The Legal News.

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ASSIGNMENT OF LIFE INSURANCE POLICIES.

The Supreme Court of Rhode Island, in the case of *Clark* v. *Allen*, has had under consideration a much controverted question of life insurance law, viz., whether a life policy is transferable outright to a person who has no interest in the life insured. One Ross had insured his life for $2000, and afterwards assigned the policy to defendant, who paid the premiums as they fell due. On Ross' death, the defendant collected the insurance, and the action was brought by Ross' representative to recover the amount collected, less the premiums paid by the defendant and the consideration paid for the assignment. The Supreme Court, following the English rule, (also found in our Code, Art. 2591) held the assignment valid and dismissed the action. The Court referred to the conflict of decisions on the question raised. In Massachusetts and Indiana, Chief Justice Durfee observed, it has been decided that a life policy is not transferable outright to a person who has no interest in the life insured. *Stevens, Adm'r,* v. *Warren*, 101 Mass. 564; *Franklin Life Ins. Co.* v. *Hazzard*, 41 Ind. 146. A similar decision (but in a case having peculiar circumstances) has been given by the Supreme Court of the United States. *Cammack* v. *Lewis*, 15 Wall. 643. The reason given is, that it is unlawful for a person to procure insurance for himself on a life in which he has no interest, and that, therefore, it is unlawful for him to take an absolute assignment of a policy upon a life in which he has no interest; for otherwise the law could always be easily circumvented by first having a person get his own life insured and then taking an assignment of the policy. And it is also argued that the gambling or wagering element is the same, and the temptation to shorten the life insured is the same in the one case as in the other.

"But, on the other hand," continued the Chief Justice, "it has been decided in England that such an assignment is valid: *Ashley* v. *Ashley*, 3 Sim. 149, cited without disapproval by Chancellor Kent, in 3 Kent's Com. 369, note. The reason given is, that such an assignment is not within the prohibition of the English statute, 14 Geo. 3, cap. 48, and that the policy, being valid in its inception, is, like any other valid *chose in action*, assignable at the will of the holder, whether the assignee has an interest in the life insured or not. This view has been repeatedly affirmed in New York. *St. John* v. *American Mutual Life Insurance Co.*, 2 Duer, 419; also in 13 N. Y. 31, on appeal; *Valton* v. *National Fund Life Assurance Co.*, 20 N. Y. 32; and see *Cunningham et al.* v. *Smith's Adm'r*, 70 Penn. St. 450."

JUDICIAL CIRCUITS.

The amount of travel imposed upon some of the judges who preside over Federal Circuits in the United States is not generally realized. It is true that these immense distances are no longer accomplished in a coach and four, but for the most part in Pullman and Wagner cars. The tax upon the energies of the individual, however, in any case cannot be inconsiderable. Judge Dillon, addressing the Chicago Bar Association recently, at a dinner under the auspices of the Association, thus referred to the subject:—

"The trans-Mississippi Federal circuit embraces seven States, and extends in an unbroken reach of territory from the British possessions, on the north, to Louisiana and Texas, on the south; from the Mississippi, on the east, to and including the Rocky Mountains, on the west. It comprises the States of Minnesota, Iowa, Nebraska, Kansas, Missouri, Arkansas, and Colorado. In each of these States there are two terms a year, and in one of them four terms, making sixteen terms annually. With the exception of Arkansas and Colorado, I have, for the last eight years, attended twice a year the terms of courts in each of these States and in Arkansas, and in Colorado, since its admission, invariably once each year and sometimes twice. The distances actually travelled are immense,—not less than ten thousand miles a year. The distance from St. Paul, where one can almost cast a stone across the Mississippi, to Arkansas, where the stream has broadened into a mighty and majestic river, bearing the commerce of twelve States, and on whose lordly bosom hostile fleets have contended, is vast. And the

distance from the great city of St. Louis to where Denver serenely sits, sentinelled and begirt by the lofty and snow-clad peaks of the Rocky Mountains, is scarcely less.

"The dockets are crowded with causes, original and appellate, of great variety and importance,—civil and criminal, at law and in equity, in admiralty and in bankruptcy. And this is only typical of the condition of the other circuits. With so much work, and with so little time for deliberate and sedate consideration, mistakes must be numerous. But the fault lies not so much with the overworked judges as with the faulty system which imposes such vast labors upon them. The State judges generally are almost equally overburdened. Hence we inevitably have a constantly increasing mass of decisions, State and Federal, many of which must be erroneous, and which, while standing as precedents, bear pernicious fruits."

THE EARLY FRENCH BAR.

[Concluded from Page 252.]

In those days a common-place book, filled with scraps of citations from all kinds of ancient writers, on all kinds of subjects, was deemed necessary to the equipment of every advocate. Pasquier, a truly great lawyer, and an exceedingly powerful orator, was among the first to discard the sacred text at the beginning of his speeches, and to renounce the continual quotation of the olden authors. Deeply imbued with classical learning, he perceived that the proper method of imitating the classic authors was not to patch up a composition out of their disjointed sayings; that the beauty of those authors consisted in their simplicity and perspicuity, a certain ease and directness of speech by which they concealed their art, instead of parading it to public view. The innovation which he made required all of his ability to sustain it. He had a neighbor who was also a lawyer, and was devoted to the old order of things; he claimed it as a glory that he had discovered the origin of the bar in the pages of Homer, and he expressed it as his opinion that "there could be nothing more profitable than an etymological dictionary, containing the names of all the arts, and of all utensils, in Greek, Latin and French, which would be a fountain from whence one might draw the most beautiful similitudes and comparisons which could be used, and which would be nowise common." It was thus that he expected to adorn his eloquence, by unheard-of words and phrases drawn from the dead languages, beautiful similitudes and comparisons extracted from a dictionary. Pasquier insisted with him that these citations were quite unknown to the ancients, and finally induced him for once to make a speech entirely out of his own head. Apparently he was not quite pleased with the experiment, for he afterwards told his adviser, "that that single speech had cost him more trouble than any three that he had ever pieced together by making quotations."

