Yale Law Journal

Volume 11
Issue 4 *Yale Law Journal*

Article 5

1902

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BANKRUPTCY—PREFERENCES—DEDUCTION OF NEW CREDITS.—IN RE SOLDOSKY ET AL., 111 FED. 511, (MINN.), AND IN RE SOUTHERN OVERALLS MFG. CO., 111 Fed. 518, (Ga.).—The Bankruptcy Act of 1898, Section 60 c. entitles a creditor who has received preferential payment on account, but who has extended further credit as therein specified, to a deduction of the amount of such new credits from the preferences that he would otherwise be required to surrender before proving the remainder of his debt, and is not limited in its application to cases where the trustee sues to recover the preferences.

The question involved in these two cases is a very important one, and one over which there has been much conflict of authority. Until the present decisions the authorities were evenly divided. The following cases supporting the above two, hold that Section 60 c. of the bankruptcy act was enacted for the benefit of all creditors who had received preferences and given the bankrupt further credit. *In re Ryan,* 105 Fed. 760; *McKey* v. *Lee,* 105 Fed. 923; *In re Deckler,* 106 Fed. 484. That Section 60 c. applies only to creditors, who have received preferences in bad faith, is held by *In re Christensen,* 101 Fed. 802; *In re Arndt,* 104 Fed. 234; *In re Keller,* 109 Fed. 118; *In re Oliver,* 109 Fed. 784.

BANKRUPRCY—PROVABLE CLAIMS—PREFERENCES.—IN RE KELLER, 109 Fed. 118 (Iowa).—When a creditor receives a partial payment from an insolvent debtor within four months prior to his bankruptcy, such payment constitutes a preference, which must be surrendered by the creditor, before he will be allowed to prove his debt against the bankrupt's estate, without regard to the knowledge or belief by either debtor or creditor of the debtor's insolvency at the time of payment.

The question here at issue has been differently decided by the federal courts, a similar case not yet having been tried out before the Supreme Court. The weight of authority, if not of reason, seems to hold a different view from that in the decision above. *In re Ratliff* 107 Fed. 80; *In re Eggert,* 98 Fed. 843; *In re Smoke,* 104 Fed. 289; *In re Hall, 4 Am. Banks,* R. 671; *In re Alexander,* 102 Fed. 464. The present case is supported by *In re Sloan,* 102 Fed. 116; *In re Fort Wayne Electric Corpus.,* 99 Fed. 400; *In re Couliam,* 97 Fed. 923.

CARRIERS—EXPULSION OF PASSENGER—ROUND TRIP—STAMPING RETURN TICKET.—SOUTHERN RY. CO. V. WOOD, 39 S. E. 894 (Ga.).—Where a round-trip ticket provides that the return coupon should not be good unless it was properly stamped by its agent, and where the railroad company failed to furnish an agent at reasonable times, *held,* that a purchaser of such ticket, upon explanation of the facts to the conductor, is entitled to ride upon any proper train, and has a right of action in tort against the railroad company for his expulsion.

There is a radical conflict of authority as to the liability of the carrier for the ejection of a passenger who tenders an invalid ticket, the invalidity of which is due to the negligence of the carrier's agents. Many courts hold that under such circumstances a passenger cannot recover for his ejection, but that it is his duty to leave the train, and bring his action simply for the actual damages arising from the breech of contract in failing to provide him with a proper ticket. *Western M. R. Co.* v. *Stocksdale,* 34 Atl. 880 (Md.); *Pouilin* v. *Ry. Co.,* 52 Fed. 197; *Hufford* v. *Ry. Co.,* 53 Mich. 158; *Townsend* v. *Ry. Co.,* 56 N. Y. 295; *Cloud* v. *Ry. Co.,* 14 Mo. App. 136. The decided weight of authority, however, is that a passenger may maintain an action in tort for his expulsion, and is not limited to an action on his contract. *N. P. Ry. Co.* v *Panson,* 70 Fed. 585; *Head* v. *Railway Co.,* 79 Ga. 358; *Sloane* v. *So. Col. Ry. Co.,* 111 Col. 668; *Hubbard* v. *Ry. Co.,* 64 Mich. 631; *Ellsworth* v. *R. Co.,* 63 N. W. 584; *Penn. R. Co.* v. *Bray,* 125 Ind. 229.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF THE LAW-STATUTE LIMITING CHARGES FOR THE USE OF PRIVATE PROPERTY.—COTTING V. GODARD, 22 Sup. Ct. 30.—The Kansas Legislature enacted that no stock yard company doing business above a certain amount should charge in excess of a certain rate on each head of stock passing through its yards. *Held,* the Act was unconstitutional.

