



1899

## RECENT CASES

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### Recommended Citation

*RECENT CASES*, 8 Yale L.J. (1899).

Available at: <http://digitalcommons.law.yale.edu/ylj/vol8/iss4/6>

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## RECENT CASES.

**CIVIL RIGHTS—SALOONS—RHONE v. LOOMIS, 77 N. W. Rep. 81 (Minn.).**—A statute provides that no person because of his race, color, or previous condition of servitude, shall be deprived of the full and equal enjoyment of privileges, accommodations, etc., furnished by hotels, theaters, restaurants, barber shops, or other places of public resort, refreshment, accommodation, etc. Under this statute the plaintiff, a colored man, sued the defendant, a saloon keeper, because latter refused to serve plaintiff with a glass of beer at his saloon, simply because of plaintiff's race and color. *Held* (two judges dissenting) that there could be no recovery, as a saloon does not come within the statute. The court held that as all legislation on the liquor traffic is restrictive and repressive, and should be restricted to the smallest practicable limits.

**CONSTITUTIONAL LAW—CONSTRUCTION—BIBLE READING IN PUBLIC SCHOOLS—PFEIFFER v. BOARD OF EDUCATION OF CITY OF DETROIT, 77 N. W. Rep. 250 (Mich.).**—The Board of Education provided for the use in schools, a book entitled, "Readings from the Bible," containing extracts embodying general moral precepts. The teachers were not allowed to make comments, and any pupil could be excused from such readings on application of parents. *Held*, that use of such book in manner described is not in violation of constitutional provision, which says that no money shall be appropriated from the public treasury for the benefit of any religious sect or society, etc. Nor is it opposed to the provision which says that no law shall prevent any person from worshiping Almighty God according to the dictates of his own conscience. Moore, J., dissenting.

**CONSTITUTIONAL LAW—POLICE POWER—TICKET BROKERAGE—PEOPLE EX REL. TYROLER v. WARDEN OF CITY PRISON OF CITY OF NEW YORK, 51 N. E. 1001 (N. Y.).**—New York Laws of 1897, C. 506, Section 1, prohibiting the sale of passenger tickets by persons not the agents of the carrier, and Section 2, allowing the agents of one carrier to buy and sell tickets of other carriers, is unconstitutional. The statute does not prohibit the sale of tickets absolutely. "The buying and selling of passage tickets is condemned only where the seller has not authority from some one of the transportation companies to act as agent." The state does not ascertain what men are fit to engage in this business by examination or other means. The selection is made wholly by the carriers. This is in contravention of Article 1, Section 6, of the New York Constitution, providing that no person shall be deprived of liberty without due process of law. It is not a valid police regulation of the business of ticket brokerage. Bartlett, Martin and Gray, J. J., dissented.

**CRIMINAL LAW—EVIDENCE—CONFESSIONS—DECLARATIONS AGAINST INTEREST—STATE v. WILLIS, 41 Atl. Rep. 820 (Ct.).**—A detective, after the capture of a prisoner accused of murder, told him, "Now, Ben, if you tell the chief and myself the whole thing—how it was done—it will make it a good deal easier for you," the superintendent adding, "It is right, it will make it go easier, if you tell the whole thing." Afterwards, for another detective, he signed a confession to which was annexed the words: "I hereby make this statement unconditionally." *Held*, such to be a voluntary confession.

**CRIMINAL LAW—FALSE PRETENSES—COMMONWEALTH V. O'BRIEN, 53 N. E. 77 (Mass.).**—Accused falsely pretended to K that he owned certain land free from incumbrance, and that he proposed to organize a corporation to which the land should be transferred in return for stock. He and K then made an agreement in writing that he would transfer some stock to K, and as a stockholder would vote that the corporation should employ K. On this contract K paid the accused money. *Held*, that the accused could be convicted of the crime of obtaining money under false pretenses, though this contract is illegal. New York and Wisconsin cases contra criticised.

**DAMAGES — MENTAL ANGUISH — TELEGRAM — DELAY IN DELIVERY — CASHION V. WESTERN UNION TEL. CO., 81 S. E., Rep. 498 (N. C.).**—A woman, whose husband had been killed by an accident, sent a telegram to her brother-in-law, who lived in another town, to come to her. The telegram was negligently not delivered until some hours after it should have been. The woman was thereby left alone and suffered from mental anguish. In a suit against the Telegraph Co., it was *held* that she could recover for such mental anguish, even though she suffered no physical pain. Such mental anguish will not be presumed, however, but must be proved.