The habit seemed to be well-nigh incorrigible. It could hardly be expected that a discourse which was a mere medley, taken from various and indifferent sources, would have any very close relationship with the matter which happened to be under nominal discussion; if any connection existed, it was remote and precarious. Poggio, the Florentine historian, wrote a book on the question, "Whether, when a man is invited to dine with another, he should return his thanks to his host for the dinner, or whether the host should return thanks to his guest for the favor of his company." Doubtless it would occur to most persons that the solution of the question would depend almost wholly on the circumstances of each particular case; somewhat on the goodness of the dinner and the goodness of the company. But thus it was that scholasticism dealt with every question as a pure abstraction, leaving out all details as irrelevant matter.

It may seem wonderful to us that men could ever have made such orations, still more wonderful that men could ever have listened to them; but there is abundant evidence that they were greatly admired in their day; the absurdity of the method was neither seen nor suspected. Is the bar now unconsciously committed to practices which will be equally outworn in some coming time? If we could see them, possibly such may chance to exist. A man through political influence, or popular favor, or executive patronage, gets on the bench; he is one whose opinion has been rarely asked, and still more rarely relied upon; and which, perhaps, could not be acted on in

any serious matter without misgiving and trepidation; and yet as soon as he is placed on the bench, without any intellectual regeneration to convert ignorance into learning, or any mental alchemy to transmute his painful mediocrity into vast ability, he at once becomes an "authority." Could legal Lamaism go any farther? If the lawyers of whom we have been speaking quoted Christ and Ovid, St. Peter and Catullus in the same breath, do we not also cite Marshall and Busteed on the same page? If they culled their quotations with an unstinted hand, do we not cite authorities to prove every legal idea which we advance; often as to points which no one ever disputed, very much as if an astronomer in saying that the sun stands on the meridian at noon-day, should prove his position by adding the names of Newton, Herschel, and many other astronomers? It must be owned that we do something in this way; and it is all very proper; but it may happen that it will look quite otherwise to our descendants three or four hundred years hence.

In an age of great ignorance and corruption we could hardly expect to find the bench and bar quite free from reproach; if such were the case with the French bench and bar in early times, they were maligned to an almost unexampled degree. Satirists did not spare them. One of them thus addresses the bar: "When you are in the court, and are pleading one against the other, it would seem as if you were ready to devour each other, as if you had an eager desire to protect innocence; but when you come out, you go to the nearest drinking house, and there devour the substance of your clients. You are like foxes, which appear to be disposed to tear each other up, but which precipitate themselves in common upon a henroost, there to consume their prey." Another, no less savage, speaks of them as follows: "Is it a good thing to see the wife of an advocate, who had not ten crowns of rent after buying his office, going about dressed like a princess, with gold on her head, on her neck, on her waist and other parts of her person? You say that this is suitable to your estate. To the devil with you, and your estate, too." But the most terrible apostrophe hurled at the judges, lawyers, and all others connected with the administration of justice, was as follows: "The gentlemen of the Parliament of Paris have the most beautiful rose which there is in France, (alluding to a rose-window which adorns the Palace of Justice), but it has been stained crimson with the blood of the crying and weeping poor. These gentlemen wear long robes, and their wives are dressed as princesses. If their garments were put under a press, the blood of the poor would run out. My lords jurists, are the revenues that you spend a part of your patrimony?"

This language is severe, and betrays a bitter animosity; but beyond the invective and denunciation, it contains hardly a serious charge. It was no discredit to the bar that the heat arising from discussion in the courts was not perpetuated in lasting dissensions; nor that some of the bar were prosperous and able to dress their families well; and as for the oppression of the poor, the accusation is so vague as to be of but little force.

However ardent may have been the feelings excited by the debates which took place in the courts, the courtesies of the bar seem to have been carefully maintained. In the trial of a cause, M. Claude Mangot, in making the closing argument, was interrupted by Versoris, whose speech he was answering. Turning to his adversary, he said: "Monsieur Versoris, you do wrong to interrupt me; you have said enough already to earn your oats!" After the judgment of the court had been rendered, the president said: "Monsieur Claude Mangot, the court directs me to say that that which is given to advocates for their services is not called oats, but honoraries." The reprimand was not very severe, but Claude Mangot took it so much to heart that he became ill from it and died a few days afterwards. He must any way have been of a singular disposition, for after his return from the University, beginning the study of the law, he made a vow not to utter a single word for four years, a resolution to which he firmly adhered. During these four years he was exceedingly diligent in study, and in attendance upon the courts; and then, entering upon the duties of an advocate, he achieved a brilliant and lasting reputation. Of him it was said by another great lawyer: "He was the most accomplished person that one could desire to see. He was only thirty-six years old when he died, and he would have had no equal in probity and integrity, in learning, or in his acquaintance with

literature, if he had lived to arrive at man's estate."

