ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ARKANSAS.[2]

COURT OF CHANCERY OF NEW JERSEY.[3]

SUPREME COURT OF OHIO.[4]

SUPREME COURT OF SOUTH CAROLINA.[5]

ACKNOWLEDGMENT. See *Deed.*

ACTION.

Building Contract—Payment conditioned on Certificate.—Under a building contract containing a clause that the work shall be done under the direction and to the satisfaction of a particular person, to be testified by a writing or certificate under his hand, no right to the money earned under the contract accrues, and no action can be maintained to recover it until the certificate is procured or the contractor is entitled to it: *Kirtland* v. *Moore*, 40 N. J. Eq.

ASSIGNMENT.

Order on Debtor.—An order drawn by a creditor on his debtor, directing the payment of a sum of money out of a specified sum, and which is presented to the debtor, though not accepted, constitutes a good assignment in equity: *Kirtland* v. *Moore*, 40 N. J. Eq.

ATTACHMENT.

Goods of Third Party Seized—Damages.—Under an attachment of A. against B. the officer seized goods of C. and returned an inventory and appraisement of them. The goods were sold under an interlocutory order of the court, and afterwards the attachment was dissolved and the proceeds of the sale, less cost, were returned to C. He then sued the surety in the attachment bond for damages. *Held*, That as he was not a party to the suit nor estopped by his acceptance of the proceeds paid to him, he was not bound by the officer's return as to the amount or value of the goods, but should recover the true value of all the goods actually taken, less the amount of the proceeds paid to him: *Straub* v. *Wooten*, 45 Ark.

BAILMENT. See *Innkeeper.*

BANKRUPTCY.

New Promise—Exemption.—A new promise to pay a debt discharged by bankruptcy is not an original and independent contract, but revives

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[2] From B. D. Turner, Esq., Reporter; to appear in 45 Ark. Rep.

[3] From John H. Stewart, Esq., Reporter; to appear in 40 N. J. Eq. Rep.

[4] From George B. Okey, Esq., Reporter; to appear in 44 Ohio St. Rep.

[5] From Robert W. Shand, Esq., Reporter; to appear in 23 South Carolina Rep.

the old debt; and where the debt was contracted under the constitution of 1868, and the new promise was since the constitution of 1874, the exemptions under the constitution of 1868 apply: *Nowland* v. *Lanagan*, 45 Ark.

BILLS AND NOTES.

Drawer—Liability of—Parol Evidence.—By the act of drawing a bill of exchange the drawer contracts that it will be accepted and paid according to its terms, and that if it is not he will pay it: *Cummings* v. *Kent*, 44 Ohio St.

Evidence of a parol agreement, prior to or contemporaneous with the drawing and delivery of a bill of exchange, that the drawer is not to be liable as such, is inadmissible: *Id.*

CONFLICT OF LAWS.

Suit between Parties out of Jurisdiction—Corporations.—In a suit brought by stockholders of a foreign corporation against that corporation and another corporation to which it had leased its road, lands, &c., all of which are out of this jurisdiction, seeking relief in regard to the transactions of those corporations with each other, the court, on demurrer, declined to take jurisdiction, on the ground that the courts of New York were the proper forum for the litigation: *Gregory* v. *N. Y., L. E. & W. Rd. Co.*, 40 N. J. Eq.

Suit by Legatee under Will proved in Foreign Jurisdiction.—The complainant claimed that, as a residuary legatee, he was entitled to a part of a fund in defendants' hands, under what the complainant insisted was a void bequest. *Held*, that as the testator was at the time of his death a non-resident (he lived in New York, where his will was proved), and his will had never been proved in this state, nor recorded here, as authorized by the statute, the complainant was not entitled to relief, although the bill states that the fund is under the control of the defendants, who reside in this state and are the executors of the surviving executor of the will by which the bequest was made: *Van Gieson* v. *Banta*, 40 N. J. Eq.

CONSTITUTIONAL LAW. See *Criminal Law.*

Regulating the Bearing of Arms, &c.—Police Power.—Sections 5 and 6 of article 11 of the Military Code of Illinois, prohibiting any body of men, other than the organized militia of the state and troops of the United States, from parading with arms in any city of the state without a license from the governor, do not infringe the right of the people to bear arms, and clearly do not conflict with the 2d Amendment to the Constitution of the United States; that amendment being a limitation only upon the power of Congress and the national government. It is undoubtedly true, that all citizens capable of bearing arms constitute the reserved militia of the United States, as well as of the states, and therefore the latter cannot prohibit the people from bearing arms, so as to deprive the United States of their rightful resource for maintaining public security, but such is not the effect of the legislation referred to: *Presser* v. *Illinois*, S. C. U. S., Oct. Term 1885.

