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ESTOPPEL.

Corporations De Jure and De Facto—Subscription for Stock—Estoppel to Deny Corporate Existence.—Capps et al. v. *Hastings Prospecting Co.*, 58 N. W. Rep. 956 (Neb.). If an association assumes to be a corporation, and acts as such, a subscriber for its stock is estopped in a suit on his subscription from denying that the corporation has legal existence; but he is not thus estopped when sued on a subscription to articles of association preliminary to formation of the corporation.

Contracts—Public Policy—Estoppel.—Brown v. *First Nat. Bank*, 37 N. E. Rep. 158 (Ind.). Although a party has received benefits from a contract, void on grounds of public policy, he is not estopped from setting up such a defense when sued upon it.

Estoppel by Pleading—Descriptio Personæ.—Greig v. *Clement et al.*, 37 Pac. Rep. 960 (Col.). The plaintiff, in the caption of his complaint, in an action of replevin for goods seized under an attachment, follows the name of the defendant with the words, "Deputy Sheriff," which was held to be merely *descriptio personæ*. In the absence of the word "as," the presumption is he was sued as an individual and not in an official character. Therefore the plaintiff is not estopped from showing that the defendant was not a deputy sheriff.

Gift—Estoppel.—In re Osmond's Estate. Appeal of Rhoade (*exec.*), 29 Atl. Rep. 266 (Pa.). The father of the decedent made a gift to her children which she invested in mortgages and kept separate from her own money, as in trust for the children. She married a second time, and being ignorant of the rights of a surviving husband made a will giving the amount in trust to the children as she had all the time intended. Her will was read in the husband's presence before she executed it, and he expressed himself perfectly satisfied with its contents. He allowed her to die in the belief that she had made everything right in regard to the gift to the children and he is *estopped* from claiming a part of this sum in opposition to her act.

Parol License—Revocation—Estoppel.—McBroom v. *Thompson et al.*, 37 Pac. Rep. 57 (Or.). A person who was not a riparian

the evidence of one who was neither an intimate friend nor an owner diverted part of a stream to his farm, aided in keeping open the channel, and made valuable improvements on his land, which would have been practically valueless without the water. All this was known and acquiesced in by the riparian owners for a period of eight years. At the end of that time they sought to enjoin a further diversion of the stream by the licensee. It was held that they were equitably estopped from denying him that privilege.

EVIDENCE.

Evidence—Res Gestæ.—Ray v. *Isbell*, 29 Atl. Rep. 538 (Conn.). In an issue as to whether all the repairs on a house were done for a certain price or only a part for such sum, testimony of an agent may be received as to what he formed an estimate of price upon, being a part of transaction and tending to show the subject matter of the contract.

Forgery—Indictment—Evidence.—People v. *Smith*, 37 Pac. Rep. 516 (Cal.). An indictment for forgery was composed of two counts, one of which was bad, and the evidence upon which conviction was obtained applied equally to both. The presumption that the verdict was rendered upon the good count accordingly did not prevail, and the error of the *nisi prius* court in ruling in the defective count was held sufficient ground for reversal of judgment on appeal.

Parol Evidence to Vary Contract.—Cohen et al. v. *Jackoboice*, 59 N. W. Rep. 665 (Mich.). The defendant gave plaintiffs a written order to insert an advertisement for twelve months, payable quarterly, and after six months paid half the year's subscription and ordered the advertisement to be discontinued. The court held on appeal that as the order contained all the *indiciæ* of a contract, except that it was not executed by both parties, it was such a valid written agreement as could not be affected by parol contemporaneous evidence.

Cancellation of Deed—Mental Incompetency—Opinion Evidence.—Holland v. *Zollner*, 36 Pac. Rep. 930 (Cal.). Where a question calls for a fact observed and not an opinion as to another's mental capacity it may be received in evidence. To say that a man acts rationally or irrationally is but to describe an outward manifestation drawn from observed facts. In this case it was decided that

expert witness, with reference to testator's conduct and conversation being irrational on certain occasions, was admissible.

SALES.

