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APPEAL—FEDERAL QUESTION—ERROR TO STATE COURT—LIABILITY ON INJUNCTION BOND.—TULLOCK v. MULVANE, 22 Sup. Ct. 372.—*Held*, a claim of immunity for attorney's fees as an element of damages under an injunction bond given in a Federal court presents a Federal question for review on error to the State court from the Supreme Court of the United States.

The validity of such a bond, the authority of the Federal court, and in general the proceedings, decrees and orders of that court involve Federal questions under Rev. Stat. Section 709. *Dupasseur v. Rochereau*, 21 Wall. 130; *Avery v. Popper*, 179 U. S. 305; *Meyers v. Block*, 120 U. S. 206. But where none of these is questioned and only the liability of a surety under the bond is to be decided, it is denied by three of the justices, in a strong dissenting opinion, that any Federal question is involved. They contend that the bond is to be interpreted like any other contract; that liability under it is purely a question of general law, and that the refusal of a State court to accept the view of the Federal courts on the subject, expressed in former decisions between other parties, is not reviewable by the Supreme Court of the United States as denying an immunity claimed by virtue of "an authority exercised under the United States." Rev. Stat. Section 709; *Provident, etc., Soc. v. Ford*, 114 U. S. 635; *Winona & St. P. R. R. Co. v. Plainview*, 143 U. S. 371.

APPEAL—REVIEW—OBJECTIONS NOT RAISED BELOW.—BRINCKERHOFF ET AL. v. FARIAS ET AL., 63 N. E. 436 (N. Y.).—In an action to procure the settlement of plaintiffs' accounts as trustees, the defendant filed some general exceptions to all that referee had decided, but did not object to the accounts as filed and neither on the trial nor during the hearing before the referee made any specific objection thereto. *Held*, that an objection raised by him specifically for the first time in the Court of Appeals on an appeal from the judgment will not be considered.

This decision departs from the findings in *Watts v. Waddle*, 31 U. S. (6 Pet.) 389; *Campbell v. Stakes*, 2 Wend. 137. It applies the rule set forth in *Markham v. Washburn* (Com. Pl.), 18 N. Y. Supp. 355; *Dodge v. Cornelius*, 168 N. Y. 242, which gives a definite limit to matter for review.

CARRIERS—NEGLIGENCE—DUTY TO ANNOUNCE STATIONS.—HOUSTON & T. C. R. R. v. GOODYEAR, 66 S. W. 862 (C. C. A.).—A railroad company, in absence of statute, is not negligent as a matter of law in failing to announce arrival of its trains at stations.

That trains must stop at the stations for a reasonable length of time, 5 Am. & Eng. Ency. 565, and authorities in note; *Teller v. N. Y. C. R. Co.*, 2 A. A. Dec. (N. Y.) 480. Company liable for any injury resulting from violation of this duty. *Washington, etc., R. Co. v. Harmon*, 171 U. S. 571.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF LAWS—STATUTES.—CONNOLLY ET AL. v. UNION SEWER PIPE CO., 22 Sup. Ct. 431.—A discrimination in

favor of agricultural products or live stock in the hands of the producer or raiser, made by the Illinois Trust Act of 1893, exempting them from the provisions which prohibit a recovery of the price of articles sold by any trust or combination formed in restraint of trade in violation of that act, renders the act repugnant to the 14th Amend., in respect to equal protection of laws. Mr. Justice McKenna, dissenting.

Mr. Justice McKenna contends that no distinction can be taken between cases in which a discriminate tax is imposed, and those in which conduct is regulated or penalized. This view appears to be sustained by *Railroad Co. v. Richmond,* 96 U. S. 521, and *Cotting v. Kansas City Stock Yards Co.,* 183 U. S. 79. But the weight of authority is *contra.* A discrimination founded upon a reasonable distinction in principle is valid. *Am. Sugar Refining Co. v. Louisiana,* 179 U. S. 89; *2 Story on the Const.,* Section 1961. The Illinois statute exempts a class from its operation, permitting them to combine and do an act which, if done by others, would be a crime. Such a discrimination is purely arbitrary.

CONSTITUTIONAL LAW—INTERFERENCE WITH INTERSTATE COMMERCE—LONG AND SHORT HAUL.—LOUISVILLE & NASHVILLE R. Co. v. ENBANK, *22* Sup. Ct. *277.*—Ky. Const., Section 218 prohibits common carriers from charging more for a shorter than for a longer haul. *Held,* that it is an unconstitutional regulation of interstate commerce, so far as its provisions extend to a long haul from a place outside of to one within the State, and a shorter haul between points on the same line and in the same direction, both of which are within the State, as the carrier is thus compelled to adjust his interstate rates with some reference to his rates within the State.

