Yale Law Journal

Volume 9
Issue 4 *Yale Law Journal*

Article 5

1900

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ACCIDENT INSURANCE—CONSTRUCTION OF POLICY—EFFECT OF PRIOR ADJUDICATION—FIDELITY AND CASUALTY CO. v. LOWENSTEIN, 97 Fed. 17.—A provision in an insurance policy was as follows: "This insurance does not cover * * * injuries, fatal or otherwise, resulting from poison, or anything accidentally or otherwise taken, administered, absorbed or inhaled." The holder of this policy died from accidental inhaling of gas. Previous decisions had held that such a provision did not exempt the company from liability for death of person insured. *Held*, that the court would hold the same view regardless of what it might hold if the question was res integra Sandborn J., dissenting.

The law is that where a provision in an insurance policy states that the company is relieved from liability for deaths from poison it refers only to cases where the poison is purposely taken, not to cases where it is accidentally taken. In the latter case the company is still held liable. *McGlother* v. *Provident Mutual Accid. Co.*, 60 U. S. Appl. 705. This view of the law seems to have been in the minds of the insurance company, and they had apparently made provision for it in the present case. It would seem, therefore, that the law, as we have laid it down, is not applicable. Its application is apparently confined to cases where the provision leaves it doubtful as to whether the insurance company desires to relieve itself from accidental poisoning, or from cases where poison is purposely taken. No such ambiguity occurs in the present case; but the court apparently takes no notice of this fact.

ANTI-TRUST LAW—POWER OF CONGRESS TO RESTRICT CONTRACTS IN RESTRAINT OF INTERSTATE COMMERCE—ADDYSTON PIPE AND STEEL CO. v. U. S., 20 Sup. Ct. Rep. 96.—A combination of cast-iron pipe concerns to regulate the bidding for contracts for sale in various States of the Union of pipe to be manufactured by the successful bidder is in violation of the anti-trust law. Congress has power to legislate against such contracts. See COMMENT. p. 170.

COMMON CARRIERS—BILL OF LADING—HUTKOFF v. PENNSYLVANIA R. R. Co., 61 N. Y. Sup. 254.—A provision in a bill of lading that the carrier shall not be liable for any loss or breakage does not exempt the carrier from the consequences of its own negligence.

Contrary to the general rule the New York courts allow a common carrier, by special contract, to stipulate for exemption from liability even for losses resulting from its own negligence. *Perkins* v. *Hudson River R. Co.*, 24 N. Y. 196, 82 Am. Dec. 282; *Nicholas* v. *New York Central, etc., R. R. Co.*, 89 N. Y. 370. Such contracts are not favored, however, and in order to have such an effect must be plainly and distinctly expressed, so that they cannot be misunderstood by the shipper. *Maguire* v. *Dinsmore*, 56 N. Y. 168. Every matter of doubt under such a contract will be solved in favor of the shipper, and where general words limiting the liability of the carrier may be given a reasonable meaning without making them include losses caused by the negligence of the carrier, they will not be construed as granting an exception from such liability. *Rathbone* v. *N. Y. C. R. R. Co.*, 140 N. Y. 48; *Kenney* v. *N. Y. C. R. R. Co.*, 125 N. Y. 422. In the present case the phrase "any loss or breakage" is a general one, and the court construes it according to the rule just mentioned. *Special express provision* against liability for negligence is the only means by which the carrier can avoid such liability. *Nicholas* v. *N. Y. C. R. R. Co.*, 89 N. Y. 370.

COMMON CARRIERS—CONTRACTS LIMITING LIABILITY—NEGLIGENCE—MARQUIS ET AL. v. WOOD, 61 N. Y. Sup. 251.—A contract for the transportation of

goods, stipulating that the carrier shall not be liable for any damage in excess of a specified amount, does not, by the attempt to limit the carrier's liability, relieve it from liability for a loss occasioned by its negligence.

Carriers and shippers may agree upon a certain valuation for property when it is delivered for transportation. Such an agreement is binding, however the loss may be caused, provided it gives the bona fide value of the goods fixed by consent of both parties. *Hart* v. *P. R. R. Co.*, 112 U. S. 331; *Graves* v. *Lake Shore R. R. Co.*, 137 Mass. 33.

