairs and assets, take any advantage of their position to secure preference or advantage for themselves over other creditors, but must share ratably with the other general creditors in a distribution of the company's assets.

In this case a director had nominally resigned, but continued in active direction. It was left to the jury to say whether he was still a director: Hays *v.* Bank, Supreme Court of Kansas, JOHNSTON, J., June 10, 1893, 33 Pac. Rep., 318.

4. *Mortgage in Contemplation of.*

A New York manufacturing corporation removed to New Jersey, and executed a chattel and real estate mortgage on property in New Jersey, to resident creditors, to secure the payment of debts contracted and payable there, which mortgage was valid in New Jersey, and under the particular statute of New York, under which the corporation was created. Such mortgage was held not to be invalid because the execution thereof was contrary to a general statute of New York, inhibiting such corporations from transferring their property to stockholders, officers, or creditors thereof, in contemplation of insolvency: Boehme *v.* Roll, Court of Chancery of New Jersey, GREEN, V. C., May 22, 1893, 26 Atl. Rep., 832

MEETINGS.

5. *By-Laws.*

If the charter or by-laws of a corporation fix the time and place at which regular meetings shall be held, this is itself sufficient notice to stockholders, and no further notice is necessary: Morrill *v.* Little Falls Mfg. Co., Supreme Court of Minnesota, MITCHELL, J., June 1, 1893, 55 N. W. Rep., 547.

NATIONAL BANKS.

6. *Rights of Transferees of Stock.*

An action was brought against the agent for the shareholders of a national bank to recover a *pro rata* share of the surplus, after payment of the bank's debts. The act of Congress of June 30, 1876, § 3, authorizes the comptroller, when all the debts of an insolvent national bank have been paid, except to "shareholders who are creditors" thereof, to notify the shareholders to meet and elect an agent, who shall receive from the comptroller or receiver the remaining assets, and dispose of them for the shareholders' benefit, distributing the same among the latter "in proportion to the shares held by each." It was *held* that, where a shareholder of an insolvent national bank failed to pay an assessment of less than the par value, made by the comptroller, a purchaser for value of the former's shares was not entitled to participate in the equitable distribution by such agent of money collected and turned over to him by the comptroller after the assessment was made, until the shareholders who paid the assessment were first reimbursed; and,

The fact that such purchaser obtained such shares at sheriff's sale on execution in favor of such insolvent bank, and against the former holder of the shares, did not entitle such transferee to participate in such fund, since the denial of such right does not conflict with the provision giving a transferee of such shares all rights of the prior holder, and the doctrine of estoppel does not apply.

MCIVER, C. J., dissented, on the grounds (1), that, there being no lien on the shares (Bullard *v.* Bank, 18 Wall., 589), the default of the former holder was personal, and its effects could not be visited on the transferee; and (2), that the agent could not set up the defence in favor of the other shareholders, who were not parties to the suit: Richardson *v.* Wallace, Supreme Court of South Carolina, POPE, J., April 24, 1893, 17 S. E. Rep., 725.

7. *Set-off.*

An assignment by a stockholder in an insolvent national bank, of his claim against the bank, before the direction of the comptroller to enforce his liability, but after the insolvency of the bank, does not affect the right to set off his liability against the dividend due on his claim, nor does the fact that the comptroller, at the time of the assignment, had not determined the amount necessary to be collected from the stockholders for the payment of the creditors. It is sufficient that such direction has been given, and amount so determined, when the set-off is made: King *v.* Armstrong, Supreme Court of Ohio, WILLIAMS, J., April 25, 1893, 34 N. E. Rep., 163.

RELIGIOUS ASSOCIATIONS.

8. *Decisions of Supreme Judicatory.*

The decisions of the supreme judicatory of a religious denomination of the associated class, having a constitution and governed by local district, State and national bodies, are not conclusive upon the courts, when they are in open and avowed defiance, and in express violation, of the constitution of such body. Watson *v.* Jones, 13 Wall., 679, distinguished: Brundage *v.* Deardof, Circuit Court, Northern District of Ohio, TAFT, C. J., May 12, 1893, 55 Fed. Rep., 839.