Another instance of collision between two members of the bar is recorded. In 1595, Arnauld, who was then at the head of his profession, was called on to pronounce the eulogy of Montmorency before the Parliament of Paris, on the occasion of the enregistering of the commission of the latter as Constable of France. This, as all like occasions, was a place for the display of great pomp, royalty and nobility being fully represented on the seats of the court-room; the orator for the time being expected to set forth all the virtues of the recently elevated dignitary with a Ciceronian discourse, abounding with the most fastidious encomium; the person thus applauded being present, and being presumed to take great pleasure in hearing his own praises, skilfully gotten up to order; such was the taste of the age. Arnauld acquitted himself the best he could, and was warmly applauded for his eloquence; but there happened to be present a young Huguenot advocate, Du Pleix by name, who only saw the ridiculous side of this proceeding; and a few days afterwards he published an ingenious and laughable travesty of the oration, which met with still more favor than the original, whose fulsome adulation it was intended to rebuke. Arnauld had attained to great influence, fortune and fame, and having become a little dogmatic and sensitive, as old lawyers in such case sometimes are wont to be, he had Du Pleix brought before the court in secret session, to answer for this breach of propriety. On being reminded of his offence, Du Pleix, addressing the court, said, in a manly sort of way: "I have committed a folly, and it is necessary that I swallow it down. But open the doors, for it will be more exemplary for the youth, if this should be recanted in their presence," and then in a public audience he prayed Arnauld to pardon him. But, like the flying Parthian, he reserved his most envenomed and fatal shaft for the last; for on scrutinizing the records of the Chamber of Accounts he found patents to the infant children of Arnauld for annual pensions of fifteen thousand pounds, which, by virtue of legal proceedings which he instituted, he caused to be annulled.

It has been the fate of lawyers in all times to be abused by satirists who are keenly alive to the details of life, and to be praised by historians, who sum up general results. It must be admitted that in the time and place of which we are speaking, virtue was a plant of rare growth; from the throne to the hovel, corruption, passion, cupidity, prejudice, reigned almost supreme. The church was no better than the world. Spiritual preferment was bought and sold like any other commodity; boys were made bishops; and war, gallantry, and something worse, were the most prevalent pursuits of the clergy. It was an age when dogma trampled upon and scorned the better feelings of the heart. The ministers of religion, who usurped dominion of the fagot and the sword, were often the readiest apologists for crime. The most revolting and odious of all discourses ever placed upon record, was one made by Jean Petit, a monk and a doctor of theology, on the 8th day of March, 1408, before a royal council. The Duke of Burgundy, having caused the Duke of Orleans to be foully assassinated, appeared before the council, and his cause was pleaded by Jean Petit, who, in his address, not only absolved the assassin, but demanded that he should be recompensed, exalting the practice of assassination to the rank of one of the cardinal virtues. The right to assassinate an enemy he proved by twelve reasons, so numbered in honor of the twelve apostles; three being drawn from the moral philosophers, three from theological doctrines, three from the civil law, and three from the holy writ. These premises were set forth with a wealth of falsehood and blasphemy which has never been equalled; and yet the orator was so much admired that he was compelled to repeat his oration to an immense and applauding multitude in front of the church of Notre Dame. There is, perhaps, not a nest of robbers now on the face of the earth that would tolerate the sentiments which he uttered. What, then, shall be said for the acclaiming populace?

Only one thing; and that is, that they were, perhaps, not quite so bad as they seemed, though, doubtless, they were close on the margin of total depravity. We cannot proceed far with the history and literature of that period, without perceiving that the people of that day were not the people of ours. What they admired, we admire no more; what they mourned over, we rejoice at; their jests, which set the

table in a roar, would make us shed tears, if we had tears to shed. So great is this difference that it seems to amount to more than a difference of taste. The truth is that scholasticism had totally vitiated the human mind; form had superseded substance; the object of language was neither to express nor conceal thought; not to convince the understanding, nor yet to persuade the heart; but was simply to astound and mystify the hearer by a maze of ingenious paradoxes, a train of audacious sophistries; and the speaker or the writer was admired only as an acrobat is admired, for his feats of skill, with but little regard to the utility of his efforts.

Where want of space forbids a resort to proof we must venture, as a well-grounded opinion, that in point of decorum, learning and integrity, the bar contained a greater number of creditable examples than any other rank or calling in society. Pierre Flotte, a lawyer, was excommunicated by the pope, Boniface VIII., as being "one-eyed of body, and totally blind of spirit;" (*Semi-videns corpore menteque totaliter excæcatus*); but this was only for maintaining the laws against the encroachments of the Holy See. Another lawyer, Yves de Kermartin, was canonized by another pope for the good deeds done while in the flesh. He is the only lawyer, it is said, who ever attained to that posthumous honor; he is known in the calendar as St. Yves, and is the patron saint of the French bar. History transmits the names of many lawyers of this early period, who were no less beloved and respected for their integrity and virtue, than renowned for their learning and eloquence.

After the discovery, or reported discovery, of the Pandects at Amalfi, the study of the civil law was pursued with all the zeal which marked the restoration of learning; and then arose the great teachers of the law who mapped out the plan of ancient and modern legal science. Among these, and of the first, was Alciat, a Milanese by birth, but by adoption a Frenchman, who first clothed the law with the elegance of polite literature, and who prepared the way for Cujas, the only lawyer to whose name the epithet of great has ever been permanently attached. Devoting his life exclusively to the study of the Roman law, possessing a vast genius for scholarship, Cujas is supposed to have attained a proficiency in this branch of learning which has never been equalled in modern times. His habit was to lie at full length on the floor, poring over some volume or manuscript of the law. Vast throngs of students followed him wherever he went. As he spoke of nothing but his favorite science, and never on the subject of religion, he was suspected of being a Calvinist. Being asked one day, directly, his opinion on the subject of religion, he remarked cautiously that he found nothing on the subject in the Pandects. There is no doubt but that this study of the civil law produced a class of men who, in respect of philosophic cultivation, of scientific attainment, and of liberality of character, excelled our revered sages of the common law. It was but natural that it should do so. We can not mention many names in this brief article; but let us pause, in conclusion, upon that of a good, pure and great lawyer, Chancellor l'Hopital.

