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CONTRACTS.

Release of Surety on Supersedeas Bonds—Agreement for Settlement.—Jacksonville, M. & P. Ry. & Nav. Co. v. *Hooper*, 85 Fed. Rep. 620.—A judgment was recovered against a railroad company, and pending proceedings to review the company paid to the plaintiff a sum in cash, and delivered certain bonds in escrow, on an agreement that, if the bonds should advance in market value to par within a year, they should be accepted by the plaintiff in full satisfaction of the judgment. They failed to reach the stipulated value and were tendered back. The proceedings in error were not dismissed, but resulted, after the expiration of the year, in an affirmance. *Held*, that such transaction did not discharge the sureties over defendant's supersedeas bond. Pardee, Circuit Judge, *dissented*, on the ground that the argument for delay between the principals released the sureties, unless it was done with their consent.

Street Railroads—Transfers—Rights of Passengers.—Jenkins v. *Brooklyn Heights R. Co.*, 51 N. Y. Supp. 216. A New York law compels certain companies to give transfers to their passengers for one continuous trip without extra charge. Under this law it is not a reasonable regulation for the company to adopt an arbitrary time limit within which such a transfer must be used and a person holding such a transfer is justified in waiting until a car comes along in which he can secure a seat.

Injunction—Building Restrictions.—Alvord v. *Fletcher*, 51 N. Y. Supp. 117. Two parcels of land were subject to the same covenant, which restricted the class of buildings to be erected thereon and their distance from the street. The fact that the owner of one of them is maintaining thereon a building which violates the covenant justifies the court in refusing him a preliminary injunction restraining the owner of the other parcel from committing a similar breach.

Maritime Liens—Priority—Supplies.—The John G. Stevens, 18 Sup. Ct. Rep. 544. A lien for damages on a tug for negligently allowing the tow to come into collision with another vessel will be given priority over a lien on the tug for supplies previously furnished. All interests existing at the time of the collision in the offending vessel—whether by way of part ownership, of mortgage, of bottomry bond, or of other maritime lien for repairs or supplies—arising out of contract with the owner of the vessel, are parts of the vessel herself, and as such are bound by and responsible for her wrongful acts. A suit by the owner of a tow against her tug for an injury to the tow by negligence on the part of the tug is a suit *ex delicto* and not *ex contractu*.

Carriers of Goods—Freight.—Moran Bros. Co. v. *No. Pac. R. R. Co.*, 53 Pac. Rep. (Wash.) 49. When a carrier demands a sum in excess of the sum due for freight charges, the consignee need not tender any sum before bringing suit (*Adams* v. *Clark*, 9 Cush. 215); also, if the carrier has negligently

delayed delivery of goods, or otherwise subjected itself to liability for damages in respect to the property carried, equal to or greater than the amount of the freight, the consignee may obtain replevin without a tender; and the claim for damages may be adjudicated in the replevin suit.

Carriers—Passengers — Extraordinary Care. — Southern Ry. Co. v. *Smith*, 86 Fed. 292. *Held*, that where one who has a passenger ticket in his pocket, but has not been to the depot, nor in any way notified the officers or agents of the company that he intends to take passage, crosses the tracks to board an outgoing train, he is not a person to whom the company owes a duty of extraordinary care and diligence as a passenger. McCormick, J., dissented.

Executory Contract—Repudiation by one Party—Resulting Right of Action.—Marks v. *VanEeghen et al.*, 85 Fed. 853. Where one party to an executory contract renounces it, without cause, before the time for performing it has arrived, he authorizes the other party to treat it as terminated, without prejudice to a right of action for damages, and if the latter elects to treat the contract as terminated, his right of action accrues at once. But the evidence of the intention to repudiate the contract must be unequivocal. This decision is contrary to that of *Daniels* v. *Newton*, 114 Mass. 530, approved in the recent case of *Clark* v. *Casualty Co.*, 67 Fed. 222. Also, the court considers as *dicta* the observations to the same effect in *Smoot's Case*, 5 Wall. 36, and *Dingley* v. *Oler*, 117 U. S. 490; and that the Supreme Court of the United States has never passed upon the question directly. The present conclusion is considered by the court to be in line with the preponderance of adjudication, beginning with the leading English case of *Hochster* v. *DeLaTom*, 2 El. and Bl. 678.