Where, however, the loss is caused by the carrier's negligence, and the stipulation limiting the amount of the carrier's liability fixes an arbitrary value printed in all bills of lading, and concerning the fairness of which the shipper has not been questioned, such stipulation is generally invalid. Encyl. of Law V, 133.

In most States where a carrier is not allowed to stipulate for total exemption from liability for a loss caused by its negligence, a stipulation *limiting* its liability for such loss would also doubtless be held void. *Chicago Ry. Co.* v. *Chapman*, 133 Ill. 96; *Muller* v. *P. R. R. Co*, 134 Pa. 310. But in *Richmond, etc., R. R. Co.* v. *Payne*, 86 Va. 48, it was held that a carrier might by contract *limit* its liability for loss caused by its negligence, though it could not *exempt itself wholly*.

In New York, where carriers can exempt themselves from all liability for negligence, they certainly can also limit the amount recoverable for negligence. *Belger* v. *Dinsmore*, 51 N. Y. 166. They must, however, expressly state that the limitation or liability is to cover losses by negligence. No general term like "any damage," as used in the present case, will be sufficient; 89 N. Y. 370.

COMMON CARRIERS—JUDICIAL NOTICE—CUSTOM—MCKIBBIN ET AL. V. GREAT NORTHERN RY. CO., 80 N. W. 1052 (Minn.).—In this case the court took judicial notice of a general custom in regard to baggage operating in favor of the plaintiff. It, however, required him to show that the general custom controlled in the particular case, by proving affirmatively that there were no special conditions or limitations imposed upon it by the defendant railroad company in its dealings with him.

This requirement is criticized in a dissenting opinion, which says: "If the conditions and limitations referred to are a part of the general custom, we should take judicial notice of them also. If they are not a part of such general custom, but are restrictions placed on the general custom by the particular railroad company, then the burden was on it to plead and prove the particular limitation or condition so placed by it on the carrying of sample cases."

The court having taken judicial notice of a general custom apparently establishing the plaintiff's case, the burden would then appear to be on the defendant to show any exceptions to the general custom in its favor.

CORPORATIONS — EMPLOYES — WAGES — CONSTITUTIONALITY OF STATUTE — STATE V. HAUN, 59 Pac. 340. (Kan.).—Statute of 1897, I. Chapter 145, provides that it shall be unlawful for any person, firm, company, corporation or agent thereof, to pay any employé any wages except in lawful money or by check or draft. Section second of the act provides that any other mode of payment is void and shall be construed as coercion. By section four the act is made to apply only to corporations or "trusts" or their agents that employ ten or more persons. *Held*, that the act is unconstitutional and void, in that it violates the Fourteenth Amendment to the Constitution of the United States, which provides that it shall not deny to any person within its jurisdiction the equal protection of the laws.

That injustice would result from the enforcement of such an act must be obvious, for by its provision it is not unlawful for any person excepting a corporation which employs ten or more persons to coerce an employé. The point is made that "the same act of the same man would be unlawful to-day if his employer was a corporation or trust and employed ten men, while to-morrow

it would be lawful, provided in the meantime the corporation had discharged one of its employés.

The fact that a laborer shall not be allowed to exchange labor for the commodities of life seems a most startling proposition. *Godcharles* v. *Wigeman*, 113 Pa. 431-437.

C. J. Darter dissents on authority of *Shafler* v. *Mining Co.*, 55 Md. 74, and *Budd* v. *New York*, 148 U. S. 517. In the former case, which was similar to the one under review, the court held the statute to be valid, as the Legislature reserved the right to amend the charter of a corporation. In the latter it was held that a law which applied to elevator owners in places of 130.000 inhabitants, and did not apply to places of less population, was not an unjust discrimination.

EVIDENCE—UNLAWFULLY OBTAINED—BACON V. UNITED STATES, 97 Fed. 35.—A letter written by the comptroller of the currency to the president of a national bank was wrongfully taken from his private box and given to the officers of the United States. *Held*, that such letter was admissible in evidence on the part of the government in a prosecution of the president.

