## NOTES OF CURRENT DECISIONS OF THE UNITED STATES SUPREME COURT.

Negligence—Exemption of Master for Injuries by Servant.

HOUGH *v.* TEXAS & PACIFIC R. CO. 9 Amer. L. Rec. 93. This was an action brought by the widow of deceased on her own behalf and as next friend of the son of deceased, to recover damages, compensatory and exemplary, on account of the death of the husband and father of plaintiffs, through the negligence of their servants and employes of the defendant. The case was taken up on error to the circuit court of the United States for the western district of Texas, and was decided in August, 1880. Mr. Justice *Harlan* delivered the opinion of the court reversing the judgment. To the rule exempting the master from liability to one servant for injury caused by a fellow-servant, there are numerous well-defined exceptions; one of which arises from the obligation of the master, whether a natural person or a corporation, not to expose the servant, when conducting the master's business, to perils or hazards against which he may be guarded by proper diligence upon the part of the master. To that end the master, whether a natural person or a corporation, although not to be held as guarantying the absolute safety or perfection of machinery or other apparatus provided for the servant, is bound to observe all the care which the exigencies of the situation reasonably require, in furnishing instrumentalities adequately safe for use. Those, at least, in the organization of a railroad corporation who are invested with controlling or superior duty in that regard, represent its personality; their negligence, from which injury results, is the negligence of the corporation. If a servant, having a knowledge of a defect in machinery, gives notice thereof to the proper officer, and is promised that such

defect shall be remedied, his subsequent use of the machinery, in the belief, well grounded, that it will be put in proper condition within a reasonable time, does not necessarily, or as a mater of law, make him, guilty of contributory negligence. It is for the jury to say whether he was in the exercise of due care in relying upon such promise, and in using the machinery after knowledge of its defective or insufficient condition. The burden of proof in such a case is upon the company to show contributory negligence.

The cases cited in the opinion were: Farwell v. Boston & Worcester R. Co. 4 Metc. 49; Railroad Co. v. Fort, 17 Wall. 557; Ford v. Fitchburg R. Co. 110 Mass. 241;

622

Priestley v. Fowler, 3 Mees. & W. 1; Patterson v. Wallace, 1 Macq. H. L. Cas. 748; Bartonshill Coal Co. v. Reid, 3 Macq. H. L. Cas. 288; Bartonshill Coal Co. v. McGuire, Id. 307; Clarke v. Holmes, 6 Hurl. & N. 349; S. C. 937; Murray v. Phillips, 35 Law Times, 477; Conroy v. Vulcan Iron Works, 62 Mo. 38; Patterson v. P. & C. Ry. Co. 76 Pa. St. 389; Le Clair v. Railroad Co. 20 Minn. 9; Brabbits v. Ry. Co. 38 Mo. 289; Holmes v. Worthington, 2 Fost. & F. 535; Railroad Co. v. Gladmon, 15 Wall. 401; Indianapolis & St. L. R. Co. v. Horst, 93 U. S. 291.

Patents for Inventions—Assignment.

GOTTFRIED *v* MILLER, 3 Morr. Trans. 644. Appeal from the circuit court of the United States for the eastern district of Wisconsin. The case was decided in the supreme court of the United States on January 23, 1882. Mr. Justice *Woods* delivered the opinion of the court affirming the decision of the circuit court. Assignments of patents for inventions are not required to be under seal. The statute regulating their transfer simply provides that "every patent or any interest therein shall be assignable in law by an instrument in writing, and as a corporation may bind

itself by a contract not under its corporate seal when the law does not require its contract to be evidenced by a sealed instrument, the absence of the corporate seal from the contract of assignment does not render it invalid or void. When the assignment is executed by an agent of the corporation, he should, in the body of the contract, name the corporation as the contracting party, and sign as its agent or officer. The attachment of stock in the hands of a stockholder does not encumber the property of the company nor prevent the assignment by the company.

Ephraim Banning and Thomas A. Banning, for appellant.

E. H. Abbott, for appellee.

The cases cited in the opinion were: That a corporation may bind itself by contract not under its corporate seal: Bank of Columbia v. Patterson, 7 Cranch, 299; Fleckner v. U. S. Bank, 8 Wheat. 338; Andover T. Cor. v. Hay, 7 Mass. 102; Dunn v. St. Andrew's Church, 14 Johns. 118; Kennedy v. Balt. Ins. Co. 3 Harr. & J. 367; Stanley v. Hotel Corp. 13 Me. 31. As to patrol contracts made by agent; Fanning v. Gregoire, 16 How. 524; Fleckner v. Bank, 8 Wheat. 338. Assignments by corporation in general; Mott v. Hicks, 1 Cow. 513; Bowen v. Norris, 2 Taunt. 374; Shelton v. Darling, 2 Conn. 435; Brockway v. Allen, 17 Wend. 40. As to the effect of attachment of stock of a stockholder: Morgan v. Railroad Co. 1 Woods, 15; Bradley v. Holdsworth, 3 Mees. & W. 334; Arnold v. Ruggles, 1 R. I. 165;

Contract—Enforcing Performance.

