

Recent Legal Decisions

LIBEL—EXCESSIVE DAMAGES—UNSUPPORTED STATEMENTS OF COUNSEL—NEW TRIAL.—A judgment for \$20,000 damages for an alleged libel published in the New York *Herald* was recovered by the plaintiff in the case of Malloy vs. Bennett, brought in the United States Circuit Court, Southern district of New York, and on a motion or a new trial, on the grounds that the verdict was excessive, the point was made that the Court had misled the jury in refusing to instruct them that they should disregard certain statements made by the plaintiff's counsel upon his opening of the case which he did not sustain by evidence. A new trial was granted on that ground. Judge Wallace, in the opinion, said: "The refusal to give the charge requested is not in view of the other instructions given, error, and in an ordinary verdict would not deserve attention, but with this verdict it starts the suggestion that the jury may have misconceived the reason why it was withheld. Solicitous that the defendant shall have the full and exact measure of justice to which he is entitled, and doubting whether the large verdict against him may not have been influenced by the misapprehension on the part of the jury, a trial before a second jury is deemed just in the interest of justice."

PROMISSORY NOTE—GUARANTY—ABSOLUTE CONTRACT.—Upon two promissory notes there was the following indorsement: "For value received we guarantee the payment of the within note, and hereby waive protest, demand and notice of non-payment thereof.—W. S. B. & Co." The notes were not paid and the indorsers were sued, and they defended on the ground that they could not be held liable until after a failure of the maker to pay or satisfy a judgment against him; but the plaintiff recovered. The defendants claimed the case—Bloom vs. Warder—to the Supreme Court of Nebraska, by whom the judgment was affirmed. Judge Cobb, in the opinion, said: "The indorsement is an absolute contract for a lawful consideration that the money expressed in the note shall be paid at the maturity thereof, at all events, and depends in no degree upon the demand of payment of the maker of the note, or any diligence on the part of the holder. This case must be distinguished from cases of guaranty of the collection of notes, in which class of cases it has been held that before an action would lie against the guarantor prompt and exhaustive steps must be taken to collect the money from the maker."

MUNICIPAL CORPORATION—DEFECTIVE PLAN FOR SIDEWALK—INJURY FROM FALL ON ICE.—In constructing a sidewalk an inclination of seven and half inches was given in the width of six feet, and a passer-by slipped and fell on some ice formed from water spilled on the pavement, and was injured. A suit was brought against the city—Urquhart vs. the City of Ogdensburg—to recover damages for the injuries, and the plaintiff recovered. The city appealed to the Court of Appeals of New York, by which the judgment was reversed. Judge Miller, in the opinion, said: "The rule laid down by Judge Cooley in a late case in Michigan is that which controls this case. He said: "In planning public works a municipal corporation must determine for itself to what extent it shall guard against possible accidents. Courts and juries are not to say it shall be punished in damages for not giving to the public more complete protection; for that would be to take the administration of public affairs out of the hands to which it has been intrusted by law. What the public have a right to require is that in the construction of their works after the plans are fixed upon, and in their management afterward, due care shall be observed; but negligence is not to be predicted of the plan itself. This rule has been held to be applicable as well to work done as to a design proposed. The approval of a plan when completed is as much a judicial act as the design of it. It is of no consequence that the judgment was exercised at the different times so long as it comprehended the single plan."

STOCK LOANED—BORROWER USING IT AS COLLATERAL SECURITY—RIGHTS OF HIS CREDITOR.—A, an owner of shares in a corporation, lent the certificates for it to B, signing the power of attorney on the back of the certificates in blank. This power contained the usual authority to sell and transfer the stock. B used this stock as security for a loan from G, giving him the certificates, with the powers of attorney as he had received them from the owner. The loan to B was not paid, and after the death of A, the owner of the stock, his administrator filed a bill in equity to have the stock in G's hands declared the property of A and to compel the delivery up of the certificates.

The Court below decided in favor of G, and the case—Otis vs. Gradner—was appealed to the Supreme Court of Illinois, which also decided in G's favor.

The Chief Justice, Scott, in the opinion, said: "The rightful possession of the certificates with the blank indorsements and powers of attorney thereon would give the holder authority to fill up the blanks and have the stock transferred to him on the books of the corporation. Had that been done it would have passed the legal title to the assignee and equity will certainly grant no relief to the assignor; no relief against the sale or pledge of the stock in good faith, although the assignee may never choose to give the stock transferred to him under the by-laws of the corporation."