This point is, no doubt, decided according to weight of authority. *Commonwealth* v. *Dana*, 2 Metc (Mass.) 329. 337; *State* v. *Griswold*, 67 Conn. 290. While we appreciate the grounds on which these cases are decided, yet the admission of these papers as evidence will allow the person who offers them to profit by his own wrong. Violence will be done to the very spirit of the IVth Amendment of the United States Constitution and of those private actions that can be brought against an invasion of one's right to his papers. The aim of that rule which says a person shall not be compelled in a criminal case to give evidence against himself is destroyed. The dissenting opinion of Baldwin, J., in *State* v. *Griswold* above, although in a case not directly in point, is a strong expression of the view opposed to what has been generally held on this point.

EVIDENCE—VARYING RECEIPTS—TOWER V. BLESSING, 61 N. Y. Sup. 255.—A receipt of a sum, "in full of all demands to date" is not conclusive on the party executing it, but it may be contradicted or explained by parol evidence.

This decision is in conformity with the rule adopted by the New York courts in regard to receipts in full. They make no distinction between a receipt for a specified sum and a receipt in full. Both furnish only *prima facie* evidence and both are equally open to explanation and contradiction. *Ryan* v. *Ward*, 48 N. Y. 204. As a general rule a receipt in full is much more conclusive than a simple receipt. *Bouvier's Dictionary*. In general a receipt in full is conclusive when given with a knowledge of all the circumstances, and when a party giving it cannot complain of any misapprehension as to the compromise he was making; 52 Ill., 183; 63 Mich. 690.

In Connecticut a receipt in full will operate as a discharge to defeat any further claims, unless executed under such circumstances of mistake, accident or fraud as will authorize a court of equity to set it aside. *Fuller* v. *Crittenden*, 9 Conn. 401; *Aborn* v. *Rathbone*, 54 Conn. 444.

INTERPRETATION—ACT REGULATING THE PRACTICE OF MEDICINE—OSTEOPATHY—NOT AN AGENCY WITHIN THE MEANING OF 92 OHIO LAWS 44—STATE V. LIFFRING, 55 N. E. 168 (Ohio).—The language of the act is "Any person shall be regarded as practicing medicine or surgery within the meaning of this act, who shall append the letters M.B. or M.D. to his name or for a fee prescribe, direct, or recommend for the use of any person any drug or medicine or other agency for the treatment, cure or relief of any wound, fracture or bodily infirmity or disease." Liffring was indicted for practicing without a a certificate. The indictment was based upon the fact that he had for a fee prescribed osteopathy—defined in the case as a system of rubbing or kneading portions of the body—as a cure for a certain disease. The fact was admitted, but it was held not an agency within the meaning of the act.

The intention of the Legislature must be presumed to have been to protect the public from dangerous drugs, medicines, or other agencies in unskilled hands. This intention must be paramount. *U. S.* v. *Fisher*, 2 Cranch 399.

JUDGES—INTEREST—DISQUALIFICATION—FIRST NATIONAL BANK OF RAPID CITY v. MCGUIRE, 80 N. W. 1074 (S. D).—An action of foreclosure was brought by a corporation before a circuit judge whose wife was a stockholder in the corporation. *Held*, that the judge was disqualified to try the cause on the ground of personal interest, since his wife, though not a party to the suit, was directly interested in the result, and since he, though under the law of the State having no present interest in, or control over his wife's property, would yet succeed to a portion of it in case of her death, and would be, in law, presumptively an heir to her estate.

This decision rests purely upon common law grounds, there being no constitutional provision or statute in South Dakota disqualifying a judge from sitting in a cause on the ground of interest, or of relationship to a party. At common law relationship to a party was not a disqualification (Am. and Eng. Encyc., Vol. 12, p. 47), so that the question of pecuniary interest of the judge was the only one to be considered. We have found no case involving precisely the question here.

MANDAMUS—CORPORATION—IN RE PIERSON, 60 N. Y. Sup. 671.—Mandamus to compel a corporation to allow petitioner, a stockholder, to examine its books, to see if it is not selling gas at a loss, is properly denied, it being shown that it has cut the price of gas to meet competition, and thus retain its customers, and there being no advantage to the stockholders or the company in an application to the attorney-general or for a receiver, which the petitioner proposes to make if he finds that such sale is being made at a loss.