9. *Change of Doctrine—Minority.*

Where the conditions under which a religious society is formed, and its property acquired, require adherence to a particular creed or system of doctrine and church polity, a minority of the membership may insist upon carrying out the purposes for which the society was organized, and a majority will not be permitted to divert the common property to other uses, or to use it for the support and maintenance of doctrines or a polity essentially at variance with its original constitution. The trust must be administered substantially in accordance with the intention of the original founders.

But changes in matters of form in the conduct of the worship, or in the administration of the ordinances, not affecting the substance of doctrine or discipline, may be made by congregations, and determined by a majority of the numbers entitled to vote, in the absence of any other lawfully established rule: Schrady *v.* Dornfeld, Supreme Court of Minnesota, VANDERBOUGH, J., March 13, 1893, 55 N. W. Rep., 49.

STOCK.

10. *Illegal Issue.*

A sale by a corporation of stock illegally issued, and the delivery of a certificate therefor, to an innocent third person, who pays cash therefor, violates the vendor's warranty of the existence and validity of the thing sold, and entitles the vendee to recover the price: Lincoln *v.* New Orleans Exp. Co., Lim., Supreme Court of Louisiana, FENNER, J., May 8, 1893, 12 So. Rep., 937.

11. *Transfer—Proof.*

Where stock is transferable only on the books of the corporation, the person in whose name the stock stands on such books is entitled to vote it, and the books of the company are conclusive upon the question as to who is entitled to vote stock legally issued: Morrill *v.* Little Mfg. Co., Supreme Court of Minnesota, MITCHELL, J., June 1, 1893, 55 N. W. Rep., 547.

TAXATION.

12. *Investments Out of State.*

Where the entire capital of a domestic corporation is invested in patent rights, and it grants the right to use such patents to other corporations, some of which are formed within and some without this State, and in consideration of such grants it receives and holds in this State

stocks of the latter corporations and the dividends thereon, the capital of such domestic corporation, to the extent of the stock of the foreign corporations held by it, is not "employed within this State," so as to make it taxable under laws of New York; but where such domestic corporation holds bonds of foreign corporations issued to it in payment for the patent rights granted, the capital thus invested is taxable, since such bonds have their situs at the domicile of the owner, unless kept employed outside the State: People *ex rel.* Edison Electric Light Co. *v.* Comptroller, Court of Appeals of New York, EARL, J., June 20, 1893, 34 N. E. Rep., 379.

CRIMINAL LAW.

Cases selected by ROBERT J. BYRON.

BETTING.

1. *Baseball Game.*

Baseball is a game of skill, within the meaning of Mansf. Dig. § 1835, making it a criminal offence to bet on such a game: Mace *v.* State, Supreme Court of Arkansas, POWELL, J. (BATTLE and MANSFIELD, JJ., dissenting), July 1, 1893, 22 S. W. Rep., 1108.

PRACTICE.

2. *Extradition—Habeas Corpus.*

Where one is arrested on an executive warrant in extradition proceedings, the validity of the indictment under which he is charged by the demanding State will not be tried on habeas corpus: Pearce *v.* State, Court of Criminal Appeals of Texas, SIMKINS, J., June 23, 1893, 23 S. W. Rep., 15.

3. *Indefinite Sentence.*

In passing sentence on a person convicted of an offence, the court has no power to provide that the imprisonment of the defendant shall begin at some future, indefinite time, depending on the happening of a contingency; and an arrest under such conviction, made after the expiration of the term of imprisonment named in the sentence, is illegal: *In re* Strickler, Supreme Court of Kansas, ALLEN, J., July 8, 1893, 33 Pac. Rep., 620.

