The purchase was at a rate of interest not shown to be excessive. The amount of the capital stock of the bank is not stated. It appears that it was a national bank, organized under the laws of the United States, and doing business in Boston. It was subject to the supervision of the government officers, and to the various regulations provided in the statutes for such institutions. Its stock then sold at par in the market; and occasionally, at about that time, at a small premium. It has always hitherto been considered in Massachusetts that investments of trust funds might properly be made in the shares of banks incorporated under the authority of this commonwealth or of the United States. Looking, as we must, simply at the circumstances of the case which are submitted to us, a majority of the court do not think the trustee ought to be held responsible for the loss on the purchase of the certificate.

4. The various matters of evidence which were objected to were competent. Decree accordingly.

(142 Mass. 29)

NASH, Petitioner for *Mandamus*, *v.* LATHROP.

(*Supreme Judicial Court of Massachusetts.* Suffolk. May 11, 1886.)

1. JUDICIAL DECISIONS—OPINIONS OF JUSTICES—RIGHTS OF THE PUBLIC.
   The public has the right of free access to the opinions of the justices of the supreme judicial court after they are delivered to the reporter of decisions.
2. SAME—CONTRACT—ST. 1879, CH. 280, CONSTRUED.
   St. 1879, *c.* 280, and the contract made in pursuance of it, do not confer upon Little, Brown & Co., the exclusive right of first publication of the opinions of the justices, and do not authorize the reporter to refuse to the public the right to examine and procure copies of the opinions.
3. SAME—SCOPE OF DECISIONS—STATUTES.
   The decisions and opinions of the justices are the authorized expositions and interpretations of the laws, which are binding upon all the citizens. They declare the unwritten law, and construe and declare the meaning of the statutes. Every citizen is presumed to know the law thus declared, and justice requires that all should have free access to the opinions, and that it is against sound public policy to prevent this, or to suppress and keep from the earliest knowledge of the public the statutes, or the decisions and opinions of the justices. Such opinions stand, upon principle, on substantially the same footing as the statutes enacted by the legislature.
4. SAME—POLICY OF THE STATE.
   The policy of the state has been that the opinions of the justices, after they are delivered, belong to the public.

The facts appear in the opinion.

R. R. Bishop, *Augustus Russ*, *A. M. Howe*, and *Geo. T. Lincoln*, for petitioner.

W. G. Russell and *G. Putnam*, for respondents.

MORTON, C. J. This is a petition for a *mandamus* to compel the reporter of decisions to allow the petitioner, who is the publisher of the Daily Law Record, a daily paper devoted to legal intelligence, to examine and take copies of the opinions and decisions of the justices of this court, which are in the regular custody of the reporter. The answer sets up that, by virtue of St. 1879, *c.* 280, and of a contract made in pursuance thereof, Little, Brown & Co. have the exclusive right of pub-

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lication of the reports of the decisions of the supreme judicial court, and respondent has no right to publish the same, or furnish the same for publication, without the consent of Little, Brown & Co.; that heretofore the petitioner has been permitted, by the respondent, with the consent of said Little, Brown & Co., to take abstracts of opinions for publication, but that recently the West Publishing Company, of St. Paul, Minnesota, and the Lawyers' Co-operative Publishing Company, of New York, and other foreign publishers, have availed themselves of the liberty thus granted the petitioner to publish the decisions of the court in the form of Reports, for sale to the profession, in competition with the authorized series of Reports, and to the injury of said Little, Brown & Co., and to the prejudice of the rights secured them by said contract and statute; and that for this reason the respondent, at the request of said Little, Brown & Co., has refused, and claims that he is bound to refuse, petitioner the privilege of copying and abstracting opinions for publication. The presiding justice before whom the petition was heard has found that the statements of fact in the answer are true.

The questions whether the state has an absolute property in the opinions of the justices after they are filed with the reporter; whether it has a copyright in such opinions which it can exercise itself, or assign to an individual; and whether a copyright on the volumes of the Reports covers such opinions so as to prevent any person from publishing them after they have been published in the volumes of the Reports,—are not necessarily involved in this case. It may be decided upon a narrower question, which is whether the state has granted to Little, Brown & Co. that exclusive right of the first publication of the opinions of the justices; in other words, whether it has conferred upon that firm the power of saying that the opinions shall not be made public until they are published in their reports.

