NOTES OF CURRENT DECISIONS OF THE UNITED STATES SUPREME COURT.

Time—Fractions of a Day—Bonds in Aid of Railroads.

TOWN OF LOUISVILLE *v.* PORTSMOUTH SAVINGS BANK, 13 Law Rep. 193. An election was held in a certain township in the state of Illinois on the second day of July, 1870, in which a donation was voted to be raised by special tax in aid of the construction of a railroad by the issuance of bonds. On the same day the people of Illinois voted in favor of the adoption of a new constitution, the second section of the fourteenth article of which was separately submitted, and is in these words: "No county, city, town, township, or other municipality shall ever become a subscriber to the capital stock of any railroad or private corporation, or make donations to or loan its credit in aid of any such corporation: provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make any such subscriptions where the same have been authorized under existing laws, by a vote of the people of such municipality prior to such adoption," The question in the case was whether the act of the town in voting for the issuance of the bonds was affected by the provision of the constitution which was passed on the same day that the vote was taken. The case was brought up to the supreme court in error to the circuit court of the United States for the southern district of Illinois, and was decided in January, 1882, Mr. Justice *Harlan* delivering the opinion of the court affirming the judgment of the lower court, to the effect that the law does not, in general, take cognizance of the fractions of a day; but courts may do so when substantial justice requires it. The section of the constitution above referred to went into operation on the second day of July, 1870, but it

did not invalidate township bonds issued in aid of a railroad corporation pursuant to an election held on that day at an hour prior to the closing of the polls of the general election at which the people of the state voted on the adoption of the constitution—the bonds to be applied in discharge of a donation voted prior to said election, to be paid by special tax.

W. J. Henry, for plaintiff in error.

S. M. Cullom and T. C. Mather, *contra.*

The cases cited in opinion were: Concord v. Portsmouth Sav. Bank, 92 U. S. 625; Fairfield v. Co. of Gallatin, 100 U. S. 50; Richards v. Douagho, 66 Ill. 74;

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Wright v. Bishop, 88 Ill. 304; Grosvenor v. Magill, 37 Ill. 240; Arnold v. U. S. 9 Cranch, 119; Richardson's Case, 2 Story, 571; Lapeyre v. U. S. 17 Wall. 198; U. S. v. Norton, 97 U. S. 170; Burgess v. Salmon, Id. 381; Kennedy v. Palmer, 6 Gray, 316; People v. Clark, 1 Cal. 406; Wrangham v. Hersey, 3 Wils. 274; Combe v. Pitt. 3 Burr. 1423; Harter v. Kernochan, 2 Morr. Trans. 235.

Common Carrier—Connecting Lines—Liability.

ST. LOUIS INS. CO. *v.* ST. LOUIS, VANDALIA, T. H. & I. R. Co. 10 Wash. Law Rep. 323. In error to the circuit court of the United States for the eastern district of Missouri. The general question presented by this case relates to the liability of the defendant for the value of certain cotton, part of shipments made at St. Louis for Liverpool, and which, having passed over defendant's road, thence over the lines of other railroads, was destroyed by an accidental fire in Jersey City, while in the custody of the Erie Railway Company for delivery to an ocean steamer for further transportation. The decision of the supreme court was rendered at the October term, 1881, Mr. Justice *Harlan* delivering the opinion of the court affirming the judgment of he lower court, to

the effect: A common carrier of merchandise, in the absence of a special contract, express or implied, for the safe transportation of goods to their destination, is only bound to carry safely to the end of its line, and there deliver to the next carrier in the route. Where the custom was to make a way-bill over its own road, it does not show an undertaking to transport beyond the terminus of its line, and such an untertaking cannot be implied from the fact that the way-bills on their face indicated that the cotton was consigned to parties beyond its terminus. No arrangement between a dispatch company, undertaking to forward goods, and sundry railroad companies whose lines terminate at a given point, whereby the latter separately agrees to carry all goods for transportation of which the former should contract, at established tariff rates furnished by the railroad companies, will raise an implication of an agreement to carry beyond the terminus of their respective routes. Nor would such an arrangement involve joint liability upon the part of the railroad companies, or make them partners, either *intersese* or as to third parties.

The cases cited in the opinion were: New Jersey St. Nav. Co. v. Merchants' Bank, 6 How. 383; Railroad Co. v. Manuf'g Co. 16 Wall. 328; York Co. v. Central Railroad, 3 Wall 113; Railroad Co. v. Pratt, 22 Wall. 129.

Life Insurance.

KNICKERBOCKER LIFE INS. CO. *v.* FOLEY, 13 Law Rep. 577. In error to the circuit court of the United States for the district of South Carolina. This action was brought to recover the amount of the policies and of premium overpaid, with interest. It was commenced in a state court, and, upon application of the insurance company, was removed to the United States circuit court. The company admitted the issue of the policies and the payment of the premiums, but set up as a defence that the plaintiff and the insured did

not make true and correct answers to the questions, whether the party insured was of temperate habits, and had always been so. The case was decided in the supreme court on March 3, 1882, Mr. Justice *Field* delivering the 767 opinion of the court affirming the judgment of the lower court. The instruction that all the representations in the application for the policy of insurance are warranties that such representations are true, and that if the jury finds from the evidence that the habits of the insured at the time of, or at any time prior to, the application were not temperate, then the answers made by him to the questions, "Are you a man of temperate habits?" "Have you always been so?" were untrue, and the policy was void; but if the jury finds that his habits, in the usual, ordinary, and every-day routine of life, were temperate, then such representations were not untrue within the meaning of the policy, although they may find that he had an attack of *delirium tremens* resulting from an exceptional indulgence in drink prior to the issuance of the policy,—correctly presents the law of the case.