Contract to make Will—Specific Performance.—Edson v. *Parsons et al.*, 50 N. E. Rep. (N. Y.) 265. Two sisters, closely united by affection, and in habits, associations and ideas, and who were also very much attached to a brother, made their wills at the same time and under the supervision of, and after consultation with, their counsel. The wills were alike, each sister giving to the other three-fourths of her residuary estate, and the remainder of the other fourth, after certain legacies were paid. It was further provided that if the testatrix should survive her sister, or if her sister, surviving her, should die before her will was proved, all the residue of her estate should go to her brother. Upon the death of one of the sisters, the other made a different will, and upon her death the brother sought to establish the provision of the first will as a contract between the sisters to give their property ultimately to him. *Held*, that the making of the wills and the attendant circumstances, were not sufficient, as a matter of law, to establish a contract such that a court of equity would interfere to prevent the surviving testatrix from altering by making a subsequent will. To invoke such an interference there must be a clear and definite contract, arising from an express agreement or from unequivocal facts.

INSURANCE.

Insurance—Accident Policy—Injuries in a Passenger Conveyance.—Ætna Life Ins. Co. v. *Vandecar*, 86 Fed. 282. An accident policy of insurance provided that "if such injuries are sustained while riding as a passenger

in a passenger conveyance using steam, cable, or electricity as the motive power, the amount to be paid shall be double the sum above specified." *Held*, Thayre, J., dissenting, that these words do not apply to one riding on the platform of a railway car.

Fidelity Insurance—Construction of Contract.—American Surety Co. v. *Pauly*, 18 Sup. Ct. Rep. 552. A contract of fidelity insurance contained a clause providing that the company should be notified of any act on the part of the employe whose fidelity was insured which might involve a loss for which the company would be responsible "as soon as practicable after the occurrence of such act shall come to the knowledge of the employer." *Held*, that this did not require notice on mere suspicion, but that when the employer had knowledge of such facts as would justify a careful and prudent man in charging another with fraud and dishonesty, the fidelity company should be notified.

Insurance by Life Tenant—Resulting Trust.—Spalding v. *Miller*, 45 S. W. (Ky.) 462. A life tenant of buildings had them insured for their full value in fee simple. On loss the insurance company paid him the full amount. *Held*, that in the absence of evidence of an intention on the part of the life tenant to insure for the benefit of the remainder men, the insurance money was not subject to a resulting trust in their favor for their share in the value of the buildings.

CONSTITUTIONAL LAW.

County Officers—Power of Appointment.—State ex rel. Williams et al., v. *Mayhew et al.*, 52 Pac. Rep. (Mont.) 981. The constitution of the State of Montana provided generally for the election or appointment of county officers. In an action of *quo warranto* to test the validity of the appointment of such officers chosen by the Legislature to serve provisionally in a newly-created county, it was *held* that although the constitution provided for such selection, yet the Legislature, having the power to create new counties, of necessity had the power to carry them into effect. A county cannot be said to be created by the sovereign power until it is endowed with the power and means to aid in these important matters of the State (see *People* v. *Hurlburt*, 24 Mich. 44).

Right to Vote.—Williams v. *State of Mississippi*, 18 Sup. Ct. Rep. 583. A provision in a constitution and laws made thereunder are not void as in contravention of the Fourteenth Amendment merely because aimed at the characteristics of the race. For members of other races would be equally debarred by the possession of these charcteristics. Although a law, fair on its face and impartial in appearance, may be within the constitutional provision if administered by public authority with an evil eye and unequal hand so as to make unjust and illegal discriminations between persons of different races, yet this maladministration must be shown as a fact. The mere possibility or probability thereof is not enough.

Inheritance Tax—Class Legislation.—Magoun v. *Illinois Trust and Savings Bank*, 18 Sup. Ct. Rep. 594. "An inheritance tax is not one on succession. The right to take property by devise or descent is the creature of the law, and the law may therefore impose conditions upon it." It is a privi-

lege—not a natural right. A State may distinguish, select and classify objects of legislation, and must necessarily have a wide range of discretion. The Fourteenth Amendment requires only that the law shall operate equally and uniformly upon all members of the class. It must appear not only that a classification has been made, but that it is reasonable and is based on some difference that bears a just and proper relation to the attempted classification and is not merely arbitrary. The Illinois inheritance tax law is valid. Though the classification in accordance with which the tax varies is more or less arbitrary, yet it is based on reasonable grounds and does not deny the equal protection of the laws.

Ex-post Facto Law—Jury Trial.—Thompson v. *State of Utah*, 18 Sup. Ct. Rep. 620. It is *ex-post facto* legislation to make a jury in a criminal case consist of only eight jurors instead of twelve when the crime was committed before the act was passed. When provision was made in the United States Constitution for trial by jury in criminal cases, it was intended that the jury should consist of twelve men. This was binding on territories. Hence a State cannot legally convict a man on verdict of eight jurors when his crime was committed before the admission of the Territory as a State.

LIBEL.