RAILROAD NEGLIGENCE—FREE PASS—STIPULATION AS TO INJURIES.—A passenger who was riding on a free pass on a railway train was injured by a collision with a special train of the company. In an action to recover for the injuries the company set up two defenses: 1. The condition on the back of the "pass," that the person accepting this free pass assumes all risk of accident to his person or property without claims for damages on this corporation. 2. That as the "pass" was illegal under the State Constitution of 1873 the plaintiff could not be permitted to use it, and was therefore a trespasser on the train. The plaintiff recovered, and the company carried the case—Buffalo, Pittsburg and Western Railroad Company vs. O'Hara—to the Supreme Court of Pennsylvania, which affirmed the judgment. The Court said: "A common carrier cannot protect himself by special contract from liability for negligence. Against his extraordinary liability as a carrier he may protect himself by such a contract. If the pass were unlawful it should have been taken up and fare demanded; otherwise there can be no claim for a trespass."

Earthquakes and Pagodas.

A notable instance of the Japanese understanding of the conditions under which they exist occurs in the manner of giving security to pagodas. Pagodas are often of great height, yet many have existed for seven hundred years, and have withstood successfully the many vibrations of the ground, which must have inevitably achieved their overthrow had they been erections of stone or brick. When I first ascended a pagoda I was struck with the amount of timber employed in its construction; and I could not help feeling that the material here wasted was even absurdly excessive. But what offended my feelings most was the presence of an enormous log of wood in the centre of the structure, which ascended from its base to its apex. At the top this mass of timber was nearly two feet in diameter, and lower down a log equally large was bolted to each of the four sides of this central mass. I was so surprised with this waste of timber that I called the attention of my good friend Sakata to the matter, and especially denounced the use of the centre block. To my astonishment he told me that the structure must be strong to support the vast central mass. In my ignorance I replied that the centre part was not supported by the sides, but upon reaching the top I found this monstrous central mass suspended like a clapper of a bell; and when I had descended I could by lying on the ground, see that there was an inch of space intervening between it and the earth which formed the floor of the pagoda. The pagoda is to a Buddhist temple what a spire is to a Christian church; and by its clever construction it is enabled to retain its vertical position even during the continuation of earthquake shocks, for by the swinging of this vast pendulum the centre of gravity is kept within the base. I now understood the reason for that lavish use of timber, which I had so rashly pronounced to be useless; and I see that there is a method in Japanese construction which is worthy of high appreciation. In the absence of any other instance, the employment of that scientific method of keeping the pagoda upright shows how carefully the Japanese have thought out the requirements to be met.

Georgie Didn't Take the Cake

Little Georgie had been sick, and was consequently placed upon a close diet. Feeling some better he begged for just one piece of cake. "Does your head ache?" asked his mother. "No, mamma," Georgie replied eagerly, "not one mite." "Do you feel bad at your stomach?" "No, I feel first rate." "Well, then," said his mother, "I guess you had better not have any." Fancy Georgie's feelings, and wonder what would have been the maternal verdict had his head ached and his stomach felt bad.

A very fashionable material for dressy home toilets is cream-white serged flannel trimmed with long loops and ends of white moire or satin ribbon. For young married ladies this fabric is made into tea-gowns and Grecian robes with trimmings of lace and white silk embroidery or braiding.

Fashionable Fancies.

In Paris shoes and stockings must match the dress.

Velvet basques grow more and more in popular favor.

The new muslins are soft-finished, without any starch or size.

Sun's veiling will continue a standard material for summer wear.

Ashes of roses has made its appearance among the aesthetic colors.

Irregular points called coques' combs edge the new Ottoman ribbons.

Beaded fringes figure largely among importations of new trimmings.

Linen collars are straight clerical bands, fastened with a jeweled button.

Birds and fruits form a part of the design of many of the dressiest satens.

Robe dresses with embroidered flounces appear among spring importations.

The transit of Venus design is one of the new patterns seen on spring satens.

New satens appear in the fashionable and aesthetic colors so popular at present.

Four capes and colors are fastened with long ribbon strings tied in a full, flowing bow.

Rhine pebbles, set in silver, form very handsome combs, ball-bars, daggers and crescents for the hair, and are much worn for evening.

A large rosette or bow of velvet ribbon, with a square or horse-shoe buckle of Strauss pebble, is worn on the left side of the dress just below the waist.

Crushed straw rry, cerise, scarlet and garnet shades are worn with black satin dresses.

Wide flounces of antique lace, and laces of every description which have been out of style for years—Chantilly, Honiton, Guipure, Fienish point and the like—are this season revived, and are used to drape courtly dinner and reception dresses for the stately dames and dowagers.

