NOTES OF CURRENT DECISIONS OF THE UNITED STATES SUPREME COURT.

Removal of Cause.

HYDE v. RUBLE, 3 Morr. Trans. 516. This was a suit begun by Ruble & Green on the sixth of March, 1880, in a state court of Minnesota, against the plaintiffs in error, who were defendants below, upon an alleged contract of bailment made by all the defendants as partners. The amount involved was a little more than $500. The plaintiffs were both citizens of Minnesota. One of the defendants was a citizen of Minnesota, but the others were citizens of Wisconsin and Iowa, and the business of the alleged partnership was carried on in Minnesota. After answers were filed, all the defendants filed in the state court a petition for the removal of the suit to the circuit court of the United States for the district of Minnesota, on the ground of the citizenship of the parties. At the next term of the circuit court the cause was remanded to the state court. Another petition was filed by all the defendants who were not citizens of Minnesota for a removal of the suit as to themselves, on the ground that there could be a final determination of the controversy, so far as it concerned them, without the presence of the defendant, who was a citizen of the state, as a party. Whereupon the state court, under the second clause of section 639 of the Revised Statutes, ordered a removal, so far as concerned the petitioning defendants, leaving the suit to proceed in that court as to the other defendant. When the case was docketed in the circuit court, under this second removal, it was again remanded. To reverse these several orders of the circuit court this writ of error was brought.

The decision of the supreme court was rendered January, 1882, by Mr. Chief Justice *Waite.* Where an action is brought in a state court by citizens of that state against several defendants alleged to be

copartners, only one of whom is a citizen of such state, while the others are citizens of other states, the right of removal as to the subject-matter of the suit does not attach to the defendants who are non-residents, under the first clause of the second section of the act of 1875, because all the parties on one side of the controversy are not citizens of different states from all the parties on the other. Neither can it be removed under the second clause of the same section on the ground that there was in the action a separate controversy wholly between citizens of different states, notwithstanding separate answers were filed denying the existence 446 of the partnership, and any contract between themselves and the plaintiffs. To entitle a party to removal under this clause there must exist in the suit a separate and distinct cause of action, in respect to which all the necessary parties on one side are citizens of different states from those on another. Nor is it removable under the act of 1866, (Rev. St. § 639, cl. 2,) because this was repealed by the act of 1875.

The cases cited in the opinion were: The Removal Cases, 100 U. S. 457; Blake v. McKim, 103 U. S. 336; Barney v. Latham, Id. 205.

NOTE. And see, as to repeal of the act of 1866, Clark v. Chicago, M. & St. P. R. Co. *ante,* 355; Sweet's Adm' v. Chicago, M. & St. P. R. Co. Id; Wormser v. Dahlman, 16 Blatchf, 319; Railroad Co. v. Mississippi, 102, U. S. 141; McLean v. Chicago, M. & St. P. R. Co. Id. 309; Girardy v. Moore, 3 Woods, 397; Osgood v. Chicago, etc., R. Co. 6 Biss 330; Chicago v. Gage, Id. 467; Carraher v. Brennan, 7 Biss, 497; Arapahoe Co. v. Kansas & P. R. Co. 4 Dill. 277; Burch v. Davenport, etc., R. Co. 46 lowa, 449; Wormser v. Kline, 57 How Pr 286; New Jersey Zine Co. v. Trotter, 23 Int. Rev. Rec. 410; Ex parte Grimball, S Cent. L. J. 151; Cook v. Ford, 4 Cent. L. J. 560.

Life Insurance.

BENNECKE *v.* CONNECTICUT MUT. LIFE INS. CO. 14 Chi. Leg. News, 267 A suit on a policy of life insurance was commenced in the circuit court of McLean county on the eighteenth day of April, 1878, by a declaration on the policy of the insurance. Defendant filed a plea of the general issue only. On the petition of the defendant the case was transferred to the circuit court of the United States for the southern district of Illinois. It was admitted by the insurance company that there was no other defence in the case than what arose from the forfeiture of the policy by reason of the fact that Bennecke had gone south of the thirty-second parallel of latitude, between the first of July and the first of November, without the consent of the company previously given in writing; and on the facts of the case it occurred as a question whether the forfeiture had been waived by the company, on which question the judges were opposed, and the presiding judge being of opinion that the forfeiture had not been waived, judgment was entered for the defendant. Whereupon, and on motion of the defendant, by its counsel, it was ordered that the state of the pleadings, and the facts found, and the question on which the judges differed, be certified according to the request of the defendant, and the law in that case made and provided, to this court to be finally decided.

The cause has accordingly been brought to this court by certificate of division of opinion and writ of error, and decided at the October term, 1881, Mr. Justice *Woods* delivering the opinion of the court affirming the judgment of the circuit court to the effect: A waiver of a stipulation in an agreement, to be effectual, must not only be made intentionally, but with knowledge of the circumstances. So, where neither the agents of the company nor the company itself knew that the party named in the policy was dead at the time

of the application for a permit to travel and live in districts prohibited by the policy, it is not a waiver of the forfeiture for so doing without permission of the company. Further, that the ratification of an act of an agent, previously unauthorized, to bind the principal, must be with a full knowledge of all the material facts.