BROWN *et al.* v. SLEE *et al.* 2 Morr. Trans. 772. This was an appeal from the circuit court of the United States for the district of Iowa, in a suit in equity to enforce the stipulations in certain wherein the plaintiffs purchased from his executors the interest of the estate of deceased in the undivided partnership property owned by the plaintiffs and deceased during

his life-time, for $100,000, payable, $25,000 in cash, $50,000 in notes, and $25,000 in land and a certain county judgment, unless the executors concluded not to keep the land and the judgment, in which event he was, at the end of five 623 years, to purchase them back and pay in money the $25,000 for which they were taken, the executors crediting him with what had, in the mean time, been collected on the judgment, with interest at the rate of 7 per centum perannum. The case was decided at the October term, 1880, and the decision delivered by Mr. Chief Justice *Waite,* affirming the decree of the lower court. On the day fixed for mutual stipulations in a contract to be performed, either party may require the other to perform, and neither can insist on the default of the other so long as he is himself behind in his own performance. The plaintiff could not demand a deed until he tendered the money, and the executors could not require the money until they had offered a deed. The failure of both parties to perform on the day was equivalent to a waiver by each of the default of the other, and either, by tendering performance of his stipulation with in a reasonable time, may enforce the performance of the contract against the other.

William M. Randolph, G. Cole, and G. G. Wright, for appellants.

Nourse & Kaufman and Seymour Dexter, for appellees.

NOTE. See *Dudley* v. *Hayward, ante,* 543.

Removal of Causes—State Laws Enforced.

OUACHITA COUNTY *v.* WOLCOTT. Error to the circuit court of the eastern district of Arkansas. This case was brought up on a certificate of division between the judges of the circuit court of the eastern district of Arkansas. The circuit judge, from the facts of the case, was of opinion that as plaintiff was a citizen of another state, and had brought the present suit before the time limited for bringing in county

warrants for cancellation under the order of the county court, they were not barred under the statute; while the district judge was of opinion that because of the failure to comply with that order the suit could not be maintained. The case was decided in the supreme court of the United States in the October term, 1880. Mr. Justice *Miller* delivered the opinion of the court reversing the judgment of the circuit court. The statute of the state of Arkansas of January 6, 1857, authorizing the county court to make an order calling in for cancellation certain county warrants, and barring all which are not brought in by a certain date, is a valid law, as it merely intended to expedite and make safe the keeping of the county warrants, and did not intend, by giving the county court authority to make such an order, to deprive the federal court of its jurisdiction, and such order is valid and binding on the plaintiff in this case, even in a suit in the federal court after removal of the cause.

F. W. Compton and A. H. Garland, for plaintiff in error.

U. M. Rose, for defendant in error.

NOTE. See *Sonstiby* v. *Keeley, ante,* p. 578, and note.

Contract—Vitiated by Fraud.

WARDELL *v.* UNION PAC. R. CO. Appeal from the circuit court of the United States for the district of Nebraska. This case was decided at the October term, 1880, by the supreme court of the United States. Mr. Justice *Field* delivered the opinion of the court affirming the decree of the circuit court. Arrangements entered into by the directions of a corporation to secure 624 an undue advantage to themselves, at its expense, by the formation of a new company, as an auxiliary to the original one, with the understanding that they, or some of them, are to take stock in it, and then that valuable contracts are to be given to it, on the profits of which they,

as stockholders of such new company, are to share, are so many unlawful devices to enrich themselves to the detriment of the stockholders and creditors of the original company, and will be condemned whenever brought before the courts for consideration. In such case a complainant can derive no benefit from the contract thus tainted, made with the original company, and afterwards assigned to the new corporation.

James M. Woolworth and James O. Broadhead, for appellant.

A. J. Poppleton, for appellees.

The cases cited in the opinion were: Great Luxembourg Co. v. Magnay, 25 Beav. 586; Benson v. Heathorn, 1 Younge & Coll. 326; Flint & Pere Marquette R. Co. v. Dewey, 14 Mich, 477; European & N. A. R. Co. v. Poer, 59 Me, 277; Drury v. Cross, 7 Wall. 299.

Construction of State Statutes—Rule of Decision.

MOORES *v.* CITIZENS' NAT. BANK. 14 Cent. L. J. 228. This was a case taken up on error to the circuit court of the United States for the southern district of Ohio, and decided in the supreme court of the United States on March 6, 1882. Mr. Justice *Gray* delivered the opinion of the court reversing the judgment of the court below. The construction given to the statute of limitations of a state by the highest court of such state is binding upon the federal courts, and the sustaining of a demurrer to plaintiff's reply, raising an issue which had been adjudicated by the state supreme court, and contrary to such adjudication, was prejudicial to the plaintiff, and requires the reversal of final judgment rendered in favor of defendant.

The cases cited in the opinion were: Ong v. Sumner, 1 Cin. Sup. Ct. 124; Lawrence R. R. v. Cobb, 35 Ohio St. 94; Tioga Railroad Co. v. Blossburg & C. R. Co. 20 Wall. 137; Kibbe v. Ditto, 93 U. S. 674; Fairfield v. Gallatin Co. 100 U. S. 47, to the points of limitations and binding effect of the decisions of

the state supreme court; and Deery v. Cray, 5 Wall. 795; Knox Co. Bank v. Llyod, 18 Ohio, 353; Bank v. Lanier, 11 Wall. 369; Telegraph Co. v. Davenport, 97 U. S. 369, to the point that the ruling was prejudicial.