Water repellent silk, which is neither spotted nor rendered flimsy by water, is the latest novelty in silks. It comes in all shades, for day and evening, and will, no doubt, achieve a great success for watering-place toilets. The silk is a soft twilled fabric, something like surah.

Heads of Limoges enamel, mounted in silver setting, are the latest French fancy for brooches, wherewith the fashionable young lady fastens her large, bright-hued gypsy kerchief of silk, which she arranges over her dainty shoulders, and knots in front low on the corsage.

Wide and full jabots of coquille ruches of lace, reaching from the throat to the hem of the dress and also down the side seams of the front breadths, from half way up the length of the seam to the bottom of the skirt, are seen upon newly-imported house robes of cashmere and vigogne.

Society girls have little flat satchels of silk or satin, delicately scented, and decorated with a bit of their own hand-painting, either floral or ornamental. These they suspend from the waist by a knot and ends of narrow ribbon. Into this case they slip the card on which is printed the order of dancing. Down the pack of the case are fastened small loops of ribbon, which serve to hold a tiny pencil.

A stylish house dress is made of dark Russian gray cashmere. The skirt is laid all the way down in hollow plaits devoid of trimming. The bodice is pointed, front and back, the paniers are arranged in heavy plaits, rounding over the hips and joining the lightly puffed drapery in the back. The front of the bodice, the edges of the paniers, and half the length of the long, close sleeves are trimmed with an elaborate pattern in braidwork.

He Saw the Elephant.

An Indian merchant took an elephant to a fair. No sooner had he arrived than he noticed a European, who, without saying a word, walked round and round the elephant, examining it attentively on all sides. The merchant addressed several questions to him without eliciting a reply. An intending purchaser appeared on the scene, and the merchant turned eagerly to the European and whispered in his ear: "Don't say a word till I have sold the elephant, and I will make you a handsome present."

The stranger nodded assent, and remained mute as before. When the bargain was concluded and the money paid, the merchant handed over ten per cent. of the purchase money, and said to the mysterious personage:

"Now you can speak; I want you to explain how you came to notice the blemish in the left leg of my elephant, which I thought I had managed entirely to conceal?"

"A blemish!" replied the silent one. "I discovered nothing; it is the first time I ever saw an elephant in my life, and I examined it out of sheer curiosity."

Wonders of the Yellowstone.

James Carroll, a well known citizen of Helena, Montana, recently made a remarkable discovery in the Yellowstone Park. He says: "While waiting for many companions, I dismounted and sat down on a rock with my Winchester lying across my knees. Around me was a scene of grandeur. Lwas in a deep gorge which led down into the valley. On each side the gray cliffs towered to a magnificent height. Behind me was the steep path down which I had come through a thick growth of stunted pines, while in front of and below me was the gorge (a quarter of a mile wide, perhaps), its bottom covered from the foot of one cliff to the other with a heavy growth of timber. After resting awhile I stood up and listened, expecting to hear my friends approaching. But not a sound met my ear. The stillness was so deep that a feeling of uneasiness came over me, and I attempted to call out to my companions. But although I opened my mouth and went through all the details of a good, lusty yell, not a sound could I make. I tried again, and with the same result. I couldn't understand it. My horse, which had been standing quietly by me, noticed a movement of the bushes near by, and probably thinking her equine friends were near, attempted a whinny. It was a sad failure, for she could not make a sound. She was evidently as much astonished as I, and became uneasy."

"I was on the point of mounting and starting back up the mountain, when a fierce-looking wild animal of the panther tribe stepped out of the bushes within about thirty feet of where I was standing. It saw me instantly and stooped to spring at me. I hastily brought my gun to my shoulder and—fired, shall I say? No. I pulled the trigger, but there was no report, although the smoke puffed out the end of the gun and the wild beast fell as if struck. It immediately jumped up and hobbled into the brush, but leaving a trail of blood behind it. I was now convinced in my former suspicion that I was in a land of enchantment, and although not at all superstitious under ordinary circumstances, I would not have been surprised now to see the devil himself jump out from behind a rock. I immediately got on my horse and started back up the path."