There is something in the life of this man that elevates and refines our conception of human nature. It can not be unfair to compare him with a great English judge of a later period. Sir Matthew Hale was born more than a century after l'Hopital. Both were profound jurists; able, upright, laborious and conscientious judges. Both of them, in the intervals of exacting pursuits at the bar and on the bench, devoted their time to legal and miscellaneous writings. Of the latter kind, Hale left behind him two volumes of moral and religious tracts; l'Hopital two volumes of Latin poems. The former had a great success in their day; the latter are said by those who have read them to be not destitute of poetical talent; but both the homilies and poems are nearly forgotten now. Both had a capacity for unrelenting and profitable study, and both were cultivated scholars. But at this point the resemblance ceases. The earliest born was by far the more enlightened of the two. Sir Matthew Hale, a prey to bigotry in its gloomiest form, caused two women to be burned for witchcraft; he was the last of the English judges who sentenced for that offence. So rank was his intolerance, that he declared that whoever believed not in witchcraft was an atheist. Far from being a time-serving judge, yet it so happened that all his errors only tended to his

official promotion, and to an increase of popular favor. His didactic writings made his name, while he was living, a household word, and enhanced the veneration in which he was held after his death. If it is a reproach to his memory that he caused two decrepit, innocent old women, to be burned to death by fire, it was no discredit to him while living; he was mentioned in the prayers of the faithful, and his walk and conversation were pointed to as an example which the youth would do well to follow. Even now it is said that he must be judged by the age in which he lived, and that he is not to be censured for faults which were common to his time; but this claim is, perhaps, more charitable than correct, since we judge all men by their relationship with the era in which they live; not to applaud them if they have been no worse than those by whom they were surrounded, but to discern whether they have intellectually or morally excelled their age.

It is no merit now to disbelieve in witchcraft; it would have been a merit in Sir Matthew Hale. There were not wanting intelligent men and women, living at that time, who rejected the barbarous superstition; and certainly this learned judge who was familiar with the great writings of antiquity, was not without the means of forming a higher judgment. The truth is, that with all his fine natural abilities and extensive acquirements, there was a certain narrowness in his composition which greatly limited the bounds of his intellectual vision. To him the common law, with all its artificial, and often unjust and oppressive rules, was the perfection of human reason; and to him vulgar and irrational superstition spoke with the accents of the divine voice. While he was free from servility, he was at the same time a stranger to that spacious freedom of thought which made up the life of l'Hopital. Both lived in strangely troubled times, wherein the path of duty was closely beset with thorns and snares, when any sincere conviction might be branded and punished as a crime; but from out of these difficulties the French jurist achieved the nobler triumph. Sir Matthew Hale walked hand in hand with all the prejudices of his age; if he sometimes withstood the crown, he never resisted the people; l'Hopital did both. Animated by a sincere respect for religion, mindful of its precepts, and diligent in its observances, he discarded the common belief in sorcery. At a time when religious persecution was esteemed to be the first duty of a citizen, he pleaded almost alone for religious toleration. He was not only in advance of his age; he was in advance of the present age.

"Placed by circumstances near a king who was a minor, and between two hostile factions, charged with the maintenance of the royal authority against all the unchained passions and interests of the time, l'Hopital was a political as well as a forensic orator; but whether in the assemblies of the States General, or in the forum of the Parliament, he never forgot his character as a magistrate. It was not by violence but by gentleness that he sought to allay hatred and to restore peace. It was toleration that he preached, with a strong and natural eloquence, sprinkled with popular proverbs, breathing the amiable spirit of the gospel. Whilst Catholics and Huguenots were running to arms, he assailed his adversaries with the weapons of charity. 'A good life,' he said, 'persuades more than prayer; the sword can do but little against the spirit, unless it is to destroy the soul with the body. Let us take away these diabolical names, names of parties, factions and seditions, Lutherans, Huguenots, Papists; let us not change our name of Christians!'"

In another discourse he said: "Let us look upon the Protestants as our brethren; let us not condemn a helpless people unheard. What we have to do is to rule the State, not to pass on questions of faith. One may be a good citizen without being a Catholic; one may separate from the church without ceasing to be a good subject of the king. What is needed is that the citizen, whether Protestant or Catholic, live in peace. Woe to those who counsel the king to put himself at the head of half of his subjects for the purpose of butchering the other half!"

And not in vain did he labor; for after years of painful and fearless effort, he obtained the edict which prevented the establishment of the Inquisition in France, and also the more short-lived edict of pacification, guaranteeing the free exercise of Protestant worship. Certainly a man living on the border-land of the middle ages—for he was born in 1504—capable of these liberal and generous views, devoting a life-time

in endeavoring to secure their adoption, and achieving so much, may well be considered to be one of the brightest ornaments that the bar has ever produced in any country; as one of the heroes of the true knighthood of noble and magnanimous spirits, upon whose spotless lives the historian may dwell with pleasure, and the reader with profit.

If it is apparent to us that Chancellor l'Hopital was greatly in advance of the civilization of his time, his contemporaries for the most part only perceived that there was a want of harmony between him and them. With the usual discriminating logic of the world, they said that since he was in favor of toleration of Huguenots, he must needs be a Huguenot himself; a charge which was more plausible than any other that could be made, and was at the same time the most damaging. In 1568, Catherine de Medicis, the evil genius of her age, excluded him from the council; and a few days later she sent to his country seat, whither he had retired, and demanded the seals. He surrendered them without regret, saying truly that the world had become so corrupt that he could no longer influence its affairs. He had previously, in a public discourse, held at a time when the frame-work of society was completely overturned by civil war, when an imprudent word often meant death to the speaker, declared, with that unconscious intrepidity which was one of the most marked traits of his character, "Every order of society is corrupted; the people are badly instructed; they hear only of tithes and taxes, nothing of good morals; each wishes to see his own religion approved, that of all others persecuted."