The decisions and opinions of the justices are the authorized expositions and interpretations of the laws, which are binding upon all the citizens. They declare the unwritten law, and construe and declare the meaning of the statutes. Every citizen is presumed to know the law thus declared, and it needs no argument to show that justice requires that all should have free access to the opinions, and that it is against sound public policy to prevent this, or to suppress and keep from the earliest knowledge of the public the statutes, or the decisions and opinions of the justices. Such opinions stand, upon principle, on substantially the same footing as the statutes enacted by the legislature. It can hardly be contended that it would be within the constitutional power of the legislature to enact that the statutes and opinions should not be made known to the public. It is its duty to provide for promulgating them; while it has the power to pass reasonable and wholesome laws regulating the mode of promulgating them, so as to give accuracy and authority to them. We are not called upon to consider what is the extent or the limitation of this power, because we are satisfied that it was not the intention of the legislature, in the statute upon which the respondent relies, to limit the previously existing right of the citizen to

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have full access to the opinions, or to confer upon Little, Brown & Co. the right to restrain any persons from procuring copies of them, whether for their own use, or for publication in the newspapers or in law magazines or papers. The policy of the state always has been that the opinions of the justices, after they are delivered, belong to the public.

The office of reporter of decisions was first established by St. 1803, *c*. 133. His duties were to obtain true and authentic reports of the decisions of the supreme judicial court, and to publish them annually. He was paid a salary by the commonwealth, "which, together with the profits arising from the publication of his said Reports, shall be full compensation for his services." These provisions, with a change in the amount of the salary, were continued through the two revisions of the law, until 1871. At first the practice of the justices was to deliver their opinions orally, and the reporter took minutes for his Reports. But these opinions were public, and any person present might take minutes and publish them. The statutes did not provide, and no claim was ever made, that the reporter had an exclusive right to the first publication. In later times the practice has been for the justices to write out their opinions, and file them with the reporter, though it occasionally happens that opinions are delivered orally from the bench, and minutes taken by the reporter for his Reports. But it has always been customary for the reporter to allow the public free access to the opinions, and to furnish copies upon receiving a reasonable compensation.

Up to 1874 no public office was provided for the reporter, but he was obliged to keep his papers at his private office, or at his house. In that year, owing undoubtedly to the difficulty felt by the public in the exercise of the right to examine the opinions of the justices, the legislature passed a statute entitled "An act to provide for the custody and examination of the opinions of the supreme judicial court before their publication in the reports." St. 1874, *c*. 43. It provided that the reporter shall keep in some safe and convenient place, to be provided by the county of Suffolk, in the city of Boston, the written opinions of the court in all law cases argued in the several counties until their publication in the Reports, and also his dockets, and copies of papers in such cases, and shall afford due facilities for their examination; for which purpose he shall be allowed a sum not exceeding $1,500 per year, to be expended in clerk hire and incidental expenses. This statute is a clear recognition of the common right to the knowledge of the opinions of the justices; the object of its enactment being to furnish additional facilities for the exercise of this right. This statute was in substance re-enacted in the Revision of 1882, and is now in force. Pub. St. *c*. 159, § 61.

It is in view of this course of legislation, and of this established policy of the commonwealth, that we must construe St. 1879, *c*. 280, upon which the respondent relies. It provides that the secretary of the commonwealth shall make a contract with Little, Brown & Co. for the publication of the Reports on the terms therein contained. By the first section that firm is to publish the Reports promptly, according to a standard therein fixed, to sell them for a fixed price, and to pay the reporter a

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salary for and towards his compensation and clerk hire. The second section provides that, by the terms of the contract, "the reporter of decisions of the supreme judicial court shall not be required or allowed to publish the Reports thereof, but shall prepare and furnish the same to said Little, Brown & Co. seasonably for publication, according to said contract," and "the stereotype plates and copyright of the volumes published under said contract shall be the property of said firm." The third section provides that "all sums of money received by the reporter for the copies of opinions, rescripts, and other papers shall be paid over by him quarterly to the treasurer of the commonwealth, with a detailed statement of the same."

The contract made in pursuance of this statute contains the provision that "the reporter shall not publish, or furnish for publication, any Reports of said decisions in any other manner," differing from the statutes, by the addition of the words "or furnish for publication." We do not think that those words add anything to the meaning of the contract. But if the added words are beyond the scope of the statute, and give any right not sustained by it, they are beyond the authority conferred upon the secretary, and can have no effect.