A. G. Magrath, for plaintiff in error.

J. B. Kennedy and Mr. Bryan, *contra.*

The case cited in the opinion was New Jersey Life Ins. Co. v. Baker, 94 U. S. 610.

Partnership—Real Estate.

SHANKS *v.* KLEIN, 10 Am. L. Rec. 593. This was an appeal from the circuit court of the United States for the southern district of Mississippi. The case was decided in the supreme court of the United States at the October term, 1881, Mr. Justice *Miller* delivering the opinion of the court affirming the decree of the circuit court, to the effect that real estate purchased with partnership funds for partnership purposes, though the title be taken in the individual name of one or both partners, is first subject to the partnership debts, and is then to be distributed among the copartners according to their respective rights. The

possessor of the legal title in such cases holds the property in trust for the purposes of the copartnership; and in case of the dissolution of the copartnership by the death of one of its members, the survivor, who is charged with the duty of paying the debts, can dispose of this equitable interest, and the purchaser can compel the heirs at law of the deceased partner to perfect the purchase by conveyance of the legal title in a court of equity.

The cases cited in the opinion were. Dyer v. Clark, 5 Metc. 562; Delmonico v. Delmonico, 2 Sandf. Ch. 366; Andrew's Heirs v. Brown, 21 Ala. 437; Dupuy v. Leavenworth, 17 Cal. 262; Markham v. Merritt, 7 How. (Miss.) 437; Fereday v. Wightwick, 1 R. & Mylne, 45; S. C. 1 Mylne & K. 649, 663; Broom v. Broom, 3 Mylne & K. 443; Cookson v. Cookson, 8 Sim. 529; Townshend v. Devaynes, 11 Sim. 498, notes.

Bill of Exchange—Pleading.

HITCHCOCK *v.* BUCHANAN, 25 Alb. L. J. 410. This was an action of *assumpsit* brought by the indorsee of a bill of exchange drawn by a company and signed by its president and secretary. It was brought up in error to the circuit court of the United States, for the southern district of Illinois, and was decided April 10, 1882, by the supreme court of the United States, Mr. Justice *Gray* delivering the opinion of the court, and affirming the judgment of the lower court on demurrers filed on the ground that the instrument declared on 768 was the bill of a company and not of the defendants. Where the bill of exchange declared on is manifestly the draft of a company, and not of the individuals by whose hands it is subscribed, it cannot be held to bind the agents personally, and an allegation that defendants made "their" bill of exchange is inconsistent with the terms of the writing sued on and made part of the record.

The cases cited in the opinion were: Sayre v. Nichols, 7 Cal. 535; Carpenter v. Farnsworth, 106

Mass. 561; Dillon v. Barnard, 21 Wall. 430; Binz v. Tyler, 79 Ill. 248.

Patents for Inventions—Prior Knowledge and Use.

VINTON *v.* HAMILTON, 21 O. G. 557. Appeal from the circuit court of the United States for the northern district of Ohio. The decision of the supreme court was rendered January 8, 1882. Mr. Justice *Woods* delivered the opinion of the court, to the effect that the patent granted for an improvement in the manufacture of iron for furnace slag was invalid, in view of facts developed by the testimony as to knowledge and use of the invention therein claimed by others prior to the invention or discovery of the patentee, and that in a process of reducing slag the application for the first time to a cupola furnace to accomplish the same end is devoid of invention. When applied to a cupola furnace the cinder-notch performed the same function in the same way.

A. C. McCallum, for appellants.

T. W. Sanderson, for appellees.

Case cited: Pearce v. Mulford, 102 U. S. 112.

Assignment—Contest—Matter in Dispute.

CHATFIELD *v.* BOYLE, 4 Morr. Trans. 81. Appeal from the circuit court of the United States for the western district of Tennessee, decided in the supreme court on March 8, 1882, Mr. Chief Justice *Waite* delivering the opinion of the court to the effect, that where certain creditors of a mercantile firm, secured by assignment, bring a suit on behalf of all creditors secured thereby to set aside a prior assignment, and on an adverse decision appeal, the matter in dispute is not the whole amount of the fund in court, but simply their proportionate share of the fund that would be realized in the event of their success, and no part of the fund that would go to creditors, not before the court, can be taken into account.

The cases cited in the opinion were: Terry v. Hatch, 93 U. S. 44; Seaver v. Bigelows, 5 Wall. 208; Rich v. Lambert, 12 How. 347; Oliver v. Alexander, 6 Pet. 143; Stratton v. Jarvis, 8 Pet. 4; Paving Co. v. Mulford, 100 U. S. 148.