It is said that in his retreat he found unexpected enjoyments. The exercise of private charity, the amusements of a country life, the reading and composition of Latin poems, in which he took great pleasure, and the conversation of a few friends, occupied the time which was not consecrated to the care and education of his children. Passing his days in this manner he wrote to a friend: "I was ignorant that rural life possessed so many charms. I have seen my hair grow white without knowing where I could find happiness. In vain nature had created me to love repose and leisure; I never should have surrendered myself to that pleasing inclination, if Heaven, regarding me with an eye of pity, had not released me from the fetters which I should not have been able to break. If any one imagines that I thought myself happy when fortune seemed to smile upon me, and that I am unhappy now that I have lost all her brilliant advantages, he knows but little of the bottom of my heart."

Four years after his retirement, he saw in the massacre of St. Bartholomew, the dire catastrophe of that policy of violence which he had powerfully struggled against all his life. He recorded his sad commentary on the event in the lines of Statius:

"Excidat illa dies ævo, nec postera credant
Saecula.... ....." [*Lib. V.*]

But his own life was imperilled; furious bigots recalled the author of the theory of toleration, which was a condemnation of their wicked deeds. Being counselled to flee for safety, he said, "By no means; I shall only go hence when, acccording to the pleasure of God, my hour is come." The next day he was told that a troop of armed men were approaching the house, and he was importuned to allow the doors to be closed and that his family and friends there present might fire upon them if they endeavored to enter; but being perfectly unmoved, he replied, "No; open the door; and if the small door is not wide enough for them to enter, open the large one." The men had, indeed, come to put him to death, but just before they reached the house they were overtaken by a messenger from the king, who was sent to inform them that the chancellor was not of those who were proscribed. On being told this he said coldly and without changing countenance, "I did not know that I had merited either death or pardon."—*U. M. Rose, in Southern Law Review.*

In a breach of promise suit at Barrie the other day, Mr. Justice Patterson pointed out that, in his opinion, an action for breach of promise should only be the resort of a spinster of mature age, whose chances to enter the matrimonial state had been entirely spoiled in consequence of the faithlessness of a suitor. In the case before him, the plaintiff was young and handsome, and, in all respects, a likely girl to captivate some other and more desirable member of the sterner sex. This very practical view of the case was upheld by the jury, who assessed the damages at one hundred dollars.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, May 16, 1878.

TORRANCE, J.

HART et al., v. BEARD.

Demurrage—Working Days.

Where a rate for demurrage was stipulated in the charter party, *held*, that only working days should be counted in estimating the demurrage.

The action was to recover the sum of $731, balance remaining due by defendant on the purchase of 529 tons of coal. There was also a demand for five days' demurrage at 29.28 per day. The defendant confessed judgment for $731, but denied the liability to demurrage.

TORRANCE, J., said that under C. S. L. C. Cap. 60, the delivery of coal should be forty chaldrons, or 120,000 lbs., per day. The 529 tons should have been delivered in ten working days, being from May 15 to May 26, inclusive. The delivery was not finished until May 31. The charter party was not binding on the defendant, as he was not a party to it; but it was a guide to determine the difficulty between the charterer and the defendant. The ship was to be discharged at the rate of 50 tons each working day, and demurrage was to be paid for a longer delay at the rate of £6 sterling per day. His Honor held that this meant working days, and Sunday, the 27th, and *Corpus Christi*, the 31st, must therefore be excluded. Defendant would have to pay for May 28, 29, and 30, at the rate named in the charter party, that being a reasonable allowance. Judgment accordingly.

A. M. Hart, for plaintiffs.

I. Wotherspoon, for defendant.

DIGEST OF U. S. DECISIONS.

The following is a digest of the principal decisions reported in recent volumes of State Reports, the selection being made from the fuller digest in the American Law Review. The volumes of State reports referred to are 53 Alabama; 2 Delaware Chancery; 81 Illinois; 55 Indiana; 44 Iowa; 45 Maryland; 35 Michigan; 22 and 23 Minnesota; 57 New Hampshire; 28 New Jersey Equity (1 Stewart, in continuation of C. E. Green); 66 New York; 77 North Carolina; 28 and 29 Ohio State; 83 Pennsylvania State; and 49 Vermont.

Action.—See *Corporation*, 2, 4; *Judge*; *Landlord and Tenant*, 1; *Officer*; *Proximate Cause*; *Witness*, 3.

Adjournment.—Where a judicial sale is duly advertised to take place on a certain day, which is afterwards made a legal holiday, the sale may and should be on that day adjourned to another.—*White* v. *Zust*, 28 N. J. Eq. 107.

Administration.—See *Executor*.

Adultery.—See *Evidence*, 7.

Advertisement.—See *Tax*, 6.

Agent.—1. An agent authorized to sell machines with warranty, made such a sale after his agency had expired, and delivered the notes received by him in payment to his successor in the agency, who had no authority to warrant, and who sent the notes to the principal without informing him by whom the sale was made. The principal brought an action on the notes. *Held*, that he ratified the sale, and was bound by the warranty.—*Eadie* v. *Ashbaugh*, 44 Iowa, 519.

2. Where an agent has a power of substitution, and exercises it, his death revokes the authority of the substitute.—*Lehigh Coal Co.* v. *Mohr*, 83 Penn. St. 228.

See *Corporation*, 2; *Judgment*, 1.

Animal.—A buffalo bull, which had been reared from a calf on a farm, and was as tame as ordinary cattle, was *held* not to be *feræ naturæ*; and an action was sustained by its owner against one who killed it while trespassing on his land.—*Ulery* v. *Jones*, 81 Ill. 403.

Application of Payments.—See *Payment*.

Assessment.—See *Tax*, 3.

Attachment.—See *Foreign Attachment*.

Attorney.—See *Judgment*, 1.

