

would be for the benefit of the infant, that "she should not be estranged from her maternal relatives," and that the guardian appointed in New York should be at liberty, when convenient, to remove the infant to New York, "for her residence and education, until the further order of the court, on security to return and account," &c. This decision was reversed by the Lord Chancellor, who, on coming to the conclusion to retain the minor in England, necessarily declined a recognition, even by comity, of the obligation of the law of the place of her nativity and of her domicile, and of the *forum* where guardianship had been legally determined, before foreign jurisdiction had been attained. Under the circumstances attending the removal of the minor from the United States, the guardian was, in my judgment, entirely justified in proceeding to England, and making the appropriate appeal, for the restitution of her ward, to the courts of that country. The decision which has been rendered, could not well be anticipated. I have no disposition further to consider it, than has been necessary to show that I am not called upon by any circumstances properly addressed to judicial discretion, to forego my jurisdiction over the minor, her guardian and her property, and to defer to the judgment of the foreign tribunal. The minor was originally, naturally and legitimately, under the control of our own courts. She was covertly carried away, in evasion of our laws; and now, to reward at once the act and the judgment of the foreign court, by sending her property after her, would be yielding to a spirit of comity, not only where it was not due, but where it had been already unacknowledged. I must, therefore, direct the allowance of the expenses of the guardian, and refuse to permit the transmission of the funds of the infant abroad.

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ABSTRACTS OF RECENT AMERICAN DECISIONS.

*Supreme Court of Alabama.*

*Damages—Ordinary care.*—Ordinary care is altogether a relative term, and means the use of those precautions which under the circumstances of each particular case, a just regard to the persons and property of others, demands; but there is no inflexible rule, either of the river or of the road, the neglect of which by one party will dispense with the exercise of common caution by the other. *Steamboat Farmer vs. McCraw.*

*Fines and Forfeitures—Power of remission is in Executive, and cannot be exercised by Legislature.*—The power to remit fines and forfeitures is confided by the State constitution to the governor alone, and cannot be exercised by the Legislature; and therefore any act of the Legislature, which attempts either directly or indirectly, to remit a fine, either before or after it has been paid, is unconstitutional. *Haley vs. Clark.*

*Fixtures—Erections for agricultural purposes, as between vendor and vendee.*—In the United States, public policy requires, that the same protection which in England is afforded to fixtures erected for the purposes of trade, should be extended to erections for agricultural purposes. As between vendor and vendee, the stationary machinery by which turning lathes, or other portable machines, which are of equal value everywhere, are impelled, if erected on the land by the vendor during his ownership, for his own use, for the purposes of either trade or agriculture, and fixed in or to the ground, or to some substance which has already become a part of the freehold, are irremovable fixtures, which pass to the vendee under his deed for the land. *Harkness vs. Sears & Walker.*

*Husband and Wife—Deed of gift construed to create separate estate in wife.*—A deed of gift, executed in Virginia, in 1824, conveying certain slaves, in consideration of natural love and affection, to the grantor's daughter, then a married woman, "and the lawful heirs of her body," contained this clause, "I do bind myself, my heirs, &c., to make to the above named property a clear and undoubted right, as much so as can be made by word or deed from the claim and claims from every person or persons whatsoever, to my said daughter and her lawful heirs as above mentioned": *Held*, that the deed created a separate estate in the wife, and excluded the husband's marital rights. *Jenkins vs. McConico.*

*Husband and Wife—Wife's separate personal property, how affected by joint deed of herself and husband.*—Where personal property is conveyed directly to the wife to her sole and separate use, she and her husband, by their joint deed, may vest the legal title in trustees for their use, and the use of the survivor for life; and the husband, surviving, may set up such deed to defeat an action of trover brought against him by the wife's personal representative. *Ib.*

*Husband and Wife.—Wife's bond or note, its effect on her separate personal estate.*—If a married woman gives her written obligation for the payment of money, it will be presumed that she thereby intended to charge her separate personal estate; and therefore, if her creditor file a bill in

equity to obtain payment out of that estate, it is not necessary that he should either aver or prove her intention to charge it. *Ozley vs. Ikelheimer.*

*Infancy.*—*Infant's deed may be avoided by suit without refunding purchase money.*—Although the deed of an infant is voidable only, and not absolutely void; yet he will not be required, in a court of law, as a prerequisite to an avoidance of his deed by suit for the land, to refund the purchase money, when it is not shown to have been in his possession, either actually or constructively, after he attained his majority. *Manning vs. Johnson.*

*Mortgages and conditional sales.*—*Equity leans against conditional sales, and in favor of mortgages.*—The inclination of the courts of equity always has been, to lean against conditional sales, because an error which converts a conditional sale into a mortgage, is not as injurious as one which changes a mortgage into a conditional sale; and this inclination is strongly manifested, whenever the transaction had its origin in a proposition for a loan, or the relation of debtor and creditor existed between the parties. *Locke's Executor vs. Palmer.*