**MUNICIPAL CORPORATIONS—IMPAIRMENT OF OBLIGATION OF CONTRACT—VALIDITY OF FRANCHISE OF WATER COMPANY — CITY OF WALLA WALLA ET AL. V. WALLA WALLA WATER CO., 19 Supr. Ct. Rep. 77.**—A city was authorized by its charter to grant the right to use its streets for laying pipes, to furnish its inhabitants with light or water to any persons for a term not to exceed twenty-five years, provided none of the rights or privileges granted should be exclusive. It was further provided that the city should have power to build water works of its own if the necessary vote could be obtained. Under this charter an ordinance was passed, and accepted by the Water Co., whereby the latter was to have the right to use the streets for pipes and furnish water to the city and its inhabitants for a term of twenty-five years. This right was not exclusive. *Held*, that such a contract is not invalid or ineffectual to bind the city. Such ordinance did not create a monopoly, or prevent the granting of a similar franchise to another company, and was within the powers of the city under its charter.

**MUNICIPAL CORPORATIONS—CONTRACTS—VALIDITY—FLYNN V. LITTLE FALLS ELECTRIC AND WATER CO., 77 N. W. Rep. 88 (Minn.).**—The Common Council of a city had authority to make a time contract with a water company to pay an agreed price for a specified number of hydrants to supply water for fire protection. Such a contract was made by the Council for 55 hydrants at \$80 each, for 30 years. *Held*, that for the Council to assume to bind the city for 30 years was beyond the scope of their authority, as such a length of time is unreasonable, and hence the contract is void.

**GARNISHMENT OF FOREIGN CORPORATION—ACTIONS AGAINST NON-RESIDENT STOCKHOLDER—ASHLEY V. QUINTARD ET AL., 90 Fed. Rep. 84.**—Shares of stock in a corporation of one state, owned by a resident of another, cannot be reached by garnishment in a third state in which the corporation does business, by service of garnishment on the agent of the corporation in the state and of summons by publication on the defendant stockholder, unless there be special statutory provision therefor. A statute subjecting foreign corporations to suits and garnishment in the state as a condition precedent to doing business therein, in connection with a statute authorizing attachments in suits against non-residents, does not confer such authority, since such statutes apply only to debts due from the corporation

generally, or to property held by it within the state; and a corporation is a debtor of its stockholders only in a metaphysical sense, not in a sense that it may be garnished as such. It holds their stock only where it has its domicile, and subject to the laws of that state. This the court holds true, although the Ohio statutes authorize attachment of stocks and interests therein, and permit the garnishment of a foreign corporation for the debt of a non-resident defendant. For a similar case, denying garnishment of stocks held as a pledge in a third state, see *Winslow v. Fletcher*, 58 Conn. 390.

**INJUNCTION—EQUITY—BOYCOTT—BECK ET AL. VS. RAILWAY TEAMSTERS' PROTECTIVE UNION ET AL.**, 77 N. W. Rep. 13 (Mich.).—The complainants, doing a general milling business, discharged several teamsters in their employ, because of a demand for increased wages, coupled with a demand to sign a "scale" of wages issued by defendants. Because of complainants' refusal to sign this "scale" the defendants took active measures to, and did materially hinder them in their business, driving away customers and issuing notices for people to boycott the firm. The Court of Equity granted an injunction against the defendants restraining them from further interfering with complainants, following *Allen v. Flood* (1898), Law T. Rep. 156.

**PERSONS—MARRIED WOMEN—LIABILITY FOR ACTS OF HUSBAND AS AGENT—SEANE V. LYONS**, 51 N. E. 976 (Mass.).—The Massachusetts statutes having given married women the right to hold, manage and dispose of her property in the same manner as if she were sole, she is "civilly responsible for personal injuries inflicted, not in her presence, upon a third person, by her husband, while acting within the scope of his authority as her agent," it further appearing that she appointed him her agent of her own free will and without coercion from him.