Bank.—The power of discounting promissory notes is an essential feature of a bank; otherwise, of buying promissory notes; and, therefore, in the case of a bank organized under a State statute not expressly authorizing it to buy notes, it was *held* that the purchase of a note by such bank was *ultra vires*.—*Farmers' Bank* v. *Baldwin*, 23 Minn. 198.

Bankruptcy.—See *Consideration*.

Betterment.—See *Tax*, 3.

Bills and Notes.—See *Bank*; *Interest*; *Negotiable Instruments*; *Payment*.

Bill of Lading.—See *Carrier*, 2.

Bona Fide Purchaser.—Where the power of towns to subscribe for stock in railroad com-

panies, and issue bonds to pay for the same, had been judicially affirmed by the decisions of the courts, it was *held* that bonds bought *bona fide* while such decisions stood unquestioned were valid, though later decisions throw doubt on the power.—*Williams* v. *Duanesburgh*, 66 N. Y. 129.

See *Negotiable Instruments.*

Bond.—See *Bona Fide Purchaser; Surety.*

Bribery.—See *Quo Warranto*, 1.

Burglary.—See *Indictment*, 1.

By-law.—See *Municipal Corporation*, 2.

Carrier.—1. A common carrier is not bound to undertake to carry goods directed by mistake to a place which does not exist (as where goods are directed to *Alvey*, there being no such place, by mistake for *Albia*, a place on the carrier's line). But if he does undertake to carry the goods, he is liable as a carrier, if he fails to deliver them where they belong.—*O'Rourke* v. *Chicago, Burlington & Quincy R. R. Co.*, 44 Iowa, 526.

2. Goods were delivered to carriers under a verbal agreement not exempting the carriers from any liability. The carriers afterwards delivered to the consignor a bill of lading, by whose terms they were exempt from liability for loss by fire. The consignor received the bill without objection, and sent it to the consignee. *Held*, that this was not conclusive evidence of his assent to it, but the carriers must show his assent affirmatively.—*Gaines* v. *Union Transportation Co.*, 28 Ohio St. 418.

3. The mere fact that a passenger pays no fare does not of itself relieve the carrier from liability for negligence by which he is injured.—*Blair* v. *Erie Ry. Co.*, 66 N. Y. 313.

4. Goods were sent by rail, having been packed and secured on a car by the shipper, but so insufficiently that on the transit they broke loose from their fastenings and were damaged, without fault of the carriers. *Held*, that the carriers were not liable, though their servants knew that the goods were not properly packed before starting.—*Ross* v. *Troy & Boston R. R. Co.*, 49 Vt. 364.

See *Damages*, 2.

Cattle.—See *Animal.*

Charity.—1. A devise for the support, maintenance, and education of the poor of a county, excluding such as should reside within the poor-house, but to be distributed among such as by timely assistance may be kept from being carried to the poor-house, is a good charitable use.—*State* v. *Griffith*, 2 Del. Ch. 392, 421.

2. Testator gave real and personal estate to the commissioners of a county, and their successors in office for ever, in trust for the benefit of the orphan poor and for other destitute persons of said county; and directed that the land devised should not be sold, but should be used as a home, and that the personalty should be invested and used for the support and education of such poor and destitute persons. *Held*, that a good charitable trust, and a sufficient trustee, were designated.—*Board of Commissioners of La Grange County* v. *Rogers*, 55 Ind. 297.

3. A bequest of a fund to employ a preacher of the Universalist denomination is a good charitable gift.—*Trustees of Cory Universalist Society* v. *Beatty*, 28 N. J. Eq. 570.

See *Tax*, 7.

Common Carrier.—See *Carrier.*

Conflict of Laws.—See *Executor.*

Consideration.—Forbearance by a creditor to institute proceedings in bankruptcy against his debtor is a lawful and sufficient consideration for a promise by a third person to pay the debt.—*Ecker* v. *Bohn*, 45 Md. 278.

Conspiracy.—See *Judge.*

Constitutional Law.—1. A State has no power to regulate the sale of patent-rights.—*Crittenden* v. *White*, 23 Minn. 24.

2. A State tax on the gross receipts of a telegraph company, most of which receipts were derived from messages sent by the company on matters pertaining to commerce, and to or from points without the State, *held*, not unconstitutional as usurping the power of Congress to regulate commerce.—*Western Union Tel. Co.* v. *Mayer*, 28 Ohio St. 521.

See *Eminent Domain.*

Contempt.—See *Foreign Attachment*, 2.

Contract.—A county subscribed for building a railroad the sum of $100,000, payable in instalments; certificates of stock were deliverable, by the terms of the subscription, when the whole was paid. After $30,000 had been paid, it was adjudged that the county had no power te make such a contract; and no more was paid. *Held*, that the county was not entitled to receive certificates of stock *pro tanto*.—*Wapello County* v. *Burlington & Missouri R. R. Co.*, 44 Iowa, 585.

See *Agent*, 1; *Consideration; Damages*, 1; *Evidence*, 2; *Illegal Contract; Insurance; Interest; Rescission; Surety; Tax*, 1.

Contributory Negligence.—See *Negligence*, 1, 2; *Railroad.*

Conviction—See *Judgment*, 2.

Corporation.—1. In general, the forfeiture of a corporate franchise can be taken advantage of only by the State; but where a corporation chartered to erect and maintain a bridge, with power to take tolls on the same for twenty years, brought an action to recover tolls, it was *held* that the defendant might show that the twenty years had expired.—*Grand Rapids Bridge Co.* v. *Prange*, 35 Mich. 400.

2. A corporation is liable in an action of tort for the fraud and deceit of its agent in making a sale.—*Peebles* v. *Patapsco Guano Co.*, 77 N. C. 233.

3. Bringing an action to recover damages for wrongful expulsion from a corporation is a waiver of the plaintiff's right to be restored to membership by *mandamus.*—*State* v. *Lipa*, 28 Ohio St. 665.