The cases cited in the opinion were: Owings v. Hull, 9 Pet. 607; Diehl v.

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Insurance Co. 58 Pa. St. 452; Bevin v. Connecticut Mut. L. Ins. Co. 23 Conn. 244; Viall v. Genesee Mut. Ins. Co. 10 Barb. 440; Earl Darnley v. L. C. & D. R. Co. Law Rep. 2 H. L. 43; Combs v. Scott, 12 Allen, 496.

Collision between Sailing-Vessels.

THE ANNIE LINDSLEY *v.* BROWN. This action was brought to recover damages sustained by the schooner Sallie Smith in a collision with the brig Annie Lindsley, which resulted in the sinking and total loss of the Smith and her cargo. The owners of the schooner brought suit against the brig in the district court, and the district court having rendered a decree in their favor, the claimants of the brig appealed the case to the circuit court, by which the decree of the district court was affirmed. The claimants then appealed to the supreme court of the United States, which rendered judgment on December 5, 1881, affirming the decree, the opinion being given by Mr. Justice *Woods.* The findings of fact by the circuit court are conclusive, and the court cannot look into the evidence, which is not part of the record of this court. The act of February 16, 1875, (1 Sup. to the Rev. St. 135,) provides that the circuit court, in cases of admiralty and maritime jurisdiction on the instance side of the court, shall find the facts and the conclusions of law, and state them separately. Where the circuit court found the facts to be that a brig and a schooner were approaching each other nearly end on,

the latter heading west by south, the former about east-north-east; and the wind east of south, and fresh; and on the discovery of the brig the schooner ported, but the brig, on the discovery of the schooner, starboarded and then ported, but too late to change the course given to her by starboarding: *Held,* that the brig was in fault for violating the sixteenth rule of navigation, which requires both vessels, when approaching end on, to put their helms to port, so that each may pass on the port side, (Rev. St. § 4233,) and that the negligence of a lookout, which has no part in bringing about the collision, cannot be regarded.

Benedict, Taft & Benedict, for appellant.

Butler, Stillman & Hubbard and Wilhelmus Mynderse, for appellees.

The cases cited in the opinion were: The Abbotsford, 98 U. S. 440; The Benefactor, 102 U. S. 204; The Adriatic, 103 U. S. 730; to the point of practice. And The Farragut, 10 Wall. 334; The Fannie, 11 Wall. 238; as to the neglect of the lookout.

Infringement of Patent—Measure of Damages.

GOULDS MANUF'G Co. *v.* COWING, 21 O. G. 1277. This was a patent case taken up to the supreme court of the United States, on appeal from the circuit court of the United States for the northern district of New York. The validity of the patent and its infringement were not disputed, and the only questions raised on appeal relate to the amount of damages the appellant is entitled to recover for the infringement of his patent. Decision was rendered on March 13, 1882, reversing the decree of the circuit court, and the opinion delivered by Mr. Chief Justice *Waite:* Where a patent is for one of the constituent parts of a machine, and not for the whole machine, in estimating the amount of damages for its infringement it does not necessarily follow that 448 the profits are to be confined to what can be made by the manufacture and sale of the patented part separately. If, without the

improvement, a machine adapted to the same uses can be made which will be valuable in the market and salable, then the inquiry is, what was the advantage gained by the use of the patented improvement? But if the improvement is required to adapt the machine to a particular use, and there is no other way open to the public of supplying the demand for that use, then the infringer has, by his infringement, secured the advantage of a market he would not otherwise have had, and the fruits of his advantage are the entire profits he has made in that market.

W. F. Cogswell, for appellant.

Elisha Foote, for appellees.

Federal Question.

DUBUCLET *v.* STATE OF LOUISIANA, 2 Morr. Trans. 559. A suit begun in a state court of Louisiana to try the title of Dubuclet, plaintiff in error, to the office of treasurer of state, the duties of which he was performing under a commission from the governor of the state. A petition was filed by the plaintiff in error for the removal of the suit to the circuit court of the United States for the district of Louisiana, and was granted by the state court, but was remanded by the circuit court on the ground that it was not in law removable, when it was taken up on error to the supreme court of the United States at the October term, 1880. Mr. Chief Justice *Waite,* in rendering the decision, *held,* that in a suit to declare the right of the candidate declared elected to office, wherein it was alleged that many voters were prevented from voting by bribery, and in violation of the civil rights act, and that the poll was, on this account, rejected by the returning board in accordance to law and their sworn duty, which rejection elected him, that such a question arose under the state law and not "under the constitution and laws of the United States," and that the case was not, therefore, removable under the act of March 3, 1875.

John Ray, for plaintiff in error.

Conway Robinson, for defendant in error.

See *Wiggins" Ferry Co. v. C. & A. R. Co. ante, P. 381 and note.*