Yale Law Journal

Volume 6
Issue 1 *Yale Law Journal*

Article 8

1896

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CONSTITUTIONAL LAW.

Impairment of Contracts—Extending Time for Redemption—State, ex rel., Thomas Cruse Sav. Bank v. *Gilliam, Sheriff*, 45 Pac. Rep. 661 (Mont.). An act extending the time for redemption of premises sold under mortgage, as applied to mortgages executed before its passage, impairs the obligation of the contract, and is unconstitutional.

Interstate Commerce—Norfolk & W. R. Co. v. *Commonwealth*, 24 S. E. Rep. 837 (Va.). A state may in order to secure and protect the lives or health of its citizens, or to preserve good order and the public morals, legislate for such purposes, in good faith, and without discrimination against interstate or foreign commerce, without violating the commerce clause of the constitution of the United States, although such legislation may sometimes touch, in its exercise, the line separating the respective domains of National and State authority, and to some extent affect foreign and interstate commerce. A state law prohibiting the running of freight trains on Sunday is such legislation and does not conflict with the interstate commerce clause of the federal constitution.

CRIMINAL LAW.

Burglary—Breaking.—Pressley v. *State*, 20 South. Rep. 647 (Ala.). Where a building is made of logs and rests upon the ground without a floor other than the ground itself, digging a hole under the lower log and thus entering the house is a breaking sufficient for the crime of burglary.

Homicide—Dying Declaration.—State v. *Parham*, 20 So. Rep. 727 (La.). A declaration made by a person with full consciousness of approaching death which has been reduced to writing by his attending physician, signed by the declarant and his signature attested by a Justice of the Peace, is admissible in evidence as a dying declaration.

INSURANCE.

External, Violent and Accidental Means—Exceptions of Policy.—American Accident Co. of Louisville v. *Carson.* 36 S. W. Rep. 169

(Ky.). A person who is unexpectedly shot by another without cause or provocation is injured by "external, violent, and accidental means," and a policy insuring against such injuries which provides that it shall not cover intentional "injuries" inflicted by the insured or any other person refers only to non-fatal injuries.

Condition of Policy—Waiver by Agent, what Constitutes—Forfeiture—Reinstatement.—Concordia Ins. Co. v. *Johnson*, 45 Pacific Rep. 722. A general agent of a company issuing a policy may waive its conditions, although the policy denies him that power. To constitute a waiver there must be more than mere knowledge on part of the agent. His language and conduct must be such as to reasonably imply an intention on his part to consent to the improper use of the insured property. If policy is void on account of the breach of its condition, it is not reinstated and made effective by the mere fact that conditions are complied with again before the loss occurred.

RAILROAD COMPANIES.

Carriers of Passengers—Ejectment from Car.—McGhee, et al., v. *Drisdale*. 20 South. Rep. 391. Action brought for damages alleged to have been sustained by reason of being put off a train. A passenger, offering an expired ticket as fare, was told by conductor that he would have to pay his way. Upon refusing to do so, he was gently led from the car, but returned and paid his fare. Evidence tended to show that the passenger had knowledge of time limit indorsed on back of ticket before purchasing it, and of the fact that it was out of date. Court held he had no cause of action against the railroad company.

Carriers—Ejection of Person from Train—Declarations of Brakeman.—Lyons v. *Texas & P. Ry. Co.*, 36 S. W. Rep. 1007 (Tex.). A person was forced to jump from a rapidly moving train at the point of a pistol presented by the brakeman who, at the same time, said, "The boss ordered me to put you off," and was injured. The declaration of the brakeman was held inadmissible to prove that the passenger was put off by the order of the conductor as being against the theory upon which declarations are admissible as part of the *res gestæ*.

Carriers—Wagonway in Freight Yard—Negligence.—Curtis v. *De Coursey*, 35 Atl. Rep. 183 (Pa.). The duty which a railway company owes to persons delivering or receiving freight in the care of a passageway for wagons from the public

highway to its freight yard does not differ from that which it owes to passengers in the care of its platforms and stations. Such persons do not enter and use the yard by the mere permission or passive acquiescence of the company. They are there by invitation, in its technical sense, and by right. A passageway for wagons must therefore be kept in a reasonably safe condition.

Street Railroads—Injuries to Passenger—Negligence—Alighting from Moving Car.—McDonald v. *Montgomery St. Ry.*, 20 Southern Rep. 317. The plaintiff in attempting to get off a moving car was injured and brought suit to recover damages The court held that a passenger jumping from a car in motion assumes the risk of alighting safely and cannot recover for injuries unless they were occasioned solely by the defendant.

Railroads—Crossings—Injuries—Contributory Negligence—Willful Negligence.—Birmingham Railway and Electric Co. v. *Bowers*, 20 South Rep. 345. A deaf person crossing a railroad track by way of a path used for public convenience, is guilty of negligence by not looking out for approaching train. An engineer running a train at a rapid rate of speed is justified in thinking that a person whom he sees in the path some distance from and approaching the track will not attempt to cross in front of the train, so that his failure to attempt to stop the train until it is too late to prevent it striking such person will not constitute willful negligence.