State regulation of local rates by reference to the existing interstate rate in effect compels the carrier to raise the interstate to the level of the local rate, which under existing competition would interfere with its interstate business. The interference is direct, and though affecting only one carrier, is unconstitutional. *N. Y. L. E. & W. R. Co. v. Penn.,* 158 U. S. 431; *Wabash, St. L. & P. R. Co. v. Ill.,* 118 U. S. 557.

The dissenting justices maintain that State regulation of local rates by reference to existing interstate rates as fixed by the carrier is no more a regulation of the latter than if Congress had fixed the interstate rate, in which case the local regulation by the State would be valid. *Miller v. Swan,* 150 U. S. 132. They also deny that the incidental effect of the provision in impairing one carrier's interstate business, there being competing carriers between the same points, is such a direct interference with interstate commerce as to invalidate the provision.

CONTRACTS—STATUTE OF FRAUDS—PERFORMANCE WITHIN ONE YEAR.—MCGIRR V. CAMPBELL, 75 N. Y. Supp. 571.—Carpenters made an agreement whereby the defendant sold his interest to the plaintiff, taking his notes therefor, and agreed not to enter into a like business in the city until the last note became payable, namely, twenty-seven months after April 20, 1897. *Held,* that the agreement was within the Statute of Frauds, requiring agreements not to be performed within one year to be in writing.

The Massachusetts rule is that where the contract would be fully performed by the death of a party during the year the statute does not apply,

and therefore it does not apply to a personal contract to refrain from certain acts for a specified time. *Doyle v. Dixon,* 97 Mass. 208. And two dissenting judges hold that the rule is the same in New York. *McKinney v. McCloskey,* 78 N. Y. 594.

Both the weight of authority in this country and in England supports the majority decision. 8 Am. & Eng. Enc. Law (1st Ed.) p. 688; *Davey v. Shannon,* 4 Exch. Div. 81; *Perkins v. Clay,* 54 N. H. 518; *Browne, Stat. Frauds,* Section 282 b.

CONVERSION—BREACH OF CONTRACT—REORGANIZATION OF RAILROAD.—INDUSTRIAL AND GENERAL TRUST, LIMITED, v. TOD ET AL., 63 N. E. 285 (N. Y.).—The bondholders of an insolvent railway company, pending foreclosure, conferred on a reorganization committee title to the bonds, for the purpose of reorganizing the affairs of the railroad; gave them power for that purpose, and required the committee to adopt a plan of reorganization giving notice thereof. *Held,* that an action of conversion will not lie against members of committee for using bonds to pay price of the railway company on a sale on foreclosure, without first making plan of reorganization and giving notice thereof, such a failure being a breach of contract.

This decision is directly opposed to the findings in *Cox v. Stokes,* 156 N. Y. 491; *United Water Works Co. v. Omaha Water Co.,* 164 N. Y. 41; *Laverty v. Snethen,* 68 N. Y. 522. It applies the principle set down in *Walter v. Bennett,* 16 N. Y. 250. The decision draws a sharp line between conversion and breach of contract.

CORPORATIONS—BUILDING ASSOCIATIONS—PAID-UP STOCK—PREFERRED CREDITORS.—CASHEN V. BUILDING AND LOAN ASSOCIATION ET AL., 41 S. E. 51 (Ga.).—Plaintiff had purchased some full paid "stock" of the defendant association with the agreement that he was to receive regular rate of interest and was not to share in the profits or losses of the association. *Held,* on the failure of the association, that the above agreement established a relation of debtor and creditor between the parties, and that plaintiff's claim was entitled to precedence over that of other stockholders.

Very few cases involving this point have ever been decided. In some States the issuance of such non-participating stock is prohibited. *State v. Oberlin Asso.,* 35 O. St. 258; *Stiles' Appeal,* 95 Pa. St. 122. In the following cases it has been held that the holders of such stock are on no different footing as creditors from the holders of the ordinary stock. *Leahy v. Asso.,* 76 N. W. 625 (Minn.); *Hohenshell v. Asso.,* 41 S. W. 948 (Mo.). The court relied upon the authority of *Cook v. Asso.,* 104 Ga. 814.

