

Western District of Pennsylvania, was an indictment for violation of Acts of Congress, by distilling spirits without payment of the special tax, or giving bond or providing a bonded warehouse. Defendant pleaded specially that the acts charged were done more than two years before the indictment was found, but it was admitted that they were within five years. The question was, whether these offenses were within the Act of April 30, 1790, which limits prosecutions for fines and forfeitures under any penal statute to two years, or the Act of March 26, 1804, by which violations of the *revenue laws* may be prosecuted within five years. It was argued for defendant that the term of five years applied only to offenses against laws relating to the importation of goods, because only such laws are revenue laws, within the meaning of the Act of 1804, MCKENNAN, Circuit Judge, however, (McCANDLESS, D. J., concurring), instructed the jury that the Act of 1866, under which the indictment was drawn, was a revenue law within the Act of 1804, and the indictment was therefore not barred. The opinion in full is reported in the Internal Revenue Record for January 29, 1870

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF ILLINOIS.

SUPREME COURT OF NEW YORK.²

SUPREME COURT OF WISCONSIN.³

AGENT.

Authority to Receive Payment.—Where A employed to sell property for B, receives securities for purchase-money and transmits them to B, his implied authority to receive payment on the securities ceases with his possession: *Strachan v. Muslow*, 24 Wis.

Where the purchaser from A gave his promissory note payable to B or his order, an alleged contemporaneous agreement that he should be at liberty to pay the note *before maturity* (stopping the interest), or to pay to A, when due, *held* to contradict the note: *Id.*

Contracts by Agent of Corporation.—The facts that the vice-president of a railway company had been for years in the habit of appointing local agents to look after its timber lands; that these had sold stumpage and timber thereon; that the company had brought suit on one of these contracts of sale, and obtained judgment, the amount of which was paid to the local agent: that the latter was

¹ From Hon. N. L. Freeman, Reporter; to appear in 48 and 49 Ills. Reports.

² From Hon. O. L. Barbour; to appear in vol. 55 of his Reports.

³ From Hon. O. M. Conover, Reporter; to appear in 23 or 24 Wis. Reports

accustomed each year to make a full report in writing to said vice-president, and pay the moneys in his hands into the treasury of the company—would authorize a jury to find that the company knew and acquiesced in the authority thus exercised, and was bound by such a contract of sale made by its local agent: *Ch. & N. W. Railway Company James et al.*, 23 or 24 Wis.

ATTORNEY.

Right of Judge to Practice as Attorney, etc.—Although as a general rule, a justice of this court is prohibited from practice in it as an attorney or counselor, yet that prohibition does not extend to or include a proceeding where a justice is interested in the subject-matter of it. In such a case, he is, by the express language of the statute, at liberty to act: *Libby v. Rosekrans*; 55 Barb.

CONFLICT OF LAWS, See *Foreign Judgment—Husband and Wife*

CONTRACT.

Subsequent Waiver of Conditions.—Where a party purchased a corn planter on condition that if he did not like it he was to return it, and in an action for the price of the planter, wherein it was sought to recover on the ground that the purchaser had retained it an unreasonable time, it appeared that the vendor had dispensed with the return of the machine, he preferring it should remain in the possession of the defendant, it was held there should be no recovery: *Low v. Pardee*, 48 Ills.

CORPORATION. See *Agent*.

Nul Tiel Corporation—Evidence under.—Where a plea, denying the corporate existence of the plaintiff suing as a corporation, is pleaded, the original articles of association, properly recorded, may be read in evidence, without a certificate of the clerk that it is a true copy: *Fortin et al. v. Pump Co.*, 48 Ills.

Effect of a Corporation of this State Consolidating with one of a foreign State.—The consolidation of the stock of a railroad company created by the laws of Wisconsin with that of one created by the laws of this State, does not constitute the corporations thus consolidating, one corporation of both States, or of either, but the corporation of each State continues a corporation of the State of its creation, although the same persons as officers and directors, manage and control both corporations as one body: *Racine and M. R. R. Co. v. Farmers' Loan and Trust Co.*, 49 Ills.

