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RECENT CASES

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CRIMINAL LAW.

Indeterminate Punishment—Constitutional Law.—Miller v. *State*, 49 N. E. (Ind.) 894. An Indiana act provides that in cases of felony, where the defendant is between certain years, the jury shall merely find his age and the crime of which he is guilty, and that the power of fixing the amount of punishment shall be in the hands of managers of the reformatory to which the criminal is sentenced. *Held*, that this does not deprive the accused of a trial by jury. *Held*, further, that the act is not unconstitutional as allowing persons charged with executive duties to exercise judicial functions, since the power conferred on the managers is purely administrative.

Second Offense—Evidence.—People v. *Sickles*, 50 N. Y. Supp. 377. A New York law provides that conviction for a second offense shall be punishable more heavily than for the first. *Held*, that if a person is indicted under this law the first offense must be proved at the trial, although it is admitted before the impanelling of the jury since its proof is a material part of the allegation. The introduction of evidence of the first offense by the state is not contrary to the rule preventing evidence of character to be introduced except by accused.

Compounding a Misdemeanor.—State v. *Carver*, 39 Atl. (N. H.) 973. Defendant, for thirty dollars, agreed in writing "to withdraw all further action against F. for illegal sale of liquor," in contravention of New Hampshire statutes and destroyed the evidence he had thereof. *Held*, that compounding a misdemeanor is an offense at common law and that a person may be convicted thereof, "though no offense liable to a penalty has been committed by the party from whom the reward is taken."

COPYRIGHT AND TRADE-MARKS.

Copyright—Publication—Depositing Copy in Library.—Jewelers' Mercantile Agency v. *Jewelers Weekly Pub. Co.*, 49 N. E. (N.Y.) 872. Plaintiff furnished book relating to his trade to all who cared to subscribe under the contract that the books were only loaned, the title remaining in the plaintiff, and were to be returned at a fixed time. Plaintiff also deposited two copies of the book with the Librarian of Congress. Defendant used part of the material in the book. Plaintiff sued to enjoin on the ground that the book had never been published under the common law meaning of the term. *Held*, that in issuing the books to the subscribers the plaintiff had lost his exclusive property in it and that this constituted a publication. The deposit of two copies with the Librarian was also held to be a publication, although no copyright was secured.

Trade-mark—"Royal" may show Origin and Proprietorship—Abandonment.—Raymond v. *Royal Baking Powder Co.*, 85 Fed. Rep. 231, affirming *Powder Co.* v. *Raymond*, 70 Fed. Rep. 376. A label or trade-mark which, though distinctive, contains false statements calculated to mislead cannot be the subject of property. While the word "royal" may be descriptive of quality, yet

when applied to the whole output of a concern it may show origin and proprietorship. The contention that it does not will not be favored when maintained by one manifestly seeking to impose his wares on the public as the manufacture of another. After abandoning for twenty-five years the use of a fraudulent label, one cannot resume it to impose his wares on the public as the manufacture of one who has established a legitimate business under a similar label.

Basis of Right of Trade-mark—Priority—Use—Invention.—Tetlow v. *Tappan*, 85 Fed. Rep. 774. *Held*, that the right to the exclusive use of a trade-mark or device does not rest on absolute priority of use or invention, but on such continued use as to make it point out the origin or source of the particular goods.

INSURANCE.

