THE PLYMOUTH ROCK, ETC.

District Court, S. D. New York. June 12, 1882.

1. TOWAGE SERVICES—PASSENGER STEAMER.

To entitle a libellant to recover salvage compensation for towage services the claimant's vessel must be shown to have been in either actual or apprehended danger at the time the services were rendered.

2. PRACTICE—COSTS.

Where salvage compensation was claimed for towage services, and the answer admitted the claimant's liability for a reasonable towage compensation, the libellant recovered a reasonable sum for towage, without costs, and was adjudged to pay the United States marshal's costs.

In Admiralty.

This was a libel filed by the master and owner of the steam-boat City of Richmond, to recover $5,000 as salvage compensation for assistance rendered to the steam-boat Plymouth Rock, under the circumstances described in the opinion of the same court, reported in *The Plymouth Rock,* 9 FED. REP. 413, 415, *et seq.*

Lorenzo Ullo, for libellant.

Sidney Chubb, for claimant.

BROWN, D. J. When the aid of the City of Richmond was requested by the captain of the Plymouth Rock, the latter, as I find upon the evidence, was neither in actual nor apprehended danger, being in tow of the Germania, which was fully able to take care of her. The request for aid was merely to expedite her passage and to take off her passengers for their more convenient landing. It is not, therefore, a case of salvage.

635

The libellant is entitled to a reasonable sum for towage and taking passengers. If the parties do not agree, a reference on that point may be taken.

The costs up to this time are allowed, and the libellant should pay the disbursements on the arrest of the vessel.

Bonds in Aid of Railroads.

TOWNSHIP OF NEW BUFFALO *v.* CAMBRIA IRON Co., Sup. Ct. U. S. Oct. Term, 1881. Error to the circuit court of the United States for the western district of Michigan. Plaintiff, in the court below, recovered judgment on certain bonds which were issued to a railroad company by the plaintiff in error to aid in the construction of a railroad, and by the railroad company transferred to defendant in error. The bonds had been issued to the railroad company under authority of an act of the legislature of the state. On the part of the plaintiff in error it is contended that by the settled law of the state as it existed when the bonds were issued they were void. The decision of the supreme court of the United States was rendered on March 27, 1882, Mr. Justice*Harlan* delivering the opinion of the court affirming the judgment of the circuit court.

Where, by the law of the state as expounded by its supreme court and acted upon by its legislative and executive departments, bonds issued to a railroad company were held valid obligations of the municipality by whom they were issued, this court will not feel bound to follow later decisions of the state supreme court modifying their former opinions. The defendant in error is a*bona fide* holder for value, and his rights and obligations depend upon the same rule. In the absence of constitutional provisions making a distinction between municipal subscriptions to stock and municipal appropriations of money or credit, there is no solid ground upon which the legislature can rest such a distinction. That the bonds were voted to one railroad company, and were delivered to a consolidated company, will not invalidate them, as they must be deemed to have been given in view of the

then-existing statute authorizing two or more railroad companies forming a continuous or connected line to consolidate and form one corporation and investing the consolidated company with the powers, rights, property, and franchises of the constituent companies.

H. F. Severens, for plaintiff in error.

W. J. Smiley, for defendant in error.

Cases cited in the opinion: As to constitutionality of state law, Taylor v. Ypsilanti, 4 Morr. Tr. 326, followed; and People v. Salem, 20 Mich. 452; Bay State v. State Treasurer, 23 Mich. 499; Thomas v. City of Port Huron, 27 Mich. 320, not followed. Rights of holder for value: Railroad Co. v. National Bank, 102 U. S. 14. Donations and descriptions: Railroad Co. v. County of Otoe, 16 Wall. 674; Olcott v. Supervisors, 16 Wall. 678; Town of Queensbury v. Culver, 19 Wall. 91. Consolidation of railroads: County of Scotland v. Thomas, 94 U. S. 682;

636

Town of East Lincoln v. Davenport, Id. 801; Wilson v. Salamanca, 99 U. S. 504; Nugent v. Supervisors, 19 Wall. 252; Empire v. Darlington, 101 U. S. 91; Menasha v. Hazard, 102 U. S. 81; Harter v. Kernochan. 103 U. S. 574; Tipton Co. v. Locomotive Works, Id. 532.