CORPORATIONS—CONSOLIDATION—DEBTS OF MERGED COMPANIES—PAYMENT.—SHADFORD V. DETROIT Y. & A. A. RY. CO., 89 N. W. 960 (Mich.).—Plaintiff had secured a judgment against one of the merged companies of the defendant corporation subsequent to the consolidation. *Held,* that the consolidated corporation was liable for the debt, although the merged company was insolvent at time of merger.

This case is an important one, and it declares that the law will not permit the creditors of two corporations to be deprived of the assets of such corporations in payment of their debts and turn them over to suits in equity against the stockholders when the union with another corporation is effected

without the passing of a valuable consideration between the corporations themselves. See *Chicago S. F. R. Co. v. Ashling,* 56 Ill. App. 327; *State v. B. & L. R. Co.,* 77 Md. 489. Nor can a corporation set up in defence the illegality of its own organization. Such illegality can only be attacked in a direct proceeding. *Meth. Ep. Church v. Pickett,* 19 N. Y. 485; *Swartout v. Mich. Air Line R. Co.,* 24 Mich. 388. *Contra, Carey v. Cincinnati R. R. Co.,* 5 Clarke 306.

DECEIT—SALE OF SHARES—MEASURE OF DAMAGES.—DRAKE ET AL. V. HOLBROOK, 66 S. W. 512 (Ky.).—Plaintiff was induced through deceit of defendant to buy certain shares of stock, the value of which was much less than represented. *Held,* the measure of damages was the difference between the actual and represented value of the stock. Du Relle, Burnam and O'Rear, J. J., dissenting.

The majority held that the party using deceit must make good his representations. If plaintiff was induced to believe he was getting a bargain he is entitled to same—the profit actually represented. Am. & Eng. Enc. Law (2d Ed.) 184. *Bank v. Gaitskill,* 37 S. W. 160; *Trimble v. Ward,* 97 Ky. 748.

The minority follow the opinion of Chief Justice Fuller in *Smith v. Bolles,* 132 U. S. 125. The measure of damages is what the plaintiff "lost by being deceived into the purchase," and must "not include the expected fruits of an unrealized speculation." The plaintiff should recover only what will repair his injury. *Baker v. Drake,* 53 N. Y. 211; *Walker v. Smith,* Fed. Cas. No. 17,086.

ELEVATED RAILROADS—DAMAGE TO ABUTTING PROPERTY—CONSTRUCTION OF ILLINOIS CONSTITUTION.—ALDRICH V. METROPOLITAN W. E. EL. RY. CO. (ILL.), 63 N. E. 155.—Defendant's road, which is constructed on its own land except where it crosses streets under license from the city, passes within thirty-one feet of plaintiff's expensive apartment house, obstructing the view and passage to the premises, and the noise destroying peace and quiet. *Held,* not to be a taking of or damage to such private property for public use, within the meaning of Const. Art. 2, Sec. 13, which prohibits such taking without just compensation.

The constitutional provision of 1870 was not intended to give a remedy for all incidental losses nor for the depreciation of property caused by the construction of railroads in the vicinity, but was intended only to restore a remedy which existed at common law but which had been denied by legislation and the Constitution of 1848. In order to recover under this provision, there must have been some physical disturbance, with a right connected with property. *Rigney v. City of Chicago,* 102 Ill. 64. Had the railroad passed directly in front of plaintiff's lot impairing his means of ingress a different rule would have been applied. *Railroad Co. v. Leah,* 152 Ill. 249, or if the elevated road had been a steam road, and cinders, ashes and smoke had been thrown and blown into the plaintiff's premises. *Railroad Co. v. Darke,* 148 Ill. 226.

EVIDENCE—DYING DECLARATIONS—SUPPLEMENTING WRITING BY PAROL.—HERD V. STATE, 67 S. W. 495 (Tex.).—*Held,* that dying declarations reduced to writing and signed may be supplemented by other declarations made at the same time, and not reduced to writing. Henderson, J., dissenting.

This is in direct contradiction to well recognized principles of evidence, and can only be explained in light of the modern tendency to admit all evidence more freely. *Wharton on Hom.*, Sec. 766; *Greenlf. on Ev.*, Sec. 161. In the early English case of *Rex. v. Reason*, 1 Strange 499, it was held that even prior and subsequent declarations, made the same day as the written one, were inadmissible.

FALSE IMPRISONMENT—ARREST BY ORDER OF STATE COURT AFTER DISCHARGE IN BANKRUPTCY—RELEASE ON HABEAS CORPUS AS EVIDENCE OF UNLAWFUL ARREST.—BENNETT V. LEWIS ET AL., 66 S. W. 525 (Ky.).—Plaintiff to avoid arrest by defendant secured from referee in bankruptcy an order of immunity from arrest on all his debts. He was thereafter maliciously arrested and imprisoned on a judgment of State court rendered prior to his discharge in bankruptcy. *Held*, arrest not unlawful. Divided court.