4. *Sunday Laws.*

Under Code, § 4578, it is no justification for the running of a freight train on Sunday that the company has issued general rules and orders to its employes not to do so, without also showing, either directly or by circumstances, such as calling upon employes to account for their misconduct, that in the particular instance the rules or orders were violated without the sanction or connivance of the officer being one of those whose duty it was to control the running of the train in question: Heard *v.* State, Supreme Court of Georgia, July 3, 1893, PER CURIAM, 17 S. E. Rep, 100.

EQUITY.

Cases selected by ROBERT P. BRADFORD.

PLEADING.

1. *Supplemental and Cross Bills—New Matter.*

A cross bill is one brought by a defendant in a suit against the complainant in the same suit, or against other defendants in the same suit, or against both, touching the matters in question in the original bill, and is considered as an auxiliary suit, or as a dependency upon the original bill, and can be sustained only on matter growing out of the original bill. Such cross bill may set up new matter arising subsequently, but still it must constitute part of the same defence, or relate to the same subject-matter in such a way as to be a defence to the original suit.

A supplemental bill is considered merely as an addition to the original bill, and, while it is often permissible and proper to introduce matter that has occurred after the institution of the suit, and of such a nature as cannot be properly the subject of an amendment, yet such new matter must not be such as to change the rights and interests of the parties before the court: Ledwith *v.* City of Jacksonville, Supreme Court of Florida, MABRY, J., June 14, 1893, 13 So. Rep., 454.

PRACTICE.

2. *Bill of Discovery—Fraudulent Conveyance.*

A bill in equity stated that plaintiffs were judgment creditors of defendants; that they had sued out executions which had been returned "no property found;" that plaintiffs had reason to believe that defendants were beneficially interested in certain goods, securities and other property placed beyond the reach of their creditors. Plaintiffs claimed full discovery of all such property and things in action. *Held*, that while the court will set aside a fraudulent conveyance so as to subject the property to execution, yet in the absence of any statute authorizing such a proceeding, it will not compel a debtor to disclose his assets or compel him to apply his assets to the payment of a judgment against him. Text-books criticized. 22 S. W. Rep., 227, reversed: Cargill *v.* Kountze, Supreme Court of Texas, GAINES, J., June 24, 1893, 22 S. W. Rep., 1015.

EVIDENCE.

Cases selected by HENRY N. SMALTZ.

DYING DECLARATIONS.

1. *Admissibility of.*

On an issue as to the admissibility of statements by deceased as dying declarations, the physician who attended deceased testified that he saw that the wound was fatal, and said to a third person, in the hearing of deceased, that "all the shot had gone to the hollow," on which remark deceased made no comment. Another witness testified to a conversation with deceased on the day of his death, in which the latter did not state who shot him, or what he expected to be the result of the

injuries, and made no statement as to how he felt, except that "he was not suffering so much." *Held*, that it did not appear that the statements of deceased were made under a sense of impending death: Blackburn *v.* State, Supreme Court of Alabama, June 7, 1893, HARALSON, J., 13 So. Rep., 274.

NOVATION.

2. *Parol Evidence of—Statute of Frauds.*

A brought suit against B, alleging that C was indebted to A for wages; that B purchased C's business, out of which the debt arose, and in part consideration agreed to pay C's debt to A; that this agreement was omitted from an instrument in the form of a receipt, set out in the petition, and containing other terms of the transfer; and that the omission was to prevent a third person from learning of the promise. *Held*, that the petition stated a cause of action.

Such a promise, omitted from a written agreement, may be proved by parol, where the promisee was induced to execute the writing on the faith of the oral promise.

Such a promise is not within the Statute of Frauds: Bartlett *v.* Pratt, Supreme Court of Nebraska, June 29, 1893, IRVINE, C., 55 N. W. Rep., 1050.

MUNICIPAL CORPORATIONS AND PUBLIC LAW.

Cases selected by MAYNE R. LONGSTRETH.

ATTORNEYS.