Fraudulent Representations—Property Value.

GORDON *v.* BUTLER, U. S. Sup. Ct. Oct. Term, 1881. Error to the circuit court of the United States for the northern district of New York. This was an action for alleged fraud in obtaining a loan upon insufficient security. The decision was rendered in the supreme court May 8, 1882. Mr. Justice *Field* delivered the opinion of the court, reversing the judgment and remanding the cause for a new trial.

The law does not hold one responsible for the extravagant notions he may entertain of the value of property dependent upon its future successful exploitation, or the result of future enterprises; nor

for expressing them to one acquainted with its general character and condition. The law does not fasten responsibility upon one for expressions of opinion as to matters in their nature conjectural and uncertain. A statement of an opinion assigning a certain value to property, like a mine or quarry not yet opened, is not to be pronounced fraudulent because the property upon subsequent development may prove to be worthless; nor is it to be pronounced honest because the property may turn out of much higher value. Whenever property of any kind depends for its value upon contingencies which may never occur, or developments which may never be made, opinion as to its value must necessarily be more or less of a speculative character; and no action will lie for its expression, however fallacious it may prove, or whatever the injury a reliance upon it may produce; but for opinions upon matters capable of accurate estimation by application of mathematical rules or scientific principles, such as the capacity of boilers or the strength of materials, or for opinions of parties possessing special learning or knowledge upon the subject. the case may be different; and for false statements, where deception is designed, and injury has followed from reliance on them, an action may lie.

Leslie W. Russell, for plaintiff in error.

Harry Bingham and A. X. Panser, for defendant in error

Case cited: Holbrook v. Connor, 60 Me. 578.

Internal Revenue.

UNITED STATES *v.* RINDSKOPF, U. S. Sup. Ct. Oct. Term, 1881. Error to the circuit court of the United States for the eastern district of Wisconsin. The decision of the supreme court was rendered on April 24, 1882. Mr. Justice *Field* delivered the opinion of the court, reversing the decision of the circuit court and remanding the case for a new trial.

The assessment of the commissioner of internal revenue was only *prima facie* evidence of the amount due as taxes upon the spirits distilled between the dates mentioned. It established a *prima facie* case of liability, and if not impeached it was sufficient to justify a recovery; but every material fact upon which his liability was asserted was open to contestation. The distiller and his sureties were at liberty to show that no spirits, or a less quantity than 637 that stated by the commissioner, were distilled within the period mentioned, and this entirely, or in part, overthrows the assessment. They were at liberty to show a payment of the tax in whole or in part, and thus discharge or reduce the liability. To the extent, however, in which the assessment was impaired, it was evidence of the amount due. It was error, therefore, to instruct the jury that the assessment was to be taken and considered in its entirety, and that the government was entitled to recover the exact amount assessed or not any sum. A decree in the equity suit is not a bar to the prosecution of the action against the principal and sureties on a distiller's bond, in the absence of proof that the assessment which it adjudged invalid covered the spirits upon which the assessment in this suit was made.

S. F. Phillips, Solicitor Gen., for plaintiffs in error.

J. P. C. Cottrill, L. Abraham, and C. E. Mayer, for defendants in error.

Public Land—Claim of Right to.

SIMMONS *v.* OGLE, U. S. Sup. Ct. Oct. Term, 1881. Appeal from the circuit court of the United States for the southern district of Illinois. Appellant recovered judgment in an action of ejectment on a patent from the United States. Defendant in that action brought suit in chancery to compel a conveyance of the legal title to himself, on the ground of a superior equity, and prevailed in his suit, from which this appeal is taken. The case was decided in the

supreme court of the United States on April 10, 1882. Mr. Justice *Miller* delivered the opinion of the court, reversing the decree of the circuit court.