Justice Brewer's opinion showed that there was no question as to the reasonableness of the limitation, but based his opinion on two grounds; first, that equal protection of the law would be denied the Kansas City Stock Yark Co. inasmuch as it was the only concern doing business of an amount provided for in the Act, and secondly, that this business is not of a class in which the public has such an interest as to warrant a reasonable limitation of charges by the legislature. Justice Brewer here discloses a refinement of the doctrine as laid down in *Munn* v. *Illinois,* 94 U. S. in declaring that this right of the legislature to put a reasonable limit on the charges of a business in which the public has an interest is confined to those cases in which the public has come to have this interest because the work is such as is usually performed by the state by aid of eminent domain and without a view of profit, in the mercantile sense, and that a private individual undertaking such work impliedly agrees to subject himself to such control.

CONSTITUTIONAL LAW—LAW FOR CUSTODY OF INSANE PERSONS—IN RE LAMBERT, 66 Pac. 851 (Cal.).—The insanity law of 1897 authorized the judge of a superior court on the application of a relative or friend of an alleged insane person for his commitment to a hospital, accompanied by a certificate of lunacy signed by two medical examiners, to forthwith determine the question of insanity and immediately commit the person to a hospital. *Held,* to be void, as depriving a person of his liberty "without due process of law." Gagoutte, J., *dissenting.*

While this decision renders entirely void the Insanity Law of 1897, intended to be a complete revision of insanity legislation, yet it is to be commended for its justice. Contrasted with the New York law, this act made no provision for giving the alleged insane person notice and an opportunity to be heard. The court in its opinion follows the law as laid down in New York that absence of such provisions is fatal. *Stuart* v. *Palmer,* 74 N. Y. 188.

CORPORATIONS—FOREIGN—ACTION AGAINST—FENNE—BOYER v. NORTHERN PAC. RY. CO., 66 Pac. 826 (Idaho).—*Held,* that a foreign corporation doing business in a state does not acquire a fixed residence in that state by designating an agent upon whom process may be served as required by statute.

This case well illustrates the development of corporation law. In the former case of *Easley* v. *Ins. Co.,* 38 Pac. 405, which is here expressly overruled, it was held that a foreign corporation could acquire a fixed residence within the state for the purpose of suing and being sued. This was also the conclusion in *N. T.* v. *Southern Pac. Ry. Co.,* 47 Fed. 297. But as shown in *Shaw* v. *Mining Co.,* 145 U. S. 444 and the recent case of *U. S.* v. *Schotter* 110 Fed., XI Y. L. JOUR. VFD the better opinion now is that a foreign corporation cannot acquire such residence in another state.

CORPORATIONS—UNPAID SUBSCRIPTIONS—RIGHTS OF CORPORATION CREDITORS.—HAWKINS v. DONNERBERG, 66 Pac. 691 (Or.).—A subscription agreement specified that the capital stock should be paid for within a definite time but more than six years had elapsed without payment. *Held,* that the creditors of the corporation could not enforce the liability of stockholders for unpaid subscriptions after the corporation's right to collect such subscriptions had become barred by the statute of limitations.

This conclusion rests on the theory forcibly stated in *So. Carolina Mfg. Co.* v. *Bank of State,* 6 Rich. Esq. 227, that as against the shareholder the creditor's only equity is to be subrogated to the rights of the corporation. Hence, if the rights of the corporation are lost or their action barred, the creditor is without remedy. But the celebrated case of *Wood* v. *Drummer,* 3 Mason 308, Fed. Cas. No. 17,944, and those following it, as *Payne* v. *Bullard,* 23 Miss. 88, are not in accord with this view. This latter line of decisions supports the more equitable doctrine that unpaid stock subscriptions constitute a trust fund held by the stockholders for the payment of the debts of the corporation.

CRIMINAL LAW—ACCUSATION OF CRIME—FAILURE TO DENY—EVIDENCE—PEOPLE v. AUGUR, 66 Pac. 794 (Cal.).—Defendant, after his arrest, was brought to the bedside of the decedent, who identified him as the man who shot him. The defendant fully understood the accusation but made no reply or denial. *Held,* that though defendant was under arrest, evidence of such failure was admissible.

This conclusion cannot be accepted as good law. In other states it has been held that silence of a person under arrest when accused of crime is not admissible as evidence against him, as such a person is not free to speak. It was so held in the leading case of Com. v. Kenney, 12 Metc. (Mass.) 235, and this has been followed not only in Massachusetts but in Texas, Missouri and other states.

CRIMINAL LAW—FORMER JEOPARDY—DISCHARGE OF JURY—WAIVER—SILENCE OF PRISONER—EX PARTE GLENN, 111 Fed. 257 (W. Va.).—Where a prisoner was once tried for felony by a regularly impaneled jury, which failed to agree and was discharged by the Court without the prisoner's consent or objection and without any actual necessity being shown, *held,* that the prison-

er's failure to object did not constitute a consent to the jury's discharge, and that a retrial was unconstitutional, being in violation of the fifth amendment.