Sale—Action on Contract.—Harber Bros. Co. v. *Moffat Cycle Co.*, 37 N. E. Rep. 676 (Ill.). A vendor sold and delivered goods to his vendee and they were accepted by him although less were received, and at different times, than the contract called for, which was well known by the vendee. Having failed without cause to pay for the goods in accordance with the agreement, it was held that he could not maintain an action on the contract for the vendor's breach of it.

Rescission of Sale—Misrepresentations to Commercial Agency.—Lowdon v. *Fisk*, 27 S. W. Rep. 180 (Tex. App.). A vendor may rescind a sale, although he has relied on an investigation of a commercial agency as to the vendee's reputed financial standing, as well as on the vendee's false statement to such agency.

Contract—Rescission by Vendor—Recovery of Purchase Money.—Patterson v. *Murphy*, 60 N. W. Rep. 1 (Neb.). Under a written contract for the purchase of land by regular installments, it being provided in the contract that no recovery shall be had for money paid, in the event of rescission for non-performance; upon failure to make payment at the times stated and upon rescission by the vendor, the vendee cannot maintain an action for the recovery of such payments on the ground that by reason of the rescission of the contract, it must be treated as never having existed and consequently the forfeiture clause could not operate against the vendee, because on that view of the case the payments must be considered as purely voluntary and not recoverable. Nor can an action be based upon the contract, disregarding the forfeiture clause.

Death by Wrongful Act—Sale of Horse with Glanders.—State to Use of Hartlove et al. v. *Fox*, 29 Atl. Rep. 601 (Md.). Where the vendor of a horse fraudulently conceals the fact that it is afflicted with glanders, he is liable for the death of a person employed to care for the horse, on the ground, that, although the deceased was not a contracting party, the vendor who sells to an innocent vendee, property which he knows to be imminently dangerous to human life, may, under proper allegation and proof, be held responsible not only to the vendee, but to such persons as the vendee may naturally call upon to take charge of the property for him.

MISCELLANEOUS CASES.

Negligence — Liability of Townships.— Vail v. *Town of Amenia*, 59 N.W. Rep. 1092 (N. Dak.). The common law fixes no implied obligation upon a *quasi* municipal corporation so as to make it liable for the negligence of its officers. Therefore in the absence of a statutory provision recovery cannot be had for injuries arising from defects in a bridge, which it was the duty of the township to keep in repair, for the town acts merely as the agent of the State.

Agreement not to Appeal.— Johnson et al. v. *Halley et al.*, 27 S. W. Rep. 750 (Tex.). When an independent executor, in consideration of a stay of execution or other agreement of benefit to the estate represented by him, agrees not to appeal from a judgment rendered against the estate, a subsequent appeal will for that reason be dismissed upon motion. The controversy is terminated by the agreement.

Homestead — Extent of Right — Rights of Widow.— Pratt v. *Pratt*, 37 N. E. Rep. 435. A householder who has acquired right of homestead in premises owned by him, where it is a single house, has right of homestead in entire house even though he allows his son to live in a portion of it. Where homestead right exists at death of householder, where there is a statute that it shall continue for benefit of widow, the husband cannot affect the widow's estate by will. If widow entitled to homestead left premises with intention of returning the day after husband's funeral, and continued absent therefrom, she is not deprived of her homestead.

Monopolies — Contracts in Restraint of Interstate Commerce.— United States v. *E. C. Knight Co. et al.*, 60 Fed. Rep. 934. This was a bill in equity filed by United States against the E. C. Knight Company, and other sugar companies to have cancelled and declared void certain contracts made by the American Sugar Refining Company, with the other defendants, as being the result of a combination or conspiracy to monopolize or restrain interstate and foreign commerce. The sections of the act of Congress upon which the bill is founded relate respectively to restraint of trade and to monopoly, but as to both, with respect only to trade or commerce among the several States or with foreign nations. It was held that the purchase of stock of sugar refineries for the purpose of acquiring control of the business of refining or selling sugar in the United States, does not involve monopoly, or restraint of interstate or foreign commerce, within the meaning of the act of July 2, 1890.