Fire Insurance—Iron Safe Clauses—Books of Account—Substantial Compliance.—McNutt v. *Virginia Fire and Marine Insurance Co.*, 45 S. W. Rep. (Tenn.) 61. Complainant held a fire insurance policy under which he was required to take an inventory at least once a year, and to keep a complete set of books, and to keep such books and inventory in an iron safe except during business hours; and which provided that failure to produce such books and inventory in case of a loss should constitute a bar to any recovery thereon. On the day before the fire complainant in taking a new inventory, in the same book with other inventories, inadvertently left the book out of the safe, and it, with current invoices, was destroyed. *Held*, in an action to recover on the policy, that when complainant produced duplicate invoices and showed beyond question the true status of his accounts and of his stock destroyed, he was entitled to recover, on the ground that he had shown a substantial compliance with every reasonable requirement of such policy. This case is at variance with *Laudman* v. *Insurance Co.*, 19 Ins. Law J., 572, where it is held, that this clause should be enforced, and that it was not a sufficient defense to show the custom of the insured to keep the books of his business in an iron safe as stipulated, but by accident or oversight on the particular occasion the precaution was omitted.

Insurance—Increase of Hazard—Waiver of Forfeiture.—Alston v. *Greenwich*, 29 S. E. (Ga.) 266.—An insurance policy contained the condition that policy would be void if the hazard should be increased by any means within the knowledge or control of the insured. A part of the insured store was rented to a tenant who largely increased the amount of hay stored therein. *Held*, Atchinson J. dissenting, that this constituted an increase of hazard, and that an inference to the contrary by the jury could not fairly be drawn. Also, the contract being valid, the policy could not be retained from the insured by the agent of the company. Therefore a delivery of the policy to the insured by the agent after loss was not a waiver of forfeiture for increase of hazard, though the agent had notice of the facts; neither was a partial appraisement of the loss a waiver.

LIBEL AND SLANDER.

Libel—Words Actionable per se.—American Book Co. v. *Gates*, 85 Fed. Rep. 729. To publish of a corporation that the list of books in which it deals "contains some of the most disgraceful trash," that it puts out-of-date school

books in "frontier" or "backwoods" states, and that "books that are referred to nowadays as a laughing stock by intelligent teachers are foisted upon whole states for a series of years;" *held*, to constitute an actionable libel. Libelous matter regarding the method of transacting one's business is actionable without the allegation of special damage.

Libel and Slander—Words Actionable per se.—Squires v. *State*, 45 S. W. (Texas) 147. To send out a circular letter purported to be issued and signed by a nominee for office, and directed to the opposing party, wherein the nominee is represented as renouncing the principles of the party which he is openly espousing, and advocating those of the opposing party and requesting its support; *held*, to constitute libel, as calculated to bring such nominee into contempt of honorable persons, but not as representing him to be a person unworthy of holding public office.

MISCELLANEOUS.

Game—Contract for Storage During "Closed Season"—Validity.—Haggerty et al. v. *St. Louis Ice Manufacturing and Storage Co.* 44 S. W. (Mo.) 1114. Where a statute prohibits the killing of certain game a certain times of the year, and further makes it a misdemeanor for any person to have in his possession during the "closed season" any of the specified game; *held*, that a contract to store such game during the "closed season" and to re-deliver it at the beginning of the "open season," was void and could not be enforced. *Sprague* v. *Rooney*, 104 Mo. 360, 16 S. W. Rep. 505.

Agency—Contract of Agent with Third Party.—Culver v. *Nester*, 74 N. W. (Mich.) 532. An attorney with the knowledge and assent of his client made a contract with a third party by the terms of which he was to receive a commission if he brought about an auction sale by order of court of certain property in litigation claimed by his client, and the third party succeeded in buying the property at or below a certain price. *Held*, not void as in restraint of free bidding, as the third party was not restricted to the price named. The assent of the client who apparently wished the attorney to get his pay from the commission rather than to pay him directly prevents the contract from being void as bringing the interests of principal and agent into conflict.

Constitutional Law—Due Process of Law—Compensation for Corporate Franchises.—Newburyport Water Co. v. *City of Newburyport*, 85 Fed. Rep. 723. A statute under which a water company is in effect compelled to convey its plant to a city under threat of municipal competition, and which provides that in case the parties could not agree as to the price to be paid, the Supreme Court might appoint a commission to determine the value of said property, but such value to be reckoned "without enhancement on account of future earning capacity or good will, or on account of the franchise of said company;" *held*, to be void as providing for the taking of property without due compensation. The fact that the company elected to sell under this statute, and petitioned the court to appoint the appraisers, *held* not to preclude it from maintaining a bill in a Federal court to test the validity of the statute.