"In about a hundred yards I met my companions, who were all standing close together trying to talk to each other, but although they seemed to be shouting at the top of their voices, they were really as dumb as the dead. Although I felt that Old Nick himself was just as likely as not to be on my trail, I could not help laughing at their odd gestures, grimaces, and red faces from their efforts at making themselves heard. They were pretty badly frightened, too. I passed by them, and beckoned them to follow me back the way we had come. No attempt was now made at conversation. After going a quarter of a mile in silence I lost my way. One of my comrades, who seemed to think he knew the way back to the trail, came up close to me, and bending over so that his mouth was close to my ear, with a superhuman effort yelled: "Let me lead!" His shout nearly burst my tympanum. We had got out of the charmed air."—*Helena Herald.*

Chestnuts and Chesnut Trees in Italy.

Signor Schira, Inspector General of Forests, in an interesting report says among other things that the famous chestnut tree on Mount Aina, which still lives, measures 64 metres in circumference at its base. Its age is estimated differently—some attribute to it 4000, some 2000 years, and recent studies give it at least 800 years. There are some other famous chestnut trees in Italy, notably one in Montanista, in Tuscany. The deplorable custom of late years of destroying the forests has deprived Italy of many noble chestnuts, but it is to be hoped they will be protected by the new scheme of the Minister of Agriculture for rewooding the denuded mountains. In the north of Italy the chestnut grows at an altitude of from 400 to 900 metres above the level of the sea; in sunny situations even at 1200. In the south the zone of growth is between 500 and 1200 metres above the level of the sea.

Almost all the Italian provinces cultivate the chestnut, these trees occupying a total superficie in Italy of about 469,114 acres. The most are found in the provinces of Lucca, Sondrio and Genoa. In Lucca, for example, 182.52 per thousand acres of the territory are occupied by the chestnut. The total annual produce of chestnut (fruit) is about 5,768,436 quintals. Those of Cuneo are best both for quality and quantity. The exportation is about 70,000 quintals, at a profit of about 2,000,000 francs. There are several methods of preserving the fruit—from sugaring the chestnuts to slightly-boiling and then drying them, or laying them, when newly gathered in November, among perfectly dry sand in vases, and burying the vases in dry earth, when they will remain fresh and good till the next June.

Tree Culture—Acclimatization

Charles M. Hovey writes an interesting article to the Massachusetts *Ploughman* which contains many valuable suggestions to tree planters. He remarked in a former article that all the attempts to acclimate in the East the trees of the Pacific coast have ended with total failure, which brings us to the subject of acclimatization, one which has attracted a great deal of attention, and the formation of societies for that especial object, notably that of Paris. But so far as any facts have been ascertained, without a single practical result.

We are all familiar with numerous trees and shrubs which have been cultivated abroad beyond the memory of any one which remain through the hundreds of years the same to-day that they were at the earliest period of which we have any knowledge. Take for instance the peach tree. We know not just how many millions have been produced from seed in our own country; but we do know it reaches into the hundreds, yet the peach to-day is no harder than it was a hundred years ago, and notwithstanding the fact that the trees have been grown from seed produced from Vermont to Florida and west to the Pacific coast. There have been varieties, such as double-flowering varieties, some of them direct from China, weeping varieties, and kinds with purple or dark-colored foliage, but the hardness, of the tree remains precisely the same; they are uncertain in our climate, and the buds are destroyed by any exceptional winter. No better test could be named of the futility of the attempt to make a slightly tender tree quite hardy by cultivation, whether from a colder or warmer region. Varieties are endless. We have white-fleshed peaches and yellow-fleshed peaches, and varieties of every shade of excellence, but no additional hardness.

Another instance is the Rhododendron (R. arboreum) and pontic azalea (A. pontic), the former from the high elevation of the Himalaya mountains, was introduced to England years ago, and cultivated as a greenhouse plant. It is still precisely the same, or not even resisting the winters of the English climate, only in the warmer places on the southern coast. But when our native, R. Catawbiense, was introduced and fertilized between the two, then came a greater or less degree of hardness; and cross fertilization between the several kinds have produced a race of superb varieties, some of which are nearly or quite hardy in our severe climate, but the large portion only half hardy. The original R. arboreum, and all the seedlings obtained from it pure, without admixture of the American species, are still only half hardy plants. The pontic azalea is the same; in our severe winters it loses its flower buds, just like the peach, but after mild winters it flowers freely. It was only when our native nulliflora and calendulacea were introduced and fertilized with the pontic, that that superb race was obtained known as gheut azaleas.

Looking among California trees we find the same effect, except in one solitary case. The well known Chinese labor vitz (Thuja senensis) is not hardy in our climate, or one of its varieties known as Thuja aurea. It is true they will live along for some years, but the branches are more or less killed and so injured that they are anything but ornamental. The Araucaria imbricata, that very remarkable tree, has resisted all attempts at acclimation in our climate, notwithstanding the fact that the seed was gathered from trees where the snow was often a foot deep; nothing short of absolute protection could keep them alive.