The right of a member of a corporation to inspect the books of the company for proper purposes is well settled in the *U. S.* 1 *Mor. Priv. Corp.*, and mandamus is the proper remedy. But in this case the purpose was not deemed a proper one. Members of a corporation have no right on speculative grounds to call for an examination of the books in order to see if, by any possibility, the company's affairs may be administered better than they think they are at present. *King* v. *Masters and Wardens of the Merchant Tailors Co.*, 2 *Barn. & Adol.* 115.

MUNICIPAL CORPORATION—PUBLIC IMPROVEMENTS—CONSTRUCTION OF VIADUCT—DAMAGES—LIABILITY OF MUNICIPALITY—SAUER V. MAYOR, ETC., OF THE CITY OF NEW YORK, 60 N. Y. Sup. 648.—*Held*, city is liable to abutting owner for damages caused by erection of viaduct in the street in front of his premises, by which he is deprived of easement of light, air and access.

The question was whether such damages came within the clause of the New York Constitution, which says "private property shall not be *taken* for public use without just compensation.' In other words, was this a *taking* of property? The court held that the rights of abutting owners are in the nature of easements. Easements are property, and therefore cannot be taken without compensation. *Kane* v. *N. Y. E. R. R. Co.*, 125, N. Y. 164.

Under the same constitutional provision a different result was reached in other States. In Illinois, under the old Constitution, an abutting owner could not recover for consequential injuries, but only for *direct physical injury* to his property. *Rigney* v. *Chicago*. 102 Ill. 64.

But the corresponding clause in the present Constitution of Illinois, adopted in 1870, says "private property shall not be taken or *damaged* for public use without compensation." Similar clauses are found in a number of State constitutions adopted since 1870, and where this is so the decisions are uniform to the effect that, in a case like the present, the abutting owner may recover.

MUTUAL BENEFIT INSURANCE—RIGHTS OF BENEFICIARIES—OVERHISER ET AL. v. OVERHISER, 59 Pac. 75 (Colo.).—The A. O. U. W. by-laws provide that the beneficiary shall be named in the certificate and shall be within one of certain designated classes, and in case of death, provides that the fund shall go to certain heirs in the absence of any direction by the insured. A wife obtained a divorce prior to the death of her husband, who held an insurance in the above-named society. *Held*, that divorce was not the legal equivalent to the death of the beneficiary and that the heirs could not take the fund.

There seems to be a wide diversity of opinion by jurists on this question. A wife, where divorced, has generally lost her rights. *Tyler* v. *Odd Fellows' Mut. Relief Assoc.*, 154 Mass. 134. Nevertheless, the decision in the case under review seems correct. The contract of insurance did not need any interpretation, and when entered into the beneficiary was competent to take under the by-laws. Nor was there any prohibition in the by-laws incapacitating the beneficiary from taking the fund owing to a legal separation. It is a well-known principle that the courts treat a policy of life insurance as something like a testament. *Bolton* v. *Bolton*, 73 Me. 299. Construing the policy as a will, the beneficiary named therein would take, as the insured failed to revoke the instrument by the designation of a new beneficiary.

NEW TRIAL—NEWLY-DISCOVERED EVIDENCE—HILL v. STATE, 53 S. W. 845 (Tex.).—Where defendant moved for a new trial on the ground of newly-discovered evidence to prove insanity. *Held*, that it should be granted, though in strictness the evidence was not newly-discovered.

We are unable to find authorities in any State except Texas which have followed this exception to the rule for a new trial upon newly-discovered evidence, where the plea is insanity. In Texas this exception was made in *Schuenler* v. *State*, 19 Texas, App. 872, and followed in *Horhouse* v. *State*, 50 S. W. 362, and the Texas courts seem disposed to strengthen these precedents.