1. *Admission to the Bar—Rights of Women.*

Constitutional and statutory provisions that every person of good moral character, being a voter, shall be entitled to admission to the bar, and shall, on application, be admitted on prescribed conditions, do not exclude women from the practice of law; there being no common law inhibition; and it being provided by the Constitution that no privileges shall be granted to any citizen which shall not, on the same terms, belong to all citizens. There being no rules providing for the admission of women to the bar, the Court has power to prescribe them: *In re* Leach, Supreme Court of Indiana, HACKNEY, J., June 14, 1893, 34 N. E. Rep., 641.

BRIDGES.

2. *Construction of Inter-county and Intra-county Bridges—Liability of Counties.*

Where the County Commissioners of the several counties are by statute authorized "to rebuild any bridge over any stream or river running into or through any county, or where such bridge crosses a stream forming the boundary line between two counties, then the commissioners of the county in which said bridge is located, or the commissioners of the respective counties where the stream or river runs between counties, are hereby authorized to rebuild" it; in such case the legislature

intended to provide for only two classes of bridges, those wholly within one county, and those partly in one county and partly in another. As to the first class it is the duty of the County Commissioners of the county to repair the bridge; as to the second class, the commissioners of the respective counties are required to do so jointly. A stream is equally the boundary, whether the line is at its middle or at its edge; and a stream is equally between two counties, whether it is all in one or half in each. Therefore, a county whose limits commence on "the west side of" a stream, is jointly liable with the other county for the construction or repair of a bridge over said stream: Keiser *v.* Commissioners of Union County, Supreme Court of Pennsylvania, MITCHELL, J., July 17, 1893, 156 Pa., 315; 32 W. N. C., 454; 26 Atl. Rep., 1066.

CONSPIRACY.

3. *Combinations of Wholesalers—Validity of Contracts.*

Any man (unless under contract obligation, or unless his employment charges him with some public duty) has a right to refuse to work for or deal with any man, or class of men, as he sees fit, and this right which one man may exercise singly, any number may agree to exercise jointly. It can never be a crime to combine to commit a lawful act, but it may be a crime for several to combine to commit an unlawful act, which, if done by one individual alone, although unlawful, would not be criminal: Bohn Manufacturing Company *v.* Hollis, Supreme Court of Minnesota, MITCHELL, J., July 20, 1893, 55 N. W. Rep., 1119. Following Cam. *v.* Hunt., 4 Metc., 111; Steamship Co. *v.* McGregor, L. R. (1892), App. Cas., 25; Carew *v.* Rutherford, 106 Mass., 1.

INTOXICATING LIQUORS.

4. *Licenses—City Council.*

Under the police power of the State, the legislature may confer upon municipalities the right to determine, in licensing the sale of intoxicants, the places where saloons may be kept, and to determine that question on each application. And under such conferred right the City Council is empowered to pass an ordinance requiring an application for a license to be made to Common Council, and conferring upon the council power to determine each individual application as far as the location and suitableness of the saloon were concerned: Sherlock *v.* Stuart, Supreme Court of Michigan, GRANT, J. (MCGRATH and LONG, JJ., dissenting), June 25, 1893, 55 N. W. Rep., 845.

5. *License Laws.*

Where an applicant for a distiller's license complies with all the requirements of the Act of June 9, 1891, relating to the granting of such license, and no remonstrance or objections of any kind were filed or made against the granting of the license, the court can not arbitrarily, and without any expression of opinion, refuse a license. For though the court has the power to consider the question of the necessity of the license for the accommodation of the public and the fitness of the applicant for the grant of the license, the refusal upon either of these grounds is not to be a merely arbitrary refusal, but only such a

refusal as is the result of an opinion to be formed after due regard has been given to the number and character of the petitioners for and against the application: *In re* Johnson's License, Supreme Court of Pennsylvania, GREEN, J., July 19, 1893, 26 Atl. Rep., 1066; 156 Pa., 322; 32 W. N. C., 503.

MUNICIPAL CORPORATIONS.