The laws encouraging settlements upon the public lands are so indulgent, and so numerous are these settlements, that the weight of the inference in favor of any claim of right on the part of a settler, whether legal or equitable, against the United States, growing out of the mere possession, is very slight, and a party claiming land, as against a patentee, on the ground of a superior equity, has cast upon him the necessity to make clear and satisfactory proof of his superior equity. In all completed sales of the public land, besides the entry in the books of the local land-office, two other documents of superior probative force usually attend the sale, which together constitute the certificate of sale,—the first signed by the register giving a description of the land, the amount paid. and the name of the purchaser; the second signed by the receiver, which is a simple receipt for the price; and in the absence of a patent these documents must be produced to establish any claim of right.

R. A. Halbert and F. A. McConaughty, for appellant.

J. L. D. Morrison, for appellee.

Bill of Review.

BURLEY *v.* FLINT, Sup. Ct. U. S. Oct. Term, 1881. This was an appeal from the circuit court of the United States for the northern district of Illinois. A bill of review had been filed in the circuit court seeking to reverse so much of the former decrees of the court in a foreclosure suit as denied the statutory right of redemption given by the laws of the state in regard to land sold under such decrees. A hearing was had on motion to dismiss the bill, which, by consent of counsel, was to be treated as a demurrer, and the court dis 638 missed the bill, from which order this appeal is prosecuted. The decision was rendered on March

13, 1882, affirming the decree of the circuit court. Mr. Justice *Miller* delivered the opinion of the court.

Where appellant does not seek to reverse the order of sale to satisfy the amount due to the mortgagee, nor ask that the sale made under that order be set aside and a new sale ordered, nor make any offer to redeem by payment of the amount found due on the original mortgage, nor offer to pay the amount bid at the sale by the mortgagee or tender any sum in court as assurance that he will do so, but simply asks that so much of the decree as forecloses this statutory right to redeem may be reviewed and reversed, his bill of review was properly dismissed.

Francis H. Kales, for appellant.

E. B. McCagg, for appellee.

Cases cited in the opinion: Brine v. Ins. Co. 96 U. S. 627; Suitterlin v. Conn. Mut. Ins. Co. 90 Ill. 483.

Corporation—Conduct of its Affairs.

OGLESBY *v.* ATTRILL, U. S. Sup. Ct. Oct. Term, 1882. Error to the circuit court of the United States for the district of Louisiana. Mr. Justice *Field* delivered the opinion of the supreme court on May 8, 1882, affirming the judgment of the circuit court.

In conducting the affairs of a corporation, as to the wisdom of an assessment, or its necessity at the time, or the motives which prompt it, the courts will not inquire if it be within the legitimate authority of the directors to levy it, and the objects for which the company was incorporated would justify the expenditure of the money to be raised. Nor will they examine into the affairs of a corporation to determine the expediency of its action, or the motives of it, when the action itself is lawful. A compromise effected between stockholders and the corporation, by which all claims arising from the assessment and the alleged fraudulent purposes of the officers in connection with it stands as a judgment, and protects from further suit equally those who advised and those who levied

the assessment; participants in whatever wrong was committed, if any there were, as well as principals; abettors as well as actors.

Henry B. Kelley, Richard De Gray, C. B. Singleton, and H. R. H. Browne, for plaintiffs in error.

Thomas J. Semmes and S. T. Wallis, for defendant in error.

Cases cited in the opinion: Bailey v. Birkenhead, Lancashire &C. J. R. Co. 12 Beav. 439;Adle v. Prudhomme, 16 La. Ann. 343.

Negligence.

SCHEFFER *v.* WASHINGTON CITY, V. M. & G. S. R. Co., 5 N. J. Law J. 169. Error to the circuit court of the United States for the eastern district of Virginia. This is an action brought by the executor of deceased to recover of a railroad company damages for the death of a party alleged to have resulted from the negligence of the company while carrying deceased on their road. A demurrer was interposed on the ground that the negligence alleged was too remote as a cause of death to justify recovery, the proximate cause 639 being suicide of decedent—his death resulting by his own immediate act. The cause was decided by the supreme court of the United States in the October term, 1881. Mr. Justice *Miller* delivered the opinion, affirming the judgment of the circuit court, to the effect that where the proximate cause of death was his own act of self-destruction, superinduced by mental aberration, physical suffering, and disease, the railroad company will not be liable.