There seems to be a diversity of opinion as to when and under what circumstances a disagreement by a jury will bar a second trial. Some courts hold as in the present case in regard to waiver of a constitutional right. *Caucemi* v. *People,* 18 N. Y. 129; *State* v. *Hodkins,* 35 W. Va. 250. But in *People* v. *Curtis,* 76 Cal. 57, and *Morgan* v. *State,* 3 Sueed (Tenn.) 475, it is held that where the record does not show a discharge of the jury to have been without the prisoner's consent, it will be presumed that the discharge was with his consent. As to what constitutes a sufficient necessity and in what cases a judge may use his discretion in discharging a jury without barring a second trial see the following: *Williams* v. *Com.,* 44 Am. Dec. 403; *Page* v. *State 3 Ohio* St. 229; *Com.* v. *Townsend,* 5 Allen 216; *State* v. *Honeysutt,* 74 N. C. 391; *People* v. *Jones,* 48 Mich. 554; *Green* v. *State,* 10 Neb. 102; *Bishop's Criminal Law,* Sections 1033-36.

EJECTMENT—TENANT OF LIFE TENANT—MORTGAGEE.—BARSON ET AL. V. MULLIGAN ET AL., 73 N. Y. Supp. 262.—Life tenant of certain premises leased them to defendants who also purchased an overdue mortgage covering the same. On death of life tenant, plaintiffs, the reversioners, without paying the mortgage, brought ejectment to recover possession from defendants. *Held,* defendants having gone legally into possession have right to remain as mortgagees in possession, until their mortgage is paid. Van Brunt, P. J., and Hatch, J., dissenting.

The position of the Court is that consent of mortgagor or judgment upon the mortgage are not essential to constitute a party, a mortgagee in possession under the lien theory. *Winslow* v. *McCall,* 32 Barb. 241. Yet possession must in every case originally be lawful. *Russell* v. *Ely,* 2 Black (U. S.) 575, The decision is sound in reason even if it lacks precedent; as the dissenting judges assert. *Phyfe* v. *Riley,* 15 Wend. 248.

EQUITY—JURISDICTION—POLITICAL QUESTIONS—ENJOINING VIOLATION OF NEUTRALITY RIGHTS.—PEARSON V. PARSON, 108 Fed. Rep. 461 (La.).—Private persons asked for a bill to enjoin the shipment from a port of the United States of alleged military supplies destined for use by Great Britain in the war with the South African Republics. *Held,* that the questions involved are entirely political, and can be dealt with only by the executive branch of the government.

The complainants contended that by reason of the declaration of the treaty of Washington of May 8, 1871, relative to the "Alabama claims," in which it was declared that: "A neutral government is bound not to permit or suffer either belligerant to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms," they were entitled to invoke the equity powers of this court to prevent such use. The court said that there was nothing in this treaty, when its history and purposes were considered, which would warrant the belief that the United States insisted upon inserting therein a new principle of international law. It is a well established principle of international law that private citizens of a neutral nation can lawfully sell

supplies to a belligerant. This principle has long since been settled in this country. *Sanctissima Trinidad,* 7 Wheat. 340, 16 *Am. & Eng. Enc. Law (2nd Ed.)*, p. 1161.

FELLOW SERVANTS—INJURY TO EMPLOYEE—NOTICE TO SHIFT BOSS—NO NOTICE TO MASTER—NEGLIGENCE OF MASTER—INCOMPETENCE OF SERVANT.—WEEKS V. SCHARER, 111 Fed. 330 (Col.).—The plaintiff was injured owing to the incompetence of a fellow servant, which incompetence had been reported to a shift boss, who directed a gang of men and supervised their labor, but who had no authority to hire or discharge employees. *Held,* that the plaintiff had no cause of action against his employer, since he and the shift boss were fellow servants, and notice to the shift boss was not notice to the master.

Courts have differed much as to when a superior was and when he was not a fellow servant of an inferior. The present case reviews the decisions on this subject, and draws from them these deductions, viz., that every superior servant, charged with supervising the work of men under him, unless he is authorized to hire or discharge them, is simply a fellow servant, for whose negligence the master is not responsible, and further that only that agent or officer, who has authority to select, discharge, or suspend the servants of his master, may charge his master by his knowledge of their incompetence.