We must look to the statute only to determine whether the respondent has the right which he claims in his answer. The purpose of the statute was to make provision for the prompt publication of the series of official reports, known as the "Massachusetts Reports," at a reasonable price. The first and second sections look only to this purpose, and deal with no other subject. They do not in terms confer upon Little, Brown & Co. the power to interfere with the public and common right to examine and procure copies of the opinions of the justices, and they do not, upon any reasonable construction, confer such a power by implication.

The provisions that the reporter, during the term of the contract, "shall not be required or allowed to publish the Reports," and that "the copyright of the volumes published under said contract shall be the property of said firm," were necessary to define clearly the rights of the firm and the duties of the reporter. Under the previous laws, the reporter was obliged to publish the Reports, and he had the copyright in the volumes in his own care. The provisions in question were needed to repeal the existing laws, and to carry out the scheme of the new law. But the legislature did not attempt to determine whether the copyright covered the opinions of the justices. The intent of the statute was that Little, Brown & Co. should have the right of publishing the Reports, which had before rested in the reporter.

The words "to publish the Reports," in the second section, are manifestly used in the same sense in which the same words are used in the first section, and refer to the issue to the public of the Massachusetts Reports. It would be a strained construction to hold that they were intended to prohibit the reporter from allowing the public the right to examine the opinions, or to prepare copies or extracts.

The third section, providing that the reporter shall account to the state for all sums of money received for copies, tends to show that the legis-

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lature expected that the immemorial custom of furnishing copies to the public would be continued. The construction claimed by the respondent is in derogation of the right of the public, and ought not to be adopted unless such was clearly the intention of the legislature. It was its intention, without doubt, that Little, Brown & Co. should have the exclusive right of publishing the authorized series of Massachusetts Reports; but we cannot see in the statute any intention to give to that firm the right to suppress and keep from the public the opinions of the justices until they should print them in the Reports. We are therefore of opinion that the claim of the respondent cannot be sustained.

Similar questions have arisen in several cases in other jurisdictions. While such cases have not the weight of authorities, because each case depends in some measure upon the statute of the state in which it arose, differing from our statute, yet the general current of the cases supports the principles upon which our decision rests. *Banks* v. *Manchester*, 23 Fed. Rep. 145; *Myers* v. *Callaghan*, 20 Fed. Rep. 441; *Chase* v. *Sanborn*, 4 Cliff. 306; *Little* v. *Gould*, 2 Blatchf. 165; *Banks* v. *West Pub. Co.* (U. S. Cir. Ct. Minn.) 27 Fed. Rep. 50.

In order to prevent misconstruction, we desire to add that, while it is the duty of the reporter to allow the public free access to the opinions in his custody, he has the right to make such reasonable regulations, as to the method of examining and obtaining copies of them, as he may deem necessary to secure the safety of his papers, and the orderly administration of the affairs of his office.

Mandamus to issue.

See, also, *Davidson* v. *Wheelock*, (U. S. Cir. Ct. Minn.) 27 Fed. Rep. 61.

(141 Mass. 93)

BUTTRICK v. TILTON.

(*Supreme Judicial Court of Massachusetts.* Essex. February 17, 1886.)

1. ENTRY, WRIT OF—DECLARATION—SUFFICIENCY OF ALLEGATIONS.
   In a writ of entry the allegation of the demandants, in their declaration, that they were seized "in their demesne as of fee," is a sufficient allegation that they were seized in fee-simple.
2. DEEDS—DELIVERY—PRESUMPTION OF.
   When a deed is regularly executed, and is found in the hands of the grantee, the presumption is that it has been duly delivered.[1]
3. SAME—DESCRIPTION OF LAND CONVEYED.
   Where deeds conveyed "a certain right of land lying in the town formerly called B.," and "also all the right we have in any estate, real or personal, belonging to the estate of J. A., late of H., deceased," *held*, that they conveyed all the right which the grantors, who executed them, had in the real estate in H. which belonged to J. A.
4. ENTRY, WRIT OF—PROOF BY DEMANDANT—RECOVERY, EXTENT OF.
   In a writ of entry the demandant must recover upon the strength of his own title, and not upon the weakness of that of the tenant. Not merely the possession, but the title, is in issue, and he can recover only to the extent to which he proves title.

[1] See note at end of case.

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