4. One stockholder in a corporation cannot maintain an action at law against the directors for damages suffered by him, in common with other stockholders, by their negligence.—*Craig* v. *Gregg*, 83 Penn. St. 19.

See *Trust*, 1, 2, 3.

Costs.—See *Tender*, 2.

County.—See *Charity*, 2; *Contract.*

Coupon.—See *Negotiable Instruments.*

Covenant.—By the terms of a lease, wherein the parties covenanted for themselves, their heirs and executors (not naming assigns), the lessee agreed to put in certain fixtures, and the lessor to buy the same at a reasonable price. *Held*, that the parties' assignees were not bound.—*Hansen* v. *Meyer*, 81 Ill. 321.

Creditor.—See *Fraudulent Conveyance*, 1.

Criminal Law.—See *Evidence*, 1, 3, 7; *Game; Indictment; Judgment*, 2; *Larceny; Reprieve.*

Crops.—See *Fraudulent Conveyance*, 2.

Custom.—See *Evidence*, 2.

Damages.—1. A. undertook to sell the goods of B., to provide a room, a team, and other necessary means for carrying on the business, and to devote all his time to it; and B agreed to furnish him with all the goods he could sell, at a price twenty-five per cent. below the retail rate. In an action by A. against B. for breach of this agreement, *held*, that A. could recover only the value of his time, and not the profits he might have made from sales, if the goods had been supplied as agreed. *Howe Machine Co.* v. *Bryson*, 44 Iowa, 159.

2. Action for ejecting plaintiff from defendant's cars, for non-payment of the fare established by defendant's rules, plaintiff having tendered what he claimed, and what was ultimately held by the court, to be the lawful fare. *Held*, that defendant might introduce evidence of plaintiff's subsequent declarations, to show that he took passage in order to test the question of fares, and expecting to be ejected, and to make money out of the transaction; and that this, being shown, was a bar to his recovery of exemplary damages.—*Cincinnati, Dayton & Hamilton R. R. Co.* v. *Cole*, 29 Ohio St. 126.

See *Interest; Libel.*

Deceit.—See *Corporation*, 2.

Deed.—See *Evidence*, 6; *Mistake.*

Deposit.—See *Tax*, 1.

Devise and Legacy.—A bequest of three-quarters of the principal and interest on a bond given to the testator, *held*, a specific legacy, and not to be made up out of the general assets, the estate being insolvent.—*Titus* v. *McLanahan*, 2 Del. Ch. 200.

2. Under a gift by will of income to a man and his wife for life, each is entitled to one-half the income.—*See* v. *Zabriskie*, 28 N. J. Eq. 422.

3. Testator gave to each of his children a pecuniary legacy "when the youngest shall arrive at the age of twelve years," and directed that his widow and children should hold all his estate in common till that time. *Held*, that the legacies were vested.—*Sutton* v. *West*, 77 N. C. 429.

4 The rules of a benevolent society provided for the payment of a sum, on the decease of any member, to his family, as described in the rules, if not otherwise directed by him before his death. A member died, bequeathing his estate and property, real, personal, and mixed. *Held*, that this bequest was not an execution of his power over the fund due from the society.—*Arthur* v. *Odd Fellows' Beneficial Association*, 29 Ohio St. 557.

5. A testator gave his wife a legacy in lieu of dower, directed his executors to sell all his

real estate, gave certain pecuniary legacies, and the residue to A. B. and C., their heirs and assigns, to be equally divided between said A. B. and C. C. died before the testator. *Held* (1) that the legacy to him lapsed; (2), that it went to the testator's next of kin, and not to the other residuary legatees; (3), that the testator's widow was not barred from claiming a share in it by accepting the provision in lieu of dower. —*Hand* v. *Marcy*, 28 N. J. Eq. 59.

See *Charity*.

Divorce.—Fraud of wife, in not disclosing her pregnancy at the time of marriage, *held*, no cause of divorce.—*Long* v. *Long*, 77 N. C. 304.

Drunkenness.—See *Insurance* (*Life*), 2.

Easement—See *Way*.

Eminent Domain.—Land which had been taken and used, under statutory authority, for a canal, may be used, under like authority, for a road, without additional compensation to the owner.—*Malone* v. *Toledo*, 28 Ohio St. 643. *Shanklin* v. *Evansville*, 55 Ind. 240.—*Stoudinger* v. *Newark*, 28 N. J. Eq. 187, 446.

Equity.—See *Injunction*.

Eviction.—See *Landlord and Tenant*, 2.

Evidence.—1. Indictment for murder. To prove that the offence was murder in the first degree, the prosecution undertook to show that it was committed in attempting to commit rape. *Held*, that evidence that the prisoner had previously committed rape on another person was incompetent.—*State* v. *Lapage*, 57 N. H. 245.

2. Plaintiff employed defendants as stock-jobbers, and agreed that all transactions should be subject to the usages of their office. They bought stock for his account, and, on his failing to deposit the required "margin," sold it, without notice to him, at a loss; whereupon he sued them in trover. *Held*, that they might show that they acted according to the usages of their office. And a new trial was granted because such evidence had been excluded; but *quære* its weight or conclusiveness if admitted. —*Baker* v. *Drake*, 66 N. Y. 518.

3. On an indictment for murder, the prisoner contended that the killing was in self-defence. There was evidence that the deceased had followed the prisoner into a house which he had threatened to kill him if he visited, of which threats the prisoner had notice. *Held*, that evidence of other like threats, of which the prisoner was not informed, was admissible to corroborate the former evidence, and to show *quo animo* the deceased entered the house. *Held*, also, that evidence of the violent and dangerous character of the deceased was admissible.—*State* v. *Turpin*, 77 N. C. 473.