The right to associate as a military company and parade with arms, not having been specially granted by an act of congress or law of the

state, is not an attribute of national citizenship protected by the 14th Amendment to the National Constitution: *Id.*

It is necessary to public peace, safety and good order, that state governments, unless restrained by their own constitutions, should have the power to control and regulate the organization, drilling and parading of military bodies, other than those authorized by the militia laws of the United States: *Id.*

Action in one State upon Judgment obtained in another—Suit against Joint Defendants—Evidence—Pleading.—Where by the law of the state in which a judgment has been obtained in a suit against joint defendants, one of whom only was served with a summons, the judgment is valid against the defendant so served, an action can be maintained thereon against him in the courts of another state: *Harley* v. *Donoghue*, S. C. U. S., Oct. Term 1885. See also *Renaud* v. *Abbott*, Id.

Whenever it becomes necessary for a court of one state, in order to give full faith and credit to a judgment rendered in another state, to ascertain the effect which it has in that state the law of that state must be proved, like any other matter of fact; and consequently an allegation in the declaration in the suit in the court of the second state, of the effect which such a judgment has by law in the state in which it was rendered is admitted by demurrer: *Id.*

Law Impairing the Obligation of a Contract—Public Officer—Compensation for Services.—When a public officer has rendered services under a law, resolution or ordinance which fixes the rate of compensation there arises an implied contract to pay for those services at that rate; and a constitutional provision, passed after the services have been rendered, lowering the limit of taxation under the law which was in force while the services were performed, impairs the obligation of this contract by destroying the remedy *pro tanto*: *Fisk* v. *Jefferson Police Jury*, S. C. U. S., Oct. Term 1885.

Taxes for Benefit of Private Individuals—Bond issued to aid Individuals in Private Enterprises.—A large portion of the city of Charleston having been laid waste by fire, the legislature authorized the city council to issue its bonds and lend them to persons who desired to rebuild in the burnt district. Bonds of said city, called "Fire Loan Bonds," were accordingly issued and lent after the year 1868, and put upon the market. *Held*, that these bonds were not valid obligations of the city: *Feldman* v. *City Council of Charleston*, 23 S. C.

The legislature has no power to levy taxes for the purpose of assisting private individuals in carrying out private enterprises, even though incidental advantages may result to the public: *Id.*

Where bonds were issued by a city to be lent "to such applicants as will build up and rebuild the waste places and burnt districts of said city, or erect improvements upon their lots," *Held*, that the bonds so issued and lent were for private purposes, notwithstanding advantages might incidentally accrue to the city: *Id.*

This case distinguished from cases sustaining local taxation in aid of railroads; and also from the case of *Herndon* v. *Moore*, 18 S. C. 339: *Id.*

Costs.

Suit against Aldermen—Personal Liability.—Where a board of aldermen have increased, and are continuing to increase, the debt of their city beyond the limit fixed by statute, and citizens institute an action to enjoin any further increase, the aldermen may be required personally to pay the costs of the action: *Scott* v. *Alexander*, 23 S. C.

Criminal Law.

Extradition—Who is a Fugitive from Justice.—To be a fugitive from justice, in the sense of the act of Congress regulating extradition, it is not necessary that the party charged should have left the state in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that, having, within a state, committed that which, by its laws, constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence, he has left its jurisdiction and is found within the territory of another: *Roberts* v. *Reilly*, S. C. U. S., Oct. Term 1885.

Penal Statute—Definition of Crime—Uncertainty.—The statute making it a misdemeanor to "commit any act injurious to the public health or public morals, or the perversion or obstruction of public justice, or the due administration of the law," is unconstitutional and void for uncertainty: *Ex parte Jackson*, 45 Ark.

Accomplice—Evidence—Acts and Declarations.—Before the acts and declarations of a felon can be put in evidence against an alleged accomplice, it must be proved to the satisfaction of the trial judge that the two had conspired together to commit the offence charged; *Rowland* v. *State*, 45 Ark.

The acts and declarations of one accomplice, in the absence of another, after the deed is done and the criminal enterprise is ended, are not admissible in evidence against the latter: *Id.*

Debtor and Creditor.

Voluntary Conveyance—Purchase of Judgment with Notice.—A., being then indebted, made three voluntary conveyances of his land, and afterwards judgments were obtained against him on this antecedent indebtedness. B., with notice of these prior deeds, advanced a sum sufficient to pay off these judgments, which were then assigned to him; and as further security, A. gave to B. a bond with a higher rate of interest, and a mortgage of the land embraced in the said voluntary conveyances. In action by B. against A. and these grantees to foreclose such mortgage, *held*, that the deeds were not a fraud upon any rights which B. was here seeking to enforce; and, therefore, whether A. owed any other debts at the time he made the conveyances, was irrelevant in this action; *Carrigan* v. *Byrd*, 23 S. C.

Decedents' Estates.

Failure to present Claim—Promise of Executor—Estoppel.—Executors' verbal statements to a creditor of the estate, that his claim was all right, and that they would pay it as soon as they had enough money on

hand to do so, will not excuse such creditor's neglect to present the claim to them formally within the time limited by the order of the court, nor estop them from setting up the order; nor will an allegation that they have wasted the estate, unsupported by a statement of the facts constituting such waste, render them personally liable to a creditor of the estate: *Lewis* v. *Champion*, 40 N. J. Eq.