GUARDIAN AND WARD—SALE OF REAL ESTATE—SPECIAL BOND—OMISSION—VALIDITY OF SALE—HUGHES V. GOODALE, 66 Pac. 702 (Mont.).—By statute, it is provided that a guardian authorized to sell real estate, must, before sale, give bond to a probate judge. *Held,* that a sale by a guardian duly appointed and qualified, but who ommitted to give the special bond required was not void.

The provision that a sale bond shall be given is one of great importance to the rights of the wards and it has been generally held that such a provision is mandatory and not directory only, the bond being a condition precedent to validity of sale. *Am. & Eng. Enc.,* 3 ed. XV., p. 61; *Williams* v. *Morton,* 38 Me. 47. But some of the cases uphold the contrary view as expressed here. *Arrowsmith* v. *Harmonnig,* 42 Ohio St. 254.

MASTER AND SERVANT—LIABILITY OF CITY—COLLISION.—THE MAJOR REYBOLD, 111 Fed. 414 (Penn.).—A municipal corporation is liable in a court of admiralty for a collision, caused by the negligence of its servants in charge of an ice-boat, which it owned, and which was being operated under the directions of the corporation, it being immaterial whether such boat was employed in a municipal service or under orders which were ultra vires.

It seems well settled in this country that in courts of law municipal corporations are not liable for the negligence of its agents in doing acts ultra vires. *Thayer* v. *City of Boston,* 19 Pick. 516; *Smith* v. *City of Rochester,* 76 N. Y. 506; *Seele* v. *Deering,* 79 Me. 343; *Spring* v. *Hyde Park,* 137 Mass. 554. This case, however, is brought in a court of admiralty, and the present decision is based almost solely on *Workman* v. *City of N. Y.,* 179 U. S. 552, in which four of the judges dissented from the majority opinion. That case decided that local decisions of a State Court could not abrogate maritime law, and that where the relation of master

and servant existed between the owner and master of a vessel, the owner even though a municipal corporation was liable, under the rule of respondeat superior, for the negligence of his servants. See also *The Sottawanna,* 21 Wall. 572-74 and *Butler* v. *Boston Steamship Co.,* 137 U. S. 527.

MORTGAGES—REFORMATION—MISTAKE—DESCRIPTION OF PROPERTY—HERRING V. FITTS, 30 So. 804 (Fla.).—When a married woman, intending to convey or mortgage her real estate, executes a proper instrument, in conjunction with her husband, with all the formalities required by law, but by mistake an erroneous description of the land is inserted, a court of chancery has power to correct the mistake.

The authorities are in open conflict on this point. While this conclusion is not without support, yet the majority of the courts seem to hold with *Williams* v. *Walker,* 9 I. B. D. 576, that a married woman's deed, if it is invalid at law is equally invalid in equity. But it is to be noted that this latter rule is followed by the Florida court whenever a personal judgment on a contract is sought against a married woman. *Dolliver* v. *Snow,* 16 Fla. 86.

PARTITION—PARTIES—TENANTS IN COMMON—ADVERSE CLAIMANTS.—SATTERLEE V. KOBBE ET AL., 72 N. Y. Supp. 675.—Plaintiff brought action for partition against his co-tenants and also made defendants six others who claimed title adversely. *Held,* persons claiming title to whole property adverse to plaintiff and co-tenants cannot be made parties and compelled to litigate their claims. McLennan, J., dissenting.

The tendency of legislation is to alter the general equity rule and allow adverse claimants to be made parties and questions of title to be tried in partition suits. *Thompson* v. *Holden,* 117 Mo. 118; *Martin* v. *Walker,* 58 Cal. 59; *Trainor* v. *Greenough,* 145 Ill. 543. Several recent New York cases have also taken the same position. *Best* v. *Yeh,* 82 Hun. 232.

TREATIES—PROCEEDINGS FOR RESTORATION OF DESERTING SEAMEN—TREATY WITH GREAT BRITAIN.—UNITED STATES V. KELLY, 108 Fed. Rep. 538 (Oregon.)—Defendants forcibly took from the custody of a deputy United States Marshall four men who had been adjudged deserters from an English ship by the United States commissioner, who ordered the marshall to restore the deserters to the ship under the direction of the British consul. *Held,* that the marshall acted as the consul's agent, so that the defendants were not guilty of obstructing an offcer of he United States while attempting to execute a legal or judicial writ.

The treaty between the United States and Great Britain gives the British consul power to require from the proper authorities the assistance provided by law for the apprehension of deserting seamen. The only assistance provided by law for this purpose is found in Section 5280 of the Revised Statutes, which gives the proper officer authority to deliver deserting seamen to the consul. In this case, the marshall was in the execution of an order from the British consul, which required him to restore the seamen to the master of the vessel, a thing not within the power of the commissioner to order. The officer, therefore, was obstructed, not in the performance of a duty enjoined by law, but in the performance of an act directed by the British consul.