MISCELLANEOUS.

Injunction—Scope of Order—Violation.—Jeweler's Mercantile Agency, Limited, v. *Rothschild, et al.*, 39 N. Y. Supp. 700. Injunction granted to restrain defendants from using previous as well as subsequent publications of the plaintiff. Plaintiff's business consisted in obtaining information with regard to the names, places of business, etc., as to individuals, firms, etc., in the jewelry trade for the benefit of their subscribers. The interest in the case lies in the fact that this is a different situation than that where a person is restrained from using the literary property of an author. These reports were not literary works. Court held that a fine of nearly $2,000 and imprisonment for two months was not excessive.

Exemptions—Tools of Trade.—Davidson v. *Hannon, et al.*, 34 Atl. Rep. 1050 (Conn.). Where a statute exempts "implements of the debtor's trade" from attachment, and a liberal construction

in favor of the debtor has been adopted, a photographer may be considered as engaged in a trade and a photographic lens used by him in his business will be exempt.

Partnership—When Relation Exists.—Winne v. *Brundage, et al.*, 40 N. Y. Supp. 225. Defendant and R. entered into an agreement whereby the latter agreed to negotiate the sale of the defendant's promissory notes, receiving as compensation a commission, a brokerage, and 25 per cent of the net profits of the defendant's business. R. was to have no part in the management of the business, and his share in the profits was to cease when his employment terminated. Held, that this agreement did not create a partnership, so as to render R. liable for debts incurred by the defendant in the business.

Assignment for Benefit of Creditors—Estoppel to Claim.—In re Sawyer, et al, 40 N.Y. Supp. 294. A firm doing business in New York made an assignment there, and on the following day a Tennessee creditor, without notice of the assignment and before its registration in Tennessee, attached property of the firm in Tennessee. This attachment was sustained on the ground that the assignment had not taken effect on the property attached. Held, that inasmuch as the attachment was not in hostility to the assignment the creditor was not estopped from claiming a share of the assigned estate, but was entitled only to the balance of his *pro rata* share after deducting the amount realized on the attachment.

Charitable Institutions—What Constitutes—Exemptions from Taxation.—City of Louisville v. *Southern Baptist Theological Seminary*, 36 S. W. Rep. 995 (Ky.). Under a constitutional provision exempting from taxation "institutions of purely public charity," and an institution confessedly a pure charity is also purely public although the management and organization are private and denominational, provided no one is excluded by reason of denominational connection or preference.

Conditional Sale—Rights of Seller—Forfeiture of Payments.—Vaughn, et al., v. *McFadyen*, 68 N. W. Rep. 135 (Mich.). When property is sold with the agreement that the title shall remain in the seller until the full price is paid, and in case of default in payment, the property may be taken back by the seller and all payments made shall be deemed payments for its use, although the seller elects to take the property after default, he cannot re-

fuse to accept the amount due until he has taken actual possession.

Municipal Corporations—Rejection of Bid—Liability to Bidder.—Talbot Paving Co. v. *City of Detroit*, 67 N. W. Rep. 979 (Mich.). Where a city charter requires contracts to be awarded to the lowest bidder this provision is for the protection of the public and not for the benefit of the bidder. Hence, the lowest bidder under such a contract, whose bid is rejected, has no right of action against the city for profits which he might have made had his bid been accepted.

Limitation of Actions—Waiver.—State Trust Co. v. *Sheldon, et al.*, 35 Atl. Rep. 177 (Vt.). The maker of a note may, at the time of its execution, waive the statute of limitations. In which case he will be estopped from setting up the statute as a defense. This is an exception to the general rule that no contract or agreement can modify a law and is valid because no principle of public policy is violated, the statute being designed for the benefit of individuals.

Life Tenant—Room in House—Eviction—Measure of Damages.—Grove v. *Yonell*, 68 N. W. Rep. 132 (Mich.). A bond recited that the defendant, being indebted to the plaintiff for certain lots, would pay a stated sum within a certain time, and that the plaintiff might "occupy any room that is in the house on said lots during the remainder of her natural life." The plaintiff selected a room and took possession of it. Afterwards she was asked by the defendant to take a room in another part of the city, and refused. Whereupon, the defendant leased the house and grounds for a term of years without any reservation of the plaintiff's room, and during the plaintiff's absence told the lessee she might use the room. Upon the plaintiff's return the lessee refused to allow her to go to her room. Held, that there was an eviction of the plaintiff by procurement of the defendant, and that the measure of damages from the date of eviction to the commencement of the action was the fair rental value of the room, and after that the rental value computed on the expectation of life of the plaintiff as based upon the mortality tables.