As a discharge in bankruptcy does not release from all debts, plaintiff should have pleaded his discharge from the debt in question. The fact that his arrest was decided to be illegal by U. S. District Court on habeas corpus shows only that he was discharged from custody, and State court might proceed with its process until the bankruptcy proceeding was properly pleaded.

The dissenting judges strongly contend that such arrest was in defiance of the Federal court; that it was unnecessary to enumerate the debts from which he had been discharged as defendant knew he had been released from debt in question. To uphold such an arrest is to disregard judgments of U. S. courts in matters within their undoubted jurisdiction.

INSOLVENCY—EFFECT OF GENERAL ASSIGNMENT.—IN RE HAYES, 75 N. Y. Supp. 312.—A general assignment by a member of the New York Stock Exchange does not affect the contractual rights which members of the exchange have in the membership, so that dividends paid them as creditors out of the sale of the insolvent member's membership are not to be deducted in determining the amount for which they are entitled to dividends out of the assigned estate.

The late case of *Merrill v. Bank*, 173 U. S. 131, in which three justices very emphatically dissented, has left this point of law in an unsatisfactory state. In this case the court, following *Merrill v. Bank, supra*, concludes that the claim of the creditor to share in the assets of the debtor and his debt against the debtor, are distinct and separate rights. The court has ably attempted to reconcile the authorities, and the case should be of value in future controversies.

JOINT CAUSES OF ACTION—CONSTRUCTION OF WILL.—HUGHES ET AL. V. HUGHES ET AL., 63 N. E. 250 (Ind.).—*Held*, that an executrix could not join in her fiduciary and individual capacity for the purpose of demanding the construction of a will. Wiley, J., dissenting.

The tendency of the law being to discourage multiplicity of suits, such joinder has generally been upheld. Thus, it was allowed for the purpose of collecting rent in *Armstrong v. Hall*, 17 How. Prac. 76, and where an executor was made defendant in an action for debt, *Day v. Stone*, 15 Abb. Prac. (N. S.) 137. The prevailing opinion is based on the rule that it is not enough that there be a common interest in the cause of action, but that there must be a common interest in the relief sought. *Martin v. Davis*, 82 Ind. 41.

MUNICIPAL CORPORATIONS—ORDINANCES—SCATTERING PAPER—DISCRIMINATION.—CITY OF PHILADELPHIA V. BROBENDER, 51 Atl. 374 (Pa.) The municipal council of Philadelphia passed an ordinance prohibiting the casting of advertisements or hand bills not enclosed in envelopes and addressed (newspapers are excepted) into the vestibules, yards or on the porches of dwellings. *Held,* this is a proper exercise of the police power and does not discriminate against a class.

There is no class discrimination, unless those engaged in the same business are affected differently, *Soon Hing v. Crowley,* 113 U. S. 703. It was decided that a city ordinance might cover a private nuisance where it was incidental to a public nuisance even if it were not a common nuisance *per se.*

NEW TRIAL—PERSONAL INJURIES—CONDUCT OF PLAINTIFF.—MCGLOIN V. METROPOLITAN ST. RY., 75 N. Y. Supp. 593.—On the first day of a trial for personal injuries, after adjournment and in the presence of jurors, plaintiff became prostrated in the court room, was attended by physicians and after about twenty minutes removed from the room. There was evidence that his physical condition at the trial was the result of the injuries alleged. It was not alleged that the attack was simulated or purposely manifested before the jury, and in response to inquiry by the court, the jurors intimated that the occurrence would not affect their decision. *Held,* that the court's refusal to grant a new trial would not be disturbed.

Two judges dissent on the ground that what had occurred must inevitably have influenced the jury, and that it was practically testimony as to his alleged injuries the truth of which the defendant had no opportunity to question and therefore there was no fair trial in this respect. Their position would have been correct if there had been the least evidence of intentional misconduct by the plaintiff. 12 Enc. Pl. & Pr. 615.

REMOVAL OF CAUSES—SUFFICIENCY OF PETITION—FOREIGN CORPORATIONS. —THOMPSON V. SOUTHERN R. R., 41 S. E. 9 (N. C.).—Defendant tried to have the case removed from the State to the Federal court, alleging that it was a citizen of another State than that in which suit was brought and in which plaintiff lived. *Held,* that this allegation was insufficient as it did not state specifically that defendant was not a resident of the State in which suit was brought.