6. *Contract—Private Capacity.*

A permit given by a city to a lot owner to construct and use a vault under the alley in the rear of his lot, and a bond given by him conditioned upon his saving the city harmless from loss on account of such vault, and keeping the alley above it in good repair, constitute a contract; and if the existence and use of the vault do not interfere with the public interest in the alley, it is a contract with the city acting in a private capacity, and, therefore, irrevocable by the city: Gregsten *v.* City of Chicago, Supreme Court of Illinois, SHOPE, J., June 19, 1893, 34 N. E. Rep., 426.

7. *Ordinances and Resolutions—Payment of Rewards.*

When the charter of a city forbids the passage of orders and resolutions by councils without presentation to the mayor for his approval, this does not authorize legislation by order and resolution, or extend the range of subjects to which such action is applicable. It merely resolves a doubt as to the validity of resolutions made by the councils in cases proper for such action; and such resolutions remain as they always were, of a temporary character, as distinguished from an ordinance which prescribes a permanent rule of conduct or government. Therefore a joint resolution of the councils of Lancaster authorizing the mayor to offer a reward for the conviction of any person starting incendiary fires in the city, but which was not submitted to the mayor for approval, is of a temporary character, passed for a present emergency, and will not sustain an action for a reward seventeen years after its passage and ten years after its last proclamation by the mayor. Its terms ceased to bind the city after the lapse of a reasonable time, and while in determing the reasonableness, the reason or necessity for the action must be taken into account, ordinarily such a resolution will not be binding beyond the term of the mayor to whom the order is directed: Shaub *v.* City of Lancaster, Supreme Court of Pennsylvania, WILLIAMS, J., July 19, 1893, 32 W. N. C., 566; 26 Atl. Rep., 1067; 156 Pa., 362.

8. *Water Rents—Uniformity.*

Water rates levied by a city need not be uniform, since they are not taxes levied by the city in its public capacity, but compensation for water furnished by the city in its private capacity. Therefore an ordinance fixing water rates for small consumers at so much per room, and for large consumers according to the amount consumed as measured by meters, thereby decreasing slightly the rates paid by small consumers, and increasing materially the rate paid by large consumers, under a former ordinance, is not unreasonable, where it does not appear that the imposition of water rates upon large consumers is

not entirely equitable, as between different individuals of that class, or that the small consumers are not required to pay rates relatively as high as those imposed upon the large consumers: Wagner *v.* City of Rock Island, Supreme Court of Illinois, BAILEY, C. J., June 19, 1893, 34 N. E. Rep., 545.

PUBLIC OFFICERS.

9. *Official Advertising—Recovery of Commissions Paid by Newspapers.*

Public officers who do not make an effort to discover what is the lowest price for which official advertising could be done, but pay the maximum price allowed by law for having such advertising done, and demand and receive from the proprietor of the newspaper inserting the advertisement, as a condition precedent to awarding such contract, a commission of 40 per cent., are informed by this very arrangement that the work could be done for 40 per cent. less, and are guilty of embezzlement for appropriating the commissions. And if the proprietors of the paper knew the purpose of the transaction they would be equally as guilty as the officers for assisting in the violation of a public duty whereby the commonwealth was injured, and in the unlawful conversion of public money to private use. The commonwealth could recover the amount of the commissions in assumpsit.

Even if the persons who make the arrangement are not known by the proprietors to be the agents of the public officers, still if the advertising was manifestly official and could not be mistaken for an item of private business, and if the persons empowered by law to select the newspapers for the advertising are two certain officials, then the proprietors are bound with knowledge of these facts and also with knowledge of such other facts as the inquiry which these required them to make would have disclosed. The proprietors neglected to inquire, and such negligent conduct must be held to be the legal equivalent of guilty conduct, and a recovery may be had from such proprietors. The form of action should be trespass, and the measure of damages is the amount of money of which the commonwealth was wrongfully deprived, with interest, not as interest but as compensation for the delay of which the rate of interest affords the fair legal measure: Commonwealth *v.* Press Co., Limited, Supreme Court of Pennsylvania, PER CURIAM, July 19, 1893, 156 Pa., 516; 26 Atl. Rep., 1035; 32 W. N. C., 561. Following Mayor *v.* Lever, 25 Q. B. D., 363.