¹ And where, after such consolidation, by legislative act, the name of the Illinois corporation is made the same as that of the Wisconsin corporation, and a mortgage is made in the corporate name by the officers of the company as consolidated, upon the line of railroad of the Illinois corporation, such mortgage is the sole mortgage of the Illinois corporation, and is legal and valid: *Id.*

And where, after the consolidation of three corporations, the corporation thereby created, afterward consolidated with another

Illinois corporation, the name of which was subsequently changed by legislative act, to the same name as that of the former corporation and the whole managed by a common board of directors, and a mortgage was made covering the entire road in Illinois, owned by the Illinois corporation: *Held*, that notwithstanding the consolidated contract with this third corporation may have been illegal, that fact could not affect the validity of the mortgage as to that portion of the property mortgaged, and not owned by such third corporation, at the time of the consolidation: *Id.*

Where corporations, created respectively by the laws of Wisconsin and Illinois, consolidate, but in making the contract of consolidation they fail to pursue the terms of their charters, and subsequently by legislative act of this State, such contract is confirmed, the corporate existence of the corporation named in the act is thereby recognized as a corporation of this State, and a mortgage subsequently made in the corporate name of all the corporations (they being the same in both States, and managed by a common board of directors) upon the property of the corporation of this State, is a valid mortgage of the latter corporation: *Id.*

DECEIT.

Action for.—An action of *tort* can be maintained against a person or his personal representatives for deceit in making false representations as to the solvency of a mercantile firm, of which he was a member, although a judgment has been recovered against the firm (and of course against him jointly with the others) for the price of the goods sold on credit, to the firm, by the plaintiffs, in consequence of such misrepresentations: *Morgan et. al. v. Skidmore*, Ex'r, 55 Barb.

DIVORCE.

Decree for.—A decree of divorce should not direct the payment, by the defendant, of arrears of alimony previously ordered by the court. The plaintiff should be left to enforce the payment of such arrears in the ordinary way: *Hoffman v. Hoffman*, 55 Barb.

In respect to permanent alimony, the better way is to direct a reference to ascertain the amount which should be allowed. Yet a decree of divorce will not be reversed, on appeal, because it orders the payment of a specified sum without a reference: *Id.*

DONATIO MORTIS CAUSA.

What will pass.—Certificates of stock and coupon government bonds will pass by delivery *mortis causa*, without any writing: *Walsh*, Executor, etc., v. *Sexton*, 55 Barb.

Thus, where the plaintiff's testatrix, during her last illness, having examined certain certificates of bank and railroad stock, and coupon government bonds, owned by her, sent for her husband, the defendant, and on his coming into the room, handed him the box containing the securities, with the key thereof, saying that she gave him the box and its contents; that they would be of use to

him after her death; and the box and its contents were taken and retained by him: *Held*, that the title to the securities passed to the defendant, although no transfer of the stock was signed and no power authorizing such transfer was executed by the testatrix: *Id.*

EQUITY.

No Power to Stop an Election.—A Court of Chancery has no power to prevent the holding of an election of officers, upon the alleged ground of a want of authority to hold such an election, the remedy therefor being complete at law, by the writ *quo warranto*: *People ex rel. Fitnam v. Galesburg*, 48 Ills.

EVIDENCE.

Dying Declarations.—In actions to recover damages for the death of a person, occasioned by the negligence of a railroad company, the dying declarations of the person killed are not admissible in evidence to charge the defendant. Such declarations are not admissible in any civil case: *Marshall v. C. & G. E. Railway Co.*, 48 Ills.

Contradictory Statements by same person.—Where one part of a statement by an accused person would inculpate, and another exculpate him, the jury, though bound to consider both, are not bound to give them equal credit; but, if the other evidence requires it, may believe the former and reject the latter: *Griswold v. The State*, 23 or 24 Wis.