Equity—Mistake of Law—Constructive Notice.—Kelly v. *Ct. Mut. Life Ins. Co.*, 59 N. Y. Supp. 139 Testator had made a policy payable to his son and then changed it, making it payable to his legal representatives. The son, as executor, had distributed the proceeds of the policy to the estate's creditors,

with knowledge that the former policy had been issued to him personally. *Held*, that the son could not recover on the former policy, though he did not know that at the time it was in existence, since the mistake was one as to his legal rights. The thing to be known was whether the policy had been legally issued and not its continued physical existence. *Held*, further, that if company's agent had told the son that the former policy had never been issued, but gave him full access to the books, he was chargeable with notice of the issue of the former policy, since an ordinarily prudent man could have apprised himself of the fact.

Interstate Commerce—Regulations.—People v. *Warden of City Prison*, *50 N. Y. Supp. 56.* The laws of New York prohibit the sale of tickets by persons not the authorized agents of the carriers, and empower the purchase by the agents of given lines of tickets over other lines for through transportation. *Held*, that these laws are valid and are not an attempted regulation of interstate commerce. They do not in any way affect the fact of transportation or interfere with a passenger seeking to make a contract of transportation, but are merely an exercise of the police power for the protection of travellers.

Divorce.—Olson v. *Olson*, 74 N. W. (Wis.) 543.—A judgment of divorce on the ground of desertion, which was for the interest of both parties, will not be disturbed where there is evidence to the effect that the defendant was compelled to leave the plaintiff by reason of his cruel and inhuman treatment, but the answer fails to allege such fact or any fact as counter-claim.

Legal Tender—Mutilated Bank Note.—North Hudson County Ry. Co. v. *Anderson*, 39 Atl. Rep. (N. J.) 905.—Plaintiff brought suit for damages for being ejected from defendant's car, claiming that he tendered the conductor a dollar bill, from which a piece one inch and a quarter by one inch and a half had been torn on the upper left-hand corner. *Held*, not a valid tender, as there was absent a part of the bill by which the conductor might be aided in determining its genuineness. The rules of the Treasury Department with regard to the redemption of mutilated notes relate simply to redemption, and do not make such notes legal tender. The case is distinguished from that of *R. R. Co.* v. *Morgan*, 52 N. J. Law 60, 18 Atl. 904, when a genuine silver coin, worn smooth by use, was held to be a legal tender.

Wills—Construction—Lapse of Legacies—Religious Bequests—Validity.—Kerrigan v. *Taft et al.*, 39 Atl. Rep. (N. J.) 701. *Held*, that a legacy to a priest, to be expended for masses for the repose of testatrix's soul, is a charitable, and not a superstitious use, and valid under the Federal and State constitution relating to freedom of conscience and religious belief. Const. U. S., Amend. I.; Const. N. J., Art. I., §§ 3, 4. Such a legacy creates a trust, which does not lapse on the death of the trustee before the testatrix, but will be carried out by the appointment by the court of another trustee. Compare to the same effect, *Hoeffer et al.* v. *Clogan et al.* (Ill.), decided February 14, 1898; and *In re Zimmerman's Will*, 50 N. Y. Supp. 395. For a case upholding such a bequest on the ground that it was an absolute gift, and not a trust which was void for uncertainty of beneficiaries, see *Harrison* v. *Brophy et al.* (Kan.), cited on p. 279, Vol. VII., YALE LAW JOURNAL.

National Banks—Assessments—Enforcement.—Hulitt v. *Bell*, 85 Fed. Rep. 98. An assessment on notice from the comptroller of the currency in accordance with Rev. St., § 5205, is optional with the corporation, and is for