PLEADING AND PRACTICE.

Cases selected by ARDEMUS STEWART.

PLEADING.

FEDERAL COURTS.

1. *Conspiracy—Jurisdiction.*

Before persons can be held to answer in the federal courts for conspiracy, they must be charged with combining and conspiring to effect a purpose expressly forbidden by some statute of the United States, or

with doing some act in furthering the conspiracy, which is expressly forbidden by a law of the United States; and where a petition claims damages for an alleged conspiracy to disbar plaintiff from practising law in the State courts because he has filed a bill in a federal court charging defendants with misconduct and corruption in certain litigation pending in a State court, no cause of action is made out: Green *v.* Rogers, Circuit Court of the District of Colorado, RINER, Dist. J., June 3, 1893, 56 Fed. Rep., 220.

PRACTICE.

INSANITY.

2. *Inquisition—Appeal.*

The petitioner in a proceeding to have a person adjudged of unsound mind has no such right that he can appeal from a judgment of sanity: Studabaker *v.* Markley, Appellate Court of Indiana, LOTZ, J., June 21, 1893, 34 N. E. Rep., 606.

JUDGE.

3. *Mandamus to Compel Exercise of Jurisdiction—Disqualification—Interest.*

The finding of a probate judge that he is disqualified, because of interest, to exercise jurisdiction of a case, is not conclusive, but his competency may be tried on a petition for mandamus: Medlin *v.* Taylor, Judge, Supreme Court of Alabama, MCCLELLAN, J., May 25, 1893, 13 So. Rep., 310.

JURORS.

4. *Competency of.*

In a personal damage case against a railway a juror stated in his examination on his *voir dire*, in substance, that he had an elevator on the line of railway, and was engaged in the business of buying and shipping grain over the railroad; that he had received favors from the railway company, and desired to retain the favorable consideration of the company; that he had no personal feeling in the matter, and could render a fair and impartial verdict. *Held*, that a challenge for cause was properly sustained; that a fair trial can only be had where the jurors are absolutely free, impartial and independent: Omaha & Rep. Val. R. R. Co. *v.* Cook, Supreme Court of Nebraska, MAXWELL, C. J., June 30, 1893, 55 N. W. Rep., 943.

A juror who states that he has formed an opinion as to the guilt of the accused, from talking with a witness for the State, but that he can disregard that opinion, and render a verdict in accordance with the law and the testimony adduced on the trial, is a competent juror; State *v.* Dugay, 35 La. Ann., 327, affirmed: State *v.* Covington, Supreme Court of Louisiana, MCENERY, J., June 14, 1893, 13 So. Rep., 266.

PROPERTY.

Cases selected by WILLIAM A. DAVIS.

DEED.

1. *Charge on Land—How Divested—Sheriff's Sale—Right of Divorced Wife—Purchaser of Portion—Liability for Whole Charge.*

Plaintiff and her husband deeded land subject to the payment of interest on $1150 to the grantors annually, during their joint lives, and to plaintiff "during her life, if she survives her said husband." On the same day their grantee reconveyed the premises, subject to the same charge, to plaintiff's husband, who remained in possession until ousted by sheriff's sale. *Held*, that as the deed indicated that the charge was intended to run with the land until the death of plaintiff and her husband, it was not divested by the sheriff's sale.

Plaintiff's rights became vested by the execution of such deeds, and were not thereafter dependent on the relation between her and her husband, though at the time of his death she had been divorced from him on her own petition.

The lien of such charge extended, as to the whole thereof, to every part of the land, and could not be apportioned on a division of the land without the consent of the parties for whose benefit it was created, so that in the absence of any such agreement by plaintiff, she could collect the interest due on the whole sum charged, from the owner of any portion of the land: Blank *v.* Kline, Supreme Court of Pennsylvania, PER CURIAM, May 31, 1893, 26 Atl. Rep., 692; 155 Pa., 613.