Libel per se—Malice.—Cady v. *Brooklyn Union Pub. Co.*, 51 N. Y. Supp. 198. A false publication of a practising dentist that he had committed suicide is libellous *per se* both as it touches him in his profession and as it is calculated to bring him into general ridicule. Malice need not be shown except in case of words qualifiedly privileged. It never is an essential ingredient in the action for damages for an ordinary slander or libel. It has to do only with the question of smart money.

Matter Libelous per se.—McFadden v. *Morning Journal Ass'n*, 51 N. Y. Supp. 275. Defendant published an article concerning plaintiff, a young lady, describing an alleged rowing race between her and another young lady as "a race for a beau with a handsome face." Names were given and the young man was described as being present, while "fair feminine friends" "encouraged each earnest, anxious aspirant." *Held* that the article was libelous *per se*, as its effect was to bring plaintiff into contempt and ridicule.

PROCEDURE.

Action for Rent—Estoppel of Tenant—Real Party in Interest.—Melcher v. *Kreiser*, 51 N. Y. Supp. 249. Plaintiff made a lease with the defendant, lessee, describing himself "as attorney and agent for the owner, lessor." *Held*, that lessee was estopped to deny the existence of the relation of landlord and tenant between himself and plaintiff, as attorney. *Held*, further, that under the code the plaintiff and not those for whom he might have been agent was the proper person to sue, since he was the only party of the first part thereto, and were this not so he might have maintained the action since a contract had been made in his name for the benefit of another, and he became thereby the trustee of an express trust.

Pleading—Jurisdiction of the Supreme Court.—Kipley v. *People of Illinois*, 18 Sup. Ct. Rep. 550. A mere allegation that a State statute is unconstitutional and void will be taken to refer a contravention of the State constitution, and is not sufficient to give the United States Supreme Court jurisdiction as over a federal question.

MISCELLANEOUS.

Monopolies—Unlawful Restraint of Trade.—John D. Park & Sons Co. v. *Nat'l Wholesale Druggists Ass'n et al.*, 50 N. Y. Supp. 1064. An agreement between manufacturers and wholesale druggists, whereby any customer of one of them who violates the agreement with the one in respect to cut-rate prices, is precluded from purchasing drugs and proprietary medicines from any combination, is unlawful, as creating a combination in restraint of trade. A court of equity will enjoin anything done in the furtherance of such an agreement, but will not enjoin the obtaining or imparting information as to the manner in which the customer conducts his business, or his violation of any agreement with any specific manufacturer or wholesale dealer, nor will it enjoin any one of the combination from making an agreement with the customer fixing the price of sale of the goods purchased.

Attorneys—Suspension—Grounds—Punishment.—State ex rel. State Bar Association v. *Finn*, 52 Pac. Rep. (Ore.) 756. In an action for disbarment it appeared that the accused had filed in a case in the Supreme Court in which he was attorney pretended affidavits of various persons to which they had never sworn. *Held*, although it was proven such was the usual manner of administering oaths in such cases, and although the evidence in the affidavits was true, such conduct was a reckless and wilful disregard of principles inconsistent with professional obligations, for which the attorney was amenable to the court. Disbarment proceedings are not to punish the attorney, but to protect the court in the proper administration of justice.

Commerce—Constitutional Law—Police Power—Pool Selling—State v. *Harbourne*, 40 Atl. Rep. (Conn.) 179. A State statute, prohibiting the business of transmitting money to any race track within or *without* the State, there to be placed or bet on horse races, is not unconstitutional, nor opposed to the power of Congress to regulate commerce between the States. Such statute is rather a police regulation to prevent gambling, and even though it incidentally affects interstate commerce it is valid (*Geer* v. *Connecticut*, 161 U. S. 519).

Trades Unions—Rights of Members—Exclusion from Work.—Davis v. *United Portable Hoisting Engineers et al.*, 51 N. Y. Supp. 180. This case, following *Allen* v. *Flood*, *held*, that members of trades unions as well as other individuals have a right to say that they will not work with persons who do not belong to their organization, and it makes no difference whether they say this themselves or through their organized societies. It is not illegal for an employer to insist upon employing members of one organization only, nor for the employee of one employer to refuse to work for him unless all his employees are members of one organization.

Bicycle—Right of Way.—Taylor v. *Union Traction Co.*, 40 Atl. Rep. (Pa.) 159. Where a bicyclist was riding in an opposite direction from a cart, but on the car tracks and in the same direction as the cars on that track, and a collision resulted whereby the bicyclist was injured by the cart, by reason of his refusal to turn out, *Held*, that the bicyclist could not recover damages, as a bicycle is not a vehicle within the ordinary meaning, and on an open highway, should turn out for a cart.