PERSONAL INJURIES—TRIAL—PHYSICAL EXAMINATION—WANCK v. CITY OF WINONA, 80 N. W. 851 (Minn.).—*Held*, in an action to recover damages for a personal injury, that the trial court, upon application by the defendant, could order the plaintiff to submit himself to a physical examination by disinterested physicians, under penalty of having his suit dismissed upon refusal to obey; and that the court erred in refusing to so order, though defendant's physician had previously attended plaintiff, and had opportunity to examine him.

The rule here laid down accords with that in many States, but conflicts with that in others, and with that applied by the Supreme Court of the United States in *Union Pacific R. Co.* v. *Botsford*, 141 U. S. 250, where it is asserted that no such power is vested in the court, either by the common law or by act of Congress. Justice Brewer, however, in a dissenting opinion, lays down a rule very like that given in the present case. He says: "It is said that there is a sanctity of person which may not be outraged. We believe that truth and justice are more sacred than any personal consideration."

PRESUMPTION AS TO COMMON LAW—SISTER STATES—BLETHEN v. BONNER ET AL., 53 S. W. 1016 (Tex.).—Where the Constitution of Massachusetts, adopted in 1780, providing that all laws previously adopted in the Colony of Massachusetts Bay and usually practiced in the courts of law shall remain in full force until repealed by the Legislature, such parts only excepted as are repugnant to the Constitution, was offered in evidence. *Held*, to be insufficient proof in an action in Texas to establish the fact that the common law was in force when such Constitution was adopted.

It has been a familiar rule that the courts of one State will presume the common law to be in force in a sister State at a given time, in the absence of evidence. The Texas courts do not follow it, however, and say in this case that they do not believe the "indulgence in presumptions" the safest guide.

PRIVILEGED COMMUNICATIONS—RIGHT OF ATTORNEY TO COMMEMT UPON FAILURE TO CALL FAMILY PHYSICIAN—CITY OF WARSAW V. FISHER, 55 N. E. 42 (Ind.).—*Held*, that in an action for damages resulting from personal injuries, counsel for defendant may properly comment upon plaintiff's failure to call as a witness his attending physician. See COMMENT, p. 171.

PUNITIVE DAMAGES—KNOXVILLE TRACTION CO. V. LANE ET UX., 53 S. W. 557 (Tenn.).—Where plaintiff, while a passenger on defendants' street car, was insulted by motorman. *Held*, that the jury might find exemplary damages, although the company did not authorize nor ratify the act and was innocent of any negligence.

There are two rules for the liability of a corporation in exemplary damages for the acts of its servants. The prevailing one holds the corporation liable where the servant or agent would be liable to such damages. *Goddard* v. *Railway Co.*, 57 Me. 202. The other requires the corporation to ratify or authorize the act. *Hale on Damages*, p. 219; *Turner* v. *R. Co.*, 34 Cal. 594.

The Supreme Court of Tennessee in this case insists that the true reason for allowing such damages is solely the breach of the contractual relation between plaintiff and the company. The rule seems severe, as it demands nothing more nor less of a corporation than supernatural foresight in selection of employés.

RAILROADS—ASSUMPTION OF RISKS—CONTRIBUTORY NEGLIGENCE—YOUNG ET AL V. SYRACUSE, B. & N. Y. R. R. Co., 61 N. Y., Supp. 202.—A switch was so placed that it could be seen only 60 feet away. The engineer who ran into the switch when open had been on the road about fourteen years, knew of the position of the switch and the company rule that it should be approached with great care. *Held*, whether engineer assumed risk of employment or was guilty of negligence was a question for the jury. Smith, J., dissenting.

This is a close case on the point of what a court is to consider a matter of law and what it is to leave to a jury. We take it that the principles on which this case is decided are well settled; that the rule in *Pautzer* v. *Tilly Foster Mining Co.*, 99 N. Y. 368, 2 N. E 24, as to a workman's presupposing his master to have provided safe appliances, is modified by an employé's knowing of an obvious defect, making no objection and continuing in employment. *Krog* v. *Chicago*, 32 Iowa 357. But the defect must be obvious and of such a kind that the injured person could have kept its dangerous character in mind without an effort.