2. *Grantee in Habendum not named in Premises.*

Where a person is named in the premises of a deed as grantee, without words of inheritance, and in the *habendum* he is again named as grantee, together with another person, not named in the premises, with words of inheritance as to both, the provisions of the *habendum* will control, and each of the persons will take an estate in fee in the land: McLeod *v.* Tarrant, Supreme Court of South Carolina, POPE, J., and MCGOWAN, J. (MCIVER, C. J., dissenting), May 23, 1893, 17 S. E. Rep., 773.

EQUITABLE ESTATE OF WIFE.

3. *Curtesy, when Barred.*

A conveyance in trust for the sole and separate use of a married woman, with covenants that the trustee will permit her to enjoy the premises, rents and profits, free from her husband's control, debts, curtesy and all other interests, and that at her death he will dispose of the property as she shall direct, vests in her an equitable estate of inheritance, which, on her death intestate, descends to her heir free from the curtesy of the husband.

A husband is entitled to curtesy in the equitable estate of his wife, of which she died seised, although such estate was limited to her separate use, except in those States where the estate of curtesy has been

abolished by statute. While it is not competent at common law, in the grant to a woman of an estate of inheritance, to exclude her husband from his right of curtesy, a like rule does not prevail in equity, where an estate may be so limited as to give the wife the inheritance, and deprive the husband of curtesy, if the intent of the devisor or settlor be express.

Such was the evident intention expressed in the above conveyance: McTigue *v.* McTigue, Supreme Court of Missouri, Division No. 1, BRACE, J., May 22, 1893, 22 S. W. Rep., 501.

MORTGAGE.

4. *Given to Secure Promissory Note—Foreclosure—Limitation.*

Where a promissory note secured by a mortgage is barred by the statute of limitations, an action to foreclose the mortgage cannot be maintained: Culp *v.* Culp, Supreme Court of Kansas, JOHNSTON, J., May 6, 1893, 32 Pac. Rep., 1118.

RAILROAD CONSTRUCTION.

5. *Obstruction of Highway—Damages to Owner of Abutting Property.*

Where a railroad company, under a city ordinance or the statute, constructs and operates its road in a street or highway, but leaves sufficient space between the road-bed and abutting land or lots for ordinary vehicles, teams and travel, there is no such obstruction of access to abutting land or lots as to permit damages for any depreciation in value thereof.

If a railroad company, in constructing its road and surfacing its track, makes holes or other temporary obstructions in a street or highway, an abutting lot or land owner may recover all special damages suffered by him prior to the commencement of his action; but on account of such defects or obstructions in the street or highway he cannot recover for the supposed depreciation in value of his property upon the ground of a permanent appropriation for the right of way: Chicago, K. & W. R. Co. *v.* Union Inv. Co., Supreme Court of Kansas, HORTON, C. J., June 10, 1893, 33 Pac. Rep., 378.

6. *Right of Way—Conveyance—Easement—Dower.*

Though Laws 1849, p. 219, incorporating a railroad, and Laws 1851, p. 272, amendatory thereof, authorize the road to take the fee simple or other title to land, provide for its taking voluntary relinquishments of the right of way, and in case of a refusal to relinquish the right of way give the right to condemn it, in which proceedings an order shall be made vesting in the company "the fee-simple title of the land," still the evident scope of the acts being simply to have the land either relinquished or taken for the purpose of a railroad, the company will take, even under a deed purporting to convey the fee, only the easement of a right of way.

A widow, not being dowable of an easement, would have no dower in the land which her husband by an absolute deed, in which she did not join, conveyed for a right of way.

The charter, by providing for relinquishment of the right of way by the "owner," impliedly makes it unnecessary for the wife to join in the conveyance by reason of her inchoate right of dower, and it makes no difference that the husband does not convey directly to the railroad, but by mesne conveyances: Chouteau *v.* Missouri Pac. Ry. Co., Supreme Court of Missouri, Division No. 2, SHERWOOD, J. (GANTT, P. J., dissenting), March 14, 1893, 22 S. W. Rep., 458.