4. The impeachment of the credit of a witness, by showing that he has made statements at other times contradictory to his testimony at the trial, does not lay a foundation for sustaining him by proof of his reputation for truth.—*Webb* v. *The State*, 29 Ohio St. 351.

5. In ejectment, the plaintiff claimed title under J. S., and offered in evidence a deed from J. S. to Rufus V., and a deed from Russel V. to the plaintiff's grantor. *Held*, that he could not show by parol that Russell and Rufus were the same person, and that the latter name was written in the deed by mistake [there being no evidence that Russel was otherwise known as Rufus].—*Pitts* v. *Brown*, 49 Vt. 86.

6. A lease was made of "the premises on the corner of A and B streets, recently occupied by J. S. The shops are not included." *Held*, that the lease did not necessarily pass the whole building on the corner, except the shops; and that whether a particular part passed as having been occupied by J. S. was a question for the jury, on which parol evidence was admissible. —*Alger* v. *Kennedy*, 49 Vt. 109.

7. On the trial of an indictment for adultery, the husband of the *particeps criminis* is a competent witness to prove circumstances which do not directly criminate, but tend to criminate, her.—*State* v. *Bridgman*, 49 Vt. 202.

8. In an action to recover personal property on the ground that defendant bought it of plaintiff, not intending to pay for it, evidence that defendant was engaged about the same time in like fraudulent transactions is admissible on the question of intent.—*Eastman* v. *Premo*, 49 Vt. 355.

See *Carrier*, 2; *Damages*, 2; *Presumption*; *Tax*, 4; *Trial*, 2; *Witness*.

Executor and Administrator.—1. The purchase by an executor of the interest of a particular legatee is no fraud on the residuary legatees, and they cannot hold him to account for the profits he may make by such purchase.—*Hale* v. *Aaron*, 77 N. C. 371.

2. A resident of Vermont made a promissory note. The payee lived and died in Massachusetts, and administration was there granted on his estate. *Held*, that the administrator might sue on the note in Vermont without taking out administration there; because, as the debt was due and payable in Massachusetts, it could not be assets in Vermont, and therefore there was no ground for granting administration in that State.—*Purple* v. *Whithed*, 49 Vt. 187.

Exemplary Damages.—See *Damages*, 2.

Expert.—See *Witness*, 1.

Feræ Naturæ. See *Animal.*

Ferry.—See *Injunction*, 2.

Fire.—See *Proximate Cause.*

Fire Insurance.—See *Insurance (Fire).*

Fixture.—1. Platform scales on a farm, fastened to sills laid on a brick wall set in the ground, *held*, to pass by a mortgage of the farm.—*Arnold* v. *Crowder*, 81 Ill. 56.

2. As between a mortgagee and an execution creditor, rolling-stock of a railroad company mortgaged with the road is part of the realty.—*Williamson* v. *New Jersey Southern R. R. Co.*, 28 N. J. Eq. 277.

See *Covenant.*

Forbearance.—See *Consideration.*

Foreign Attachment.—1. A railroad company mortgaged its property and income to secure payment of its bonds; and, by the terms of the mortgage, remained in possession until default. *Held*, that its earnings, while so in possession, might be reached by process of foreign attachment in a suit against it.—*Mississippi Valley & Western Ry. Co.*, v. *United States Express Co.*, 81 Ill. 534.

2. But where a receiver is in possession of a railroad, a creditor of the railroad company cannot attach its earnings in the hands of one of its debtors; and if he does so, without leave of the court by which the receiver is appointed, he is guilty of a contempt.—*Richards* v. *The People*, 81 Ill. 551.

3. Money taken by an officer from the person of a prisoner arrested for crime, is attachable in the officer's hands in a civil action against the prisoner.—*Reifsnyder* v. *Lee*, 44 Iowa, 101.

Fraud.—See *Corporation*, 2; *Divorce; Evidence*, 8; *Executor*, 2.

Fraudulent Conveyance.—1. The plaintiff in an action of tort is not, before judgment, a creditor of the defendant, and cannot impeach a conveyance by the latter as made to delay or defraud him.—*Hill* v. *Bowman*, 35 Mich. 191.

2. A. conveyed to B. land on which a crop was growing; the crop was afterwards taken on execution against A., and B. replevied it. *Held*, that the defendant in the action of replevin might show that the conveyance to B. was made to defraud A.'s creditors.—*Pierce* v. *Hill*, 35 Mich. 194.

See *Executor*, 3.

Game.—Where a statute forbids the catching of rabbits with ferrets by any person, except on premises owned by him, one who so hunts on premises not owned by him is not protected by having the owner's license, if he does not act as the owner's agent.—*Hart* v. *The State*, 29 Ohio St. 666.

Garnishment.—See *Foreign Attachment.*

Homicide.—See *Evidence*, 1, 3.

Husband and Wife.—A trustee for his wife and others, having converted to his own use part of the trust fund, was removed. *Held*, that this was not a reduction to possession of the wife's share; and, therefore, that her share of other money received by the succeeding trustee was not liable to make up the loss of the other *cestuis que trust.*—*Jones* v. *Randel*, 2 Del. Ch. 637.

See *Devise*, 2; *Divorce; Evidence*, 7; *Will.*

[To be continued.]

GENERAL NOTES.

The following anecdote is told of Sir John Holker, the English Attorney General:—As Sir John was entering the House recently, he saw a stranger standing in the corridor, inquiring after a member. The member in question happened to be a friend of Sir John's, and desirous of obliging him, he said to the stranger, "Come along, I'll get you in." The stranger followed, and Sir John passed him into the speaker's gallery. As he turned to go away, the man held out his hand, and before the Attorney-General quite realized his position, he found he was the possessor of sixpence. Sir John was very proud of the coin, and showed it to his colleagues on the Treasury Bench, affirming that it was the most easily earned sixpence he possessed.