**POLICE REGULATION—SUNDAY LAW—CLASS LEGISLATION—BARBER SHOPS—STATE V. PETIT**, 77 N. W. Rep. 225 (Minn.).—A statute prohibited all labor on Sunday excepting works of necessity and charity. It expressly provides that the keeping open of a barber shop on Sunday for the purpose of cutting hair and shaving beards not to be a work of necessity or charity. As to other kinds of labor or business, it was left to be determined as a question of fact. This statute was held not to be obnoxious to the objection of being class legislation. Buck, J., dissenting.

**PRIVILEGED COMMUNICATIONS—ATTORNEY AND CLIENT—TESTIMONY AS TO CONTENTS OF EXECUTED INSTRUMENT—FAYERWEATHER ET AL. V. RICH ET AL.**, 90 Fed. Rep. 13.—Held, that the reason of the rule protecting communications between attorney and client does not extend to the contents of any document put into writing by the attorney for his client; and an attorney who prepared a codicil to the will of a client, since deceased, should state whether the codicil, since destroyed, was executed, and what were its contents, though he cannot (Code Civ. Proc. §§ 835, 836) be required to testify as to the transactions or communications leading up to its execution.

**TELEGRAPHS AND TELEPHONES—PREFERENTIAL LIENS FOR LABOR AND MATERIALS—KEELYN V. CAROLINA MUT. TELEPHONE AND TELEGRAPH CO., ETC.**, 90 Fed. Rep. 29.—The doctrine of the federal courts in *Fordick v. Schall*, 99 U. S. 235, and *Bound v. Ry. Co.*, 50 Fed. 314, allowing claims of those furnishing labor and supplies necessary to keep a railroad a going concern priority over its mortgage indebtedness, held, applicable to telephone and telegraph companies, which have power of eminent domain, and which are recognized important public

agencies of modern commerce. In the course of this decision *Wood v. Deposit Co.*, 128 U. S. 421, is cited to the effect that the rule has no application to corporations purely private. For a state court decision *contra*, see *YALE LAW JOURNAL*, Vol. VII, p. 315.

VENUE—CAUSE OF ACTION—WHERE ARISES—JURISDICTION—CONDON ET AL. V. LEIPSIGER, 55 Pac. Rep. 82 (Utah).—A deed to land in one county was deposited in escrow in another county, to be delivered upon the performance of certain conditions and the payment of certain money. *Held*, that an action for the delivery of the deed arose in the county where the deed was deposited and not where the land was situated.

WAR REVENUE TAX—EXPRESS COMPANIES LIABILITY FOR TAX—MANDAMUS—ATTORNEY GENERAL EX REL. MOORE ET AL. V. AMERICAN EXPRESS CO., 77 N. W. Rep. 807 (Mich.).—Under Act of Congress, June 13, 1898, sched. A, requiring every express company to issue to every shipper a bill of lading for each shipment, to which bill of lading and duplicate thereof shall be attached and cancelled a stamp of the value of one cent, and making the carrier liable for a failure to issue receipts, *held*, that it is the duty of company to affix the stamp without requiring the shipper to pay therefor. For the express company to increase their charges on all packages one cent, without regard to size, weight or distance to be carried, is not a valid increase of rates, but an attempt to make the shippers pay the stamp tax. Further held that mandamus lies on application of attorney-general to compel an express company to discharge its duties in regard to receiving and forwarding property.

WILLS—CONSTRUCTION—RULE IN SHELLEY'S CASE—HOOKER ET AL. V. MONTAGUE, 31 S. E. Rep. 705 (N. C.).—A testatrix provided in her will as follows: "That all my property, real, personal and mixed, be converted into money and divided equally among my children, share and share alike, with this restriction, that the shares falling to my daughters be placed in the hands of my son, B. M., as trustee for each of them, and that he shall hold the same for and during their lives, and pay each of them the yearly interest or profits, and pay said interest to the individual heirs at law after the death of each." The son was also appointed executor. *Held*, that such devise did not vest in each daughter the absolute title to her portion, and therefore the daughter had no power of testamentary disposition of the same. Faircloth, C. J., and Furches, J., dissented on the ground that such a devise created an absolute estate according to the rule in Shelley's Case.

WILL—CONSTRUCTION—STAPLES ET AL. V. LEWIS, 41 Atl., Rep. 815 (Ct.). *Held*, that by term "legal representatives" the testator of a will meant lineal descendants, since each case must be decided in the light of relevant circumstances.