TORTS.

Cases selected by ALEXANDER DURBIN LAUER.

MALICIOUS INTERFERENCE.

1. *Breach of Contract.*

An action will not lie against one who maliciously, but without violence, deceit, fraud, or benefit to himself, procures a breach of contract between others.

The complaint alleged that the defendant maliciously, and with intent to annoy the plaintiff, caused and procured plaintiff's landlord to demand that plaintiff vacate his lodgings. A demurrer to the complaint was sustained: Boyson *v.* Thorn, Supreme Court of California, HAYNES, C., June 12, 1893, 33 Pac. Rep., 492.

NEGLIGENCE.

2. *Electric Wire — Injury from Charged Wires — Proximate Cause.*

Where a telephone company has permission from an electric light company to string its wires along the latter's poles when the telephone company wishes to connect a residence where it has no poles, and the telephone company disconnects a residence, and, instead of removing the wire, coils it up, and hangs it on an electric light pole, the telephone company is bound to look after the wire; and if it fail to do so, and the electric light company remove the pole, and hang the wire on a telephone pole, where it becomes charged with electricity from an electric light wire, and injures a pedestrian on the sidewalk, the negligence of the telephone company is the proximate cause of the accident: Ahern *v.* Oregon Telephone Co., Supreme Court of Oregon, LORD, C. J., June 19, 1893, 33 Pac. Rep., 403.

3. *Licensee—Personal Injury.*

Where the president of a corporation grants a request of a teacher for permission for a class of thirty or more pupils to visit the company's power house for the purpose of viewing the machinery, such pupils are mere licensees, to whom the company owes no duty to provide against the danger of accident.

Where one of such pupils, while inspecting such machinery in company with the class and teacher, stepped into an open and unprotected vat of hot water located where he was unable to see it, the company is not liable for damages for failure either to warn him of the existence and

danger of the vat, or to protect it by cover or railing, or to sufficiently light the building to enable him to see it: Benson *v.* Baltimore Traction Co., Court of Appeals of Maryland, ROBERTS, J., June 21, 1893, 26 Atl. Rep., 973.

4. *Master and Servant—Defective Machinery—Knowledge of Defects.*

In an action by an employee for personal injuries caused by a defective hand wagon in use about defendant's works, the jury was authorized to infer, from the evidence and instructions, that plaintiff had, prior, to the injury, learned of the alleged defects. *Held*, that it was error to also charge, in the absence of notice to defendant of such defects, that plaintiff had a right to presume that the wagon was in a reasonably safe condition, and that, though he had known it was out of repair, he had a right to presume that defendant would use reasonable diligence in repairing it: Penna. Co. *v.* Burgett, Appellate Court of Indiana, DAVIS, J. (LOTZ, J., dissenting), June 24, 1893, 34 N. E. Rep., 650.

5. *Oil Escaping from Cars.*

A complaint which alleged that defendant negligently ran its train filled with oil over its track, which was defective, and at a rate of speed forbidden by ordinance, and that the train was wrecked thereby, and the oil flowed on to plaintiff's premises and caught fire, and destroyed her property, states a cause of action against defendant without additional proof that defendant was guilty of some act of wilful negligence in firing the oil, or that its management was such as would naturally result in such injury: Lake Erie & W. R. Co. *v.* Lowder, Appellate Court of Indiana, DAVIS, J., June 6, 1893, 34 N. E. Rep., 447.

TROVER.

6. *Receivers.*

Trover may be brought against a receiver, as such, without leave of court, in a case where he sells property as under a mortgage which was not so included; the question of good faith or knowledge not being essential: Kenney *v.* Ranney, Supreme Court of Michigan, HOOKER, C. J., July 26, 1893, 55 N. W. Rep., 982.