Whether they could convict on the inculpatory part alone, *without* corroborating evidence, not here determined: *Id.*

FOREIGN JUDGMENTS.

Effect of Decrees of Divorce as Evidence.—When the question arises, in an action brought in this court by a wife against her husband, for a divorce *pro causa* adultery, as to the effect which shall be given here to a decree of divorce obtained in a Circuit Court of Indiana, by the husband against his wife, *as evidence*, it is exclusively a question as to the jurisdiction of the Indiana court to make the decree: *Hoffman v. Hoffman*, 55 Barb.

In determining that question in the second action, the court has nothing to do with any allegations of fraud in instituting the action in, or procuring the decree of, the Indiana court: *Id.*

The fact that the defendant in the former action instituted a suit to set aside the decree in that action for fraud, will not estop her when plaintiff in the second action, from insisting, on the trial thereof, that the Indiana court never acquired jurisdiction of her person, so as to make a decree of divorce which the courts of this State are bound to regard as conclusive evidence of a decree verdict as to her: *Id.*

The courts of this State will not regard a service or notice of the pendency of an action by publication in an Indiana newspaper, as giving a court of that State jurisdiction of a defendant who was at the time a resident of this State: *Id.*

HIGHWAY.

Ice on City Sidewalks.—If ice or snow is suffered to remain upon a sidewalk in such an uneven or rounded form that one cannot walk over it, using due care, without danger of falling, the city or town will be liable to a person injured thereby: *Cook v. The City of Milwaukee*: 23 or 24 Wis.

Otherwise, where the injury resulted from the mere slipperiness of the sidewalk, arising from the smooth surface of ice or snow accumulated upon it: *Id.*

If a gutter is left so obstructed as not to carry off water flowing there from *natural causes*, and ice is consequently formed on the sidewalk, perhaps the city will be liable for injuries resulting therefrom; but if the gutter is merely insufficient to carry off water suddenly accumulated by artificial means through the wrongful acts of third parties, the city is not liable unless guilty of some subsequent default in not repairing walks thus rendered dangerous: *Id.*

Sudden damage to.—Where a highway has *suddenly* become deficient or out of repair, through some action of the elements, the town is not liable for resulting injuries, unless it had notice of the fact (or sufficient time to acquire knowledge by reasonable diligence), and also had time to repair the defect or guard travelers against the danger: *Ward v. The Town of Jefferson*, 23 or 24 Wis.

Nor is the town liable when the injury resulted from a *latent* defect of which it was ignorant, without negligence: *Id.*

But apart from such circumstances, where one is injured (without negligence on his part) in consequence of a highway being out of repair, the town is *absolutely* liable, and the question whether it used due diligence in keeping the highway in repair cannot be submitted to the jury: *Id.*

HUSBAND AND WIFE.

Nuptial Contract in Foreign Country.—Rights to Property Subsequently Acquired Here.—Where there was a nuptial contract between persons domiciled in Prussia and married there, who then owned no property elsewhere and do not appear to have contemplated a change of domicile, and the contract does not indicate any intention to control by it future acquisitions in any foreign State: *Held*, that real property acquired in this State by the parties after becoming domiciled here, and held and owned by the husband in his own name, was subject to be disposed of by him, by will or otherwise, according to the laws of this State: *Fuss v. Fuss et al.*, 23 or 24 Wis.

The fact that such real estate was purchased with funds of the wife is no sufficient ground for setting aside the husband's will, devising the property to her during her life-time, with remainder to other parties than her heirs; ample provision being made for her support: *Id.*

MUNICIPAL CORPORATION. See *Highways*.

Estoppel by Acts of Agents.—As to matters within scope of their powers, corporations may be estopped, and agreements made in their behalf may be ratified by acquiescence and accepting the benefit