Cases cited: Insurance Co. v. Tweed, 7 Wall. 44; Milwaukee & St. P. R. Co. v. Kellogg. 94 U. S. 469; McDonald v. Snelling, 14 Allen, 294.

Removal of Cause—Separable Controversy.

CORBIN *v.* VAN BRUNT, U. S. Sup. Ct. Oct. Term, 1881. Error to the circuit court of the United States for the eastern district of New York. The case was decided in the supreme court on May 8, 1882. Mr.

Chief Justice *Waite* delivered the opinion of the court, affirming the order of the circuit court.

Where the real controversy is about the right to the possession of land, and so far as the title is concerned it appears that citizens of the state in which suit is brought are the only parties interested, and they occupy both sides of that controversy, the cause is not removable under the second clause of section 2 of the act of 1875, as there are no separate controversies, such as admit of separate and distinct trials.

Randall Hagner, for plaintiff in error.

J. J. McElhone and Joseph K. McCammon, for defendants in error.

Cases cited in opinion: The Removal Cases, 100 U. S. 457; Blake v. McKim, 103 U. S. 336; Hyde v. Ruble, 3 Morr. Tr. 516.

Removal of Causes—Revenue Cases.

VENABLE *v.* RICHARDS, U. S. Sup. Ct. Oct. Term, 1881. Error to the circuit court of the United States for the eastern district of Virginia. The opinion in this case was delivered by Mr. Justice *Harlan* on May 8, 1882, affirming the judgment.

Section 643 of the Revised Statutes, providing for the removal of both civil and criminal prosecutions of a limited class arising under the laws of the United States without regard to the amount involved, is not in conflict with the act March 3, 1875, providing for the removal of civil causes to the circuit court; and the act of 1875, so far as it embraces suits arising under the laws of the United States, does not preclude a removal of a suit of the class defined in section 643.

W. P. Burwell, for plaintiff in error.

S. F. Phillips, Solicitor Gen., for defendant in error.

Patents for Inventions—Reissue, when Void.

JOHNSON *v.* FLUSHING & NORTH SIDE R. Co., U. S. Sup. Ct. Oct. Term, 1881. Appeal from the circuit court of the United States for the eastern district of New York. The decision was rendered on

May 8, 1882. Mr. Justice *Woods* delivered the opinion of the court, affirming the decree of the circuit court. Where the original patent could not be fairly construed to embrace 640 the device used by the appellee, which appellants insist is covered by then reissue, if the reissued patent covers it, it is broader than the original and is therefore void. Even if a patentee has a right to a reissue if applied for in seasonable time, the right may be lost by his laches and unreasonable delay. Where it is shown that the invention which appellants contend was covered by the original patent had been in general use long before the date of its issue, the patent is invalid.

Thomas Bracken and B. F. Butler, for appellants.

Andrew McCallum and S. D. Law, for appellee.

Cases Cited in the opinion: Giant Powder Co. v. Cal. Vigoret Powder Co. 6 Sawy. 508; S. C. 5 Feb. Rep.197; Powder Co. v. Powder Works, 98 U. S. 126; Ball v. Langles, 102 U. S. 128; James v. Campbell, 3 Morr. Tr. 438; Miller v. Bridgeport Brass Co. Id. 419.

Patent for Inventions—License.

MELLON *v.* DELAWARE, L. & W. R. Co., U. S. Sup. Ct. Oct. Term, 1881. Appeal from the circuit court of the United States for the western district of Pennsylvania. The decision on appeal was rendered by the supreme court of the United States on April 3, 1882, Mr. Justice *Woods* delivering the opinion, affirming the decree of the circuit court.

Where the case turns upon a single fact, as whether or not a license was absolute and unconditional, as it appears on its face, the burden of proof is on him who asserts the affirmative, and if the weight of evidence is against him the decree dismissing the bill charging an infringement will be affirmed.

H. T. Fenton and Furman Sheppard, for appellants.