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## DECISIONS IN COMMERCIAL LAW.

UNITED STATES TRUST COMPANY OF NEW YORK V. WABASH WESTERN RAILWAY.—An assignee or receiver is not bound to adopt the contracts, accept the leases, or otherwise step into the shoes of his assignor, if in his opinion it would be unprofitable or undesirable to do so; and he is entitled to a reasonable time to elect whether to adopt or repudiate such contracts according to the Supreme Court of the United States. By the appointment of a receiver of a railroad, the Court does not bind itself to pay the agreed rentals of a leased line *eo instanti*, by the mere act of taking possession. The Court will not order the receiver of a railroad property to pay the rent of a leased part of the road to the trustee under a trust deed or mortgage thereon, where the receiver has not received therefrom sufficient to pay such rent over running expenses, and where such trustee has not asked the Court for its surrender, but has permitted it to remain in the receiver's hands. Until the mortgagee of a railroad asserts his rights under the mortgage to the possession of the road by filing a bill of foreclosure, or, if the road be in the hands of a third party, he has no right to its earnings and profits.

KNAPP V. MORSE.—The Supreme Court of the United States holds that a claim in a patent must be interpreted with reference to the rejected claims and to the prior state of the art, and cannot be construed as to cover either what was rejected by the Patent Office, or disclosed by prior devices. The combination of old elements which perform no new function and accomplish no new results, does not involve patentable novelty. The end or purpose sought to be accomplished by the device is not the subject of a patent; the subject of a patent is the device or mechanical means by which the desired result is to be secured. That which infringes a patent if later, would anticipate it if earlier. There can be no infringement by defendant of a patent for a combination if a single element of the patentee's combination is left out of the defendant's device.

HEDGES V. COUNTY OF DIXON.—The Supreme Court of the United States decides that the holders of bonds issued by a county in excess of its authority cannot, by an offer to surrender and cancel so much of such bonds as exceed the limit authorized, have relief in a court of equity, decreeing the residue of such bonds valid and enforcing payment thereof against the county, where the county received no part of the proceeds of the bonds, but they were issued as a donation to a railroad company. Recitals in bonds issued under legislative authority may estop the municipality from disputing their authority as against a *bona fide* holder for value; but when the municipal bonds are issued in violation of a constitutional provision, no such estoppel can arise by reason of any recitals contained in the bonds. A court of equity, in the absence of fraud, accident, or mistake, cannot change the terms of a contract. A provision in a State constitution that a municipal corporation shall not become indebted to an amount exceeding a certain per cent. of its taxable property, forbids implied as well as express liability on bonds issued contrary to such provision. Where a contract is void at law for want of power to make it, a court of equity has no jurisdiction to enforce such contract, or in absence of fraud, accident, or mistake, to so modify it as to make it legal and then enforce it. Where the transaction, or the contract, is declared void, because not in compliance with express

statutory or constitutional provision, a court of equity cannot interpose to give validity to such transaction or contract or any part thereof.

YOUNG V. THE BANKIER DISTILLERY COMPANY.—Every riparian proprietor is entitled to have the natural water of the stream transmitted to him without sensible alteration in its character or quality. Any invasion of this right causing actual damage or calculated to found a claim which may ripen into an adverse right, entitles the party injured to the intervention of the court. In this case, decided by the House of Lords, the respondents were riparian proprietors on one side of a stream called the Doups Burn. They and their predecessors had for sixty years used the water of the burn for the purpose of distillation, when the appellants, without any prescriptive right so to do, poured into the stream a large body of water which they pumped from their mines, which water, if it had been left to the law of gravitation, would have never reached the stream. The respondents did not complain of the increased volume of the stream, but that the foreign water was of a character and quality different from that of the natural stream, and that it prejudicially affected the water of the stream for distillery purposes. The court affirmed the decision of the Court of Sessions to the effect that the respondents were entitled to have the appellants interdicted from discharging the mine water into the stream.

THE "SOUTHGATE."—By charter party and bill of lading the defendants were exempted from liability for damage to the plaintiff's cargo arising from "... perils, dangers and accidents of the sea or other waters of what nature and kind soever—strandings—and all other accidents of navigation, and all losses and damages caused thereby ... even when occasioned by negligence, default, or error in judgment of the pilot, master, mariners, or other servants of the shipowners, but unless stranded, sunk or burnt, nothing herein contained shall exempt the shipowner from liability to pay for damage to cargo occasioned by ... improper opening of valves, sluices and ports, or by causes other than those above excepted. ... " Whilst the defendant's steamship was lying at her moorings, loading, the plaintiff's cargo of grain, under the above charter party and bill of lading, the circulating pump delivery valve in the side of the ship was reasonably and properly opened by the defendant's engineer, but was negligently and improperly left open, whereby a quantity of sea water entered the ship and damaged the plaintiff's cargo. To prevent the vessel foundering at her moorings, where the water was deep, the master had her towed into shallower water, where she settled on the ground, and the water was subsequently pumped out. For the loss so sustained the plaintiffs sued the defendants.—Held by the English Court of Admiralty that the defendants were not liable, as the negligence clause applied to "dangers and accidents of the sea or other waters" as well as to "accidents of navigation," and the words "unless stranded, sunk or burnt," constituted a condition preventing liability attaching to the ship-owner for the damage occasioned by the valve being improperly open. It would seem that the defendants were also protected, because the damage resulting from the incursion of water into the ship—caused by the use of the valve whilst she had cargo in her, though she was still at her moorings, and not in motion—was an "accident of navigation" within the meaning of the exception in the first part of the clause in question.

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