The reason for this decision was that the corporation might be a citizen both of a foreign State and of that in which suit was brought. The rule seems to be that all jurisdictional facts must be stated in the clearest possible manner. *Hirschl v. Machine Co.,* 42 Fed. 803; *Fife v. Whittell,* 102 Fed. 537. It has been held in other cases, however, that a mere allegation that the corporation is a citizen of another State is sufficient, as this precludes the idea of it being a citizen of the State where suit is brought. *Myers v. Murray,* 42 Fed. 695; *Shattuck v. Insurance Co.,* 7 C. C. A. 386.

STREET RAILWAYS—ELECTRIC—ADDITIONAL BURDEN TO ABUTTING PROPERTY OWNERS.—PECK ET AL. V. SCHENECTADY R. R. Co., 63 N. E. 357 (N. Y.).—*Held,* that the use of a city street by an electric road is an additional burden to the owners of the fee, for which they are entitled to compensation. Parker, C. J., and Werner, J., dissenting.

This decision which follows *Craig v. Railroad Co.*, 39 N. Y. 404, is contrary to the numerous holdings in all the other States of the country. *Barney v. Keokuk*, 94 U. S. 324; *Attorney General v. Railroad Co.*, 125 Mass. 515; *Elliott v. Railroad Co.*, 32 Conn. 579. The dissenting opinion is a vigorous protest against carrying conformity of decision so far, especially in the face of present conditions, street railways now being so common and convenient to the public as to come within the purposes for which streets are established and maintained. 1 *Lewis*, Em. Dom. (2d Ed.) sec. 115f.

TARIFF—IMPORTATION FROM PHILIPPINES—SENATE RESOLUTION EXPLAINING INTENT IN RATIFYING TREATY—EFFECT OF CONDITION OF WAR.—THE DIAMOND RINGS, 22 Sup. Ct. 59.—*Held*, that a condition of war in the Philippines and a Senate resolution to effect that in ratifying the Spanish treaty the Senate did not intend to permanently annex islands nor incorporate their inhabitants into citizenship, did not operate to differentiate the status of the Philippines from that of Porto Rico in regard to tariff laws. Gray, Shiras, White, McKenna, J. J., dissenting.

In *De Lima v. Bidwell*, 21 Sup. Ct. 743, Porto Rico, after cession is declared United States territory and not subject to tariff laws applicable to foreign countries. *Downs v. Bidwell*, 21 Sup. Ct. sustained an act of Congress making discrimination in the case of Porto Rico in duties, imports and excises contrary to the constitutional provision. The court here approves both decisions and holds that in the absence of a special act of Congress it would be mere judicial legislation to make the existing tariff laws applicable to imports from the Philippines.

TAXES—INHERITANCE—PERSONAL PROPERTY OF NON-RESIDENT ALIEN—WILL EXECUTED ABROAD.—EIDMAN V. MARTINEZ, 22 Sup. Ct. 515.—*Held*, American securities passing under will executed abroad are not subject to inheritance tax imposed by Act of 1898, Section 29.

The question revolves upon the phrase "passed by will or under intestate laws of any State or territory." This language has frequently created difficulty in State courts. *Romaine's Estate*, 127 N. Y. 89. The words quoted above must be construed together and to construe "State" to include a foreign State would be rejecting a recognized principle that tax-laws should be literally construed. *Am. Net & Twine Co. v. Worthington*, 141 U. S. 468; *U. S. v. Hunnewell*, 13 Fed. 167.

TRUSTS—DUTIES AND LIABILITIES OF TRUSTEES—GUARDIAN'S SALE—CONFIRMATION.—FRAZIER V. JEAKINS, 68 Pac. 24 (Kan.).—A sale of the property of a minor by the guardian to her husband is void even though such sale was made upon fair consideration and free from fraud, and received the confirmation of a court of probate. Cunningham, J., dissenting.

"We cannot doubt that a sale by a trustee to his own wife would be set aside on the application of the cestui que trust on the ground of her relationship to the trustee. It would be evidence of unfairness quite as much as if the sale were made to the trustee himself, and falls within the spirit of the rule which forbids his own purchase." *Appeal of Dundas*, 64 Pac. 325. The confirmation of a guardian's sale by a court of probate is *res judicata* as to irregularities only, and cures nothing of substance. *Koehler v. Ball*, 2 Kan. 161, 83 Am. Dec. 451.