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## REVIEW OF RECENT DECISIONS

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ACTION—REFUSAL OF RULING OF TRIAL COURT HELD PROPER—  
APPEAL AND ERROR—CREDIBILITY OF WITNESS NOT REVER-  
SIBLE—COSTS—DOUBLE COSTS AWARDED AGAINST PLAINTIFF  
WHERE APPEAL IS FRIVOLOUS.

*Mantabano vs. Goldman*, 145 N. E. 459.

This action was originally commenced in contract or tort. Plaintiff waived the count in contract and relied on tort. The count alleged the conversion of a chattel, although the evidence conclusively showed that there was a sale of that chattel by the plaintiff to the defendant. The finding was for the defendant. Plaintiff then appeals, setting forth the following errors: first, that plaintiff was entitled to judgment, second, that the trial court ruled against the credibility of one of plaintiff's witnesses. The court held that the former presented no error of law, and that the latter was entirely in the discretion of the trial court; and as the appeal is frivolous, double costs were awarded against the plaintiff.

CARRIERS—INJURIES TO STOCK WHILE IN TRANSIT—MEASURE OF  
DAMAGES—RECOVERY MUST BE ON CAUSE OF ACTION PLEADED.

*Morrow et al. vs. Wabash Ry. Co.*, 265 S. W. 851.

This was an action to recover damages for loss sustained to plaintiff's cattle. By a written contract, defendant had agreed to ship cattle from Macon, Missouri, to New Orleans, La. When the shipment arrived at East Saint Louis, the connecting carrier refused to trans-ship the cattle on to New Orleans due to their maimed and bruised condition, and consequently the plaintiff was forced to sell them at a loss in East Saint Louis. Plaintiff seeks to recover the difference between the value of the stock before they were delivered to the defendant for shipment and their value when they arrived in East Saint Louis. The Court refused to allow the claim for such measure of damages, saying, "Under the circumstances the measure of damages was the difference between their value at the time and place where they should have been delivered, to wit, New Orleans, and their reasonable market value in East Saint Louis, less the unpaid freight." Plaintiff instead of attempting to hold the defendant on its common law liability introduced live stock contract limiting the defendant's common law liability, and were

thus placed in the position of declaring on one cause of action and attempting to recover on another, as this special contract was inconsistent with the common law liability of defendant."

#### CONTRACTS IN RESTRAINT OF TRADE—CONSTITUTIONAL LAW.

*East Jersey Water Co. v. City of Newark, et al.* (New Jersey Chancery, July, 1924) 125 Atl. 578.

Complainant and Respondent, among others, entered into a contract whereby complainant should construct and turn over to respondent a system of waterworks, and restricting the territory in which water could be sold. After taking over the Newark system, that city having an excess supply, sold water to two outlying towns neither of which was within the territory specified, and both of which could otherwise have been served by complainant.

The argument arose on a motion to strike out the bills of complaint.

Held, by the court that the territorial restriction in the contract was void as being in restraint of trade since it was conceived with a necessity of life, to wit, water. Since the water delivered by the city in violation of the territorial restriction is definitely ascertainable in gallons at a specified rate, there is no grounds for equity jurisdiction, and the complainant has an adequate remedy at law.

Although there was a prior suit involving the same question, the doctrine of *res adjudicata* does not apply, the parties not being identical in the two cases.

As to the only constitutional point, it was held that where a contract in its inception was void as being in restraint of trade, the provision as to the impairment thereof has no application.

#### CRIMINAL LAW—WRIT OF PROHIBITION.

*State ex rel. Meininger v. Brewer, Circuit Judge.* (Supreme Court of Missouri, July, 1924) 264 S. W. 1.

Relator had been convicted of embezzlement, sentenced, and had appealed. While his case was pending on appeal, the circuit court had taken steps to try relator on indictments for felony which had been found before the conviction for embezzlement. He thereupon began this proceeding in prohibition, and the issue arises whether the circuit court has jurisdiction to try the relator for the other offenses during pendency of his appeal. Relator relies on Sec. 3697 Rev. Stat. 1919.