*Mortgages and conditional sales.*—*Absolute deed declared a mortgage.*—In this case, a deed absolute on its face was declared a mortgage, on proof of these facts: That the transaction originated in a loan of money, and the relation of debtor and creditor existed between the parties; that some of the articles of personal property conveyed were not enumerated in the deed; that the creditor gave up the debtor's notes, and retained no evidence of the debt; that the creditor, about two months afterwards, acknowledged in writing, that, at the time the deed was executed, it was agreed between them that, if the debtor repaid to him by a specified day the amount expressed as the consideration in the deed, then he would reconvey all the property therein mentioned, and bound himself to reconvey accordingly, and that all the property, both real and personal remained in the debtor's possession, without any agreement for rent or hire so far as the evidence disclosed. *Id.*

*Statutes, Construction of.*—*Meaning of words in statutes same as at common law.*—When words are used in a statute, which, when used in reference to the same subject, have obtained a fixed and definite meaning at common law, the inference is, that they were intended to be used in their common law sense. *Vincent, Ex parte.*

*Statutes, construction of—Repealing clause in unconstitutional statute.*—A repealing clause in an unconstitutional statute, declaring “that all laws contravening the provisions of this act be, and the same are hereby repealed,” does not affect the previous laws. *Tims vs. The State*.

*Statutes, Construction of—Computation of time—Statute of Limitations.*—In the computation of time under a statute, the settled practice in this State is, to include one day and exclude the other, unless the statute requires so many entire days to intervene. Therefore, under the act of the 7th February, 1843, (which limits actions for the recovery of lands to ten years after the accrual of the cause of action,) a suit commenced on the 7th February, 1853, is not barred. *Owen vs. Slatter*.

*Statutes, Construction of—Performance of condition precedent.—Difference between public and private statutes.*—Where a statute affects a community, and requires as a condition to its validity that something should be done before it goes into operation, the act has no force or effect until the thing required to be done is performed; but where a statute affects only one or more designated persons, whether natural or artificial, those interested in its object may dispense with a preliminary of this character, and claim the benefit of its provisions, without requiring the performance of the condition. *Savage & Darrington vs. Walshe & Emanuel*.

*Statute of Wills—Difference between enabling and disabling statutes.* Courts will not so construe a statute, when its words do not force them, as to defeat a devise or bequest, which would have been valid if the testator had died immediately after making it; but as to a statute whose effect is to sustain rather than to defeat a bequest, a different rule of construction prevails. *Hoffman vs. Hoffman*.

*Wills.—By what law governed.*—A will of realty, executed before the adoption of the new code of Alabama, is governed by its provisions, if the testator died since its adoption; but a will of personalty only would be governed by the old law. *Hoffman vs. Hoffman*. NOTE, that the code of 1852, (§1611) requires two witnesses to a will disposing of either real or personal property; while the former law required three witnesses to a will of realty, and none at all to a will of personalty.

*Wills—Residuary legacy.—Share which lapses by death does not survive.* Where one of several residuary legatees, who take in common, dies before the testator, his legacy, which lapses by his death, does not survive to his co-legatees, but descends to the testator's next of kin under the statute of distribution, and no interest in it passes to one who takes a life estate by implication in the residuum. *Hamlet vs. Johnson*.

*Wills—Residuary legacy—Express bequest of life estate converts super-added right of disposition into mere power.*—A testator, *inter alia*, bequeathed to his wife several negroes, all his household and kitchen furniture, stocks of horses, cattle, &c., “all of which she is to have and hold during her natural life, and at her death to dispose of at her will and pleasure.” There was no residuary clause, and no bequest over in default of disposition by the wife. *Held*, that the widow took but a life estate in the property, with power to dispose of the remainder; and she having died intestate, that the property went to the testator’s personal representative, to be by him administered as in case of intestacy. *Denson vs. Mitchell and Wife*.

*Will—Remoteness*—“*Die without heirs of the body*” construed to mean *indefinite failure of issue*.—Testator bequeathed all his property, real and personal, to his wife during her natural life, “with the following exceptions: I give and bequeath the special legacies to my three daughters hereinafter named. I give my daughter Frances, one negro girl named Maria; to my daughter Lena, one negro girl named Aggy; and to my daughter Mary Ann one negro boy named Alick; which latter named negro I give to Mary Ann, and to the heirs of her body, and in the event that she should die without any such heirs, it is my will, that said boy return to my estate to be disposed of as the rest of my property. It is further my will, that at the death of my wife, the whole of my estate, both real and personal, be equally divided among my living children, or to the living heirs of their body, the three above named daughters to receive an equal proportion in common with the rest of my children, notwithstanding the above named special legacies; provided, however, that the portion falling to Mary Ann be subject to the same requirements that are made in reference to the boy Alick.” Mary Ann was unmarried at the time this will was executed, and also at the testator’s death, but she afterwards married, and had one child born, who died before her; and upon her death, without issue surviving her, the surviving children and grandchildren of the testator brought detinue against her husband for the boy Alick. *Held*, that the words of the will must be construed in their legal sense, to mean an indefinite failure of issue, and therefore the limitation over was void for remoteness, and Mary Ann took the absolute interest in Alick. *Landman vs. Snodgrass*.