STREET RAILROADS—CONTRIBUTORY NEGLIGENCE—BRAINARD V. NASSAU ELECTRIC R. R. Co., 61 N. Y. Sup. 74.—A man who surrenders his seat on a crowded street car to a woman and stands on the running board of the car, is not, as a matter of law, negligent. Riding on the running board of a crowded street car is not *per se* negligence.

Both of the points decided are somewhat novel in character. Surrendering one's seat to another passenger does not constitute contribuory negligence as a matter of law. Such question is usually one of fact and depends upon the circumstances. *Lehr* v. *R. R. Co.*, 118 N. Y. 556, 23 N. E. 889; *Still* v. *R. R. Co.*, 52 N. Y. Sup. 975. In the present case the surrender was made to a woman who may be presumed to have been weaker than the deceased. The words of Hatch, J., are worthy of note: "Custom, even at Coney Island, has not deadened all sense of courtesy, and if it had, we should continue to think that the law of negligence has still a sufficient respect for the amenities of life as not *per se* to charge as negligence the surrender of a seat by a man to a woman."

SUITS AGAINST PUBLIC OFFICERS FOR OFFICIAL MISCONDUCT—LAW GIVING RIGHT TO BE INDEMNIFIED BY MUNICIPALITY UNCONSTITUTIONAL—IN RE JEN-

SEN. 60 N. Y. Supp. 933.—*Held*, that a law, retrospective in its nature, enabling public officials to be indemnified by the municipality, for reasonable counsel fees and expenses paid or incurred in successfully defending prosecutions against them for official misconduct, is unconstitutional. See COMMENT, p. 173.

TAXATION—SITUS OF NOTES AND MORTGAGES OWNED BY A NON-RESIDENT —NEW ORLEANS V. STEMPLE, 20 Sup. Ct. Rep. 110.—*Held*, notes and mortgages in the hands of an agent for collection and deposit are subject to taxation where found, irrespective of the domicile of the owner.

While this has been the doctrine in many States, it has not been affirmed before by the Supreme Court. Bank notes and municipal bonds, it is well settled, are sufficiently tangible to be taxed where found. The Supreme Court has held, too, that shares of stock in national banks may for purposes of taxation have a situs of their own, *Tappan* v. *Merchants' Nat. B'k*, 19 Wall 490; and that a State may tax the interest in land in the State of a non-resident mortgagee. *Savings and Loan Soc.* v. *Multnomah County*, 169 U. S. 421; but that bonds, mortgages and debts generally have no situs independent of the domicile of the owner. *State Tax on Foreign-held Bonds*, 15 Wall 300. The last is here construed not be a denial of the power of the Legislature to establish such independent situs for bonds and mortgages The words of the court go beyond the authorities and the necessities of the facts in hand, and would cover any case where the bonds and mortgages are found in the State, whether in the possession of an agent or not. It would seem that they should not be taxed irrespective of the domicile of the owner unless they have acquired some sort of a permanent business situs.

VICE-PRINCIPAL—CONDUCTOR OF A FREIGHT TRAIN—NEW ENGLAND R. R. Co. v. CONROY, 20 Sup. Ct. Rep. 85.—*Held*, the conductor of a freight train is not a vice-principal so as to make the company liable for the injuries of a fellow-servant caused by his neligence. *Chicago, M. & St. P. R. Co.* v. *Ross*, 112 U. S. 377, overruled. Justice Harlan dissents. See COMMENT, p 174.

WITNESS—IMPEACHMENT—TRIAL—STATEMENTS IN ARGUMENT—BECKER V. CAIN, 80 N. W. 805 (N. D.).—In this action the defendant attempted to impeach the testimony of the plaintiff as to his ownership of certain goods, by proving a statement made by the plaintiff in his argument as attorney in a previous action, inconsistent with such testimony, which statement, upon cross-examination, the plaintiff denied having made. *Held*, that such statement was inadmissible as evidence in the present action, and so incompetent to impeach plaintiff's testimony.

This is an interesting application of the rule that statements of an attorney in his argument are statements, not of fact, but of the evidence in the case, and what, in his opinion, that evidence tends to prove. The statement being thus irrelevent to the issue, it was accordingly inadmissible for the purpose of discrediting the witness. *I. Greenleaf Evid., Sec.* 449.