The Douglass fir of which Mr. Robinson speaks so highly is indeed a handsome and most valuable tree, and it is to be regretted that it has not yet been found thoroughly hardy only in one place, although the author characterizes it "as the most interesting and valuable of all exotic trees recently introduced into Massachusetts," and "its introduction worth many millions of dollars to the State." Now I do not know of any fine specimens except those of Mr. Hunnewell on his fine grounds at Wellesley. I have cultivated it for forty years, though the trees were always introduced from England, but I have never been able to preserve even one tree. Where the Colorado specimens fifteen feet high are growing the author does not tell us. Mr. Hunnewell's specimens are of his own raising from one tree, which by particular care grew large enough to produce seed; from this tree have been grown the very beautiful specimens which ornament his group of coniferous trees. Experiments with the Douglass fir in Massachusetts should be conducted with much caution, for I fear that the attempt to acclimate it would end like other Pacific Coast trees—an utter failure. Still I would not wish to be considered as discouraging such attempts, but that no extensive planting should be made until we know something more of its hardness in our severe climate.

The great trees of California (Sequoia gigantea) have not yet been

found to succeed in our climate, though seeds taken from the highest recorded elevations have been tried. It is, or should be, the object of the Arnold Arboretum to try these experiments, and give the public the advantage of the patient endeavors of its professors, the skill of its gardeners and the best opportunities of general culture (not special care and protection), to ascertain the exact hardness of this and other trees, of which a list is given for Massachusetts. The numerous losses I have made in the attempt for nearly half a century to acclimate all the coniferous trees of which there was any hope of succeeding, judging from their adaption to the English climate, induce me to utter a word of caution to all cultivators (who have not the wealth to experiment) to plant them sparingly, and not plant at all unless they have a subsol as dry and localities as fortunate as those of Mr. Hunnewell.

The Capressina Lawsonina is an elegant tree, and fortunately, owing to three or four successive mild winters, our trees attained a size large enough to perfect seeds. These we planted and a handsome lot of plants obtained, one of which I selected as an erect and distinct variety with glaucous or bluish foliage (C. Hovey), but after caring for it in the best manner four or six years, it failed to stand our severe winters.

"For more than one hundred years public spirited citizens have been experimenting with exotic trees, in different parts of the country; and if we know now what trees to plant and what to omit, it is because such experiments have been made."

This is certainly true of the last fifty years, but we have gained but little knowledge, and from the exceptional causes of location, soil treatment, etc., we can add but very slowly to our fund of information trustworthy enough to plant extensively all that are so often commended as hardy.

Married Folks Would be Happier

If home trials were never told to neighbors.

If they kissed and made up after every quarrel.

If household expenses were proportioned to receipts.

If they tried to be agreeable as in courtship days.

If each would try to be a support and comfort to each other.

If each remembered the other was a human being, not an angel.

If women were so kind to their husbands as they are to their lovers.

If fuel and provisions were laid in during the high tide of summer.

If both parties remembered that they were married for worse as well as for better.

If men were as thoughtful of their wives as they are of their sweethearts.

If there were fewer silk and velvet street costumes and more plain, tidy house dresses.

If there were fewer "please darlings" in public and more common manners in private.

If wives and husbands would take some pleasure as they go along, and not degenerate into some toiling machines. Recreation is necessary to keep the heart in its place, and to get along without it is a big mistake.

Clips.

The United States eats annually \$3,000,000 worth of peanuts.

Mr. Bearden, aged 104 years, and Mrs. Lee, 40 years of age, were united in marriage in Bibb county, Alabama, recently.

The gold-mining fever has broken out anew in Georgia, and almost every paper in the State has something to say about the yellow metal.

A Carson (Nev.) man, who was divorced from his wife twenty years ago, left for California recently to remarry the partner of his early manhood. He has neither seen his former wife nor his children during all this time.

Less than a century ago, on July 13, 1788, France, Belgium, Holland, and Switzerland were swept by a cold wave so intense that the Lake of Geneva was covered with ice three-quarters of an inch thick. If those countries had been well wooded the disaster, it is thought, would not have occurred.

"Spinsters' dinners" is a new form of hospitality which will be introduced this season. Betrothed girls, on the eve of their marriages, will give farewell dinners to their maiden friends. Men will be altogether absent, and the only matrons present will be the mothers of the future bride and groom. Failing a mother, a maiden aunt, or even a grandmother, will be invited.