Preference—Debts due to Public—Surety.—A debt due by a surety at the time of his death on a county treasurer's bond, for default of his principal, is a "debt due to the public," and as such is entitled to priority of payment out of the assets of one deceased: *Baxter* v. *Baxter*, 23 S. C.

DEED.

Acknowledgment—Impeachment of.—The maker of a deed may prove that there was no appearance before an officer to acknowledge it, and no acknowledgment in fact, but if he did acknowledge it in some manner, the officer's certificate is conclusive of the terms of acknowledgment: *Petty* v. *Grisard*, 45 Ark.

EASEMENT. See *License*.

EQUITY.

Agreement by Director to indemnify Co-Director—Statute of Frauds —Remedy at Law.—The complainant, one of the eight directors of a corporation, endorsed a promissory note for its benefit, and the proceeds of which it received, under an oral agreement with all of his co-directors to indemnify him from all loss resulting therefrom, except as to his own portion, one-eighth. He was compelled to pay the note, and five of the directors repaid him their respective shares of the amount. On demurrer by the other two directors to a bill to recover the amount due on their indemnity, *Held*, 1. That the agreement was not within the Statute of Frauds. 2. That the remedy at law being adequate, the bill must be dismissed: *Cortelyou* v. *Hoagland*, 40 N. J. Eq.

Subrogation—Reformation—Assignee of Void Security.—The assignee of a void security, issued in lieu of a valid one, is in equity, subrogated to all the rights of his assignor (the holder) in the original security; and is entitled to have it delivered up to him, and if imperfect, to have it reformed by the party that executed it, or by his successor in office: *Goldsmith* v. *Stewart*, 45 Ark.

The plaintiff filed his complaint in equity against the clerk of the county and several separate boards of school directors, showing that the holders of school warrants of their several school districts, had presented them to the county court for cancellation and re-issue, in pursuance of an act of the legislature, and that new warrants were issued by the court and were transferred to him by the holders, and the originals were deposited with the clerk; and that the act under which the new issue was made had been declared unconstitutional and void by this court. Further that the original warrants were imperfect in omitting to state the considerations for which they were issued. He prayed that they be delivered up to him by the clerk and be reformed by the directors of the districts for which they had been issued by their predecessors. *Held*,

upon demurrer: 1st. That the plaintiff, as assignee of the void re-issue, was in equity subrogated to all rights of the holders in the original certificates, and was entitled to them. 2d. The trustees who issued the originals should be parties, and should reform them, if within reach of the process of the court, but if not, then their successors, the defendants, might reform or re-issue them under the directions of the court: *Id.*

EVIDENCE. See *Criminal Law.*

EXECUTORS AND ADMINISTRATORS. See *Decedents' Estates.*

EXTRADITION. See *Criminal Law.*

FRAUDS, STATUTE OF. See *Equity.*

Promise to pay Debt of Another—Agreement to accept Draft—New Consideration.—An agreement by a third party, to accept for creditor his debtor's draft for the amount of his debt, stands upon the same footing as a promise to pay the debt, and must, under the Statute of Frauds, be in writing, if a promise to pay the debt should be: *Chapline* v. *Atkinson*, 45 Ark.

A parol promise to pay the debt of another is not within the Statute of Frauds when it arises from some new and original consideration of benefit or harm moving between the newly contracting parties: *Id.*

HIGHWAYS. See *Streets.*

INNKEEPER.

Deposit of Money by one not a Guest—Liability.—An innkeeper is not liable as such for the loss of money deposited with him for safe keeping by a person who is not a guest of the inn at the time such deposit is made, or at the time the loss occurs: *Arcade Hotel* v. *Wiatt*, 44 Ohio St.

The clerk of such innkeeper has no authority to bind the latter, either as innkeeper or special bailee, for the loss of money deposited for safe keeping with such clerk by a person who is not a guest of the inn at the time of such deposit: *Id.*

W., the keeper of a gambling house closed his night's business at 2 o'clock A. M., having a sum of money upon his person; and not being ready to retire for the night, and not wishing to carry his money upon his person at that time of the night, visited an inn for the purpose of depositing his money for safe keeping; found the inn in charge of a night clerk; inquired if he could have lodgings for the night; was told that he could; stated that he did not desire to go to his room at that time, but wished to leave some money with the clerk, and would return in about half an hour. The clerk told him he would reserve a good room for him. He did not enter his name. It was not upon any book of the inn. No room was assigned to him. He left his package of money with the clerk, received a check for it, and departed. He returned in about three hours to have a room assigned him and retire for the balance of the morning. The clerk had absconded with the money. *Held*, W. was not a guest of the inn at the time he deposited his money with the clerk, and the innkeeper is not liable for its loss: *Id.*

INSURANCE.

Representations — Warranty—Forfeiture — Premium.—When a life policy is issued and accepted upon the express condition that the answers and statements of the application are warranted true in all respects, and that if the policy be obtained by any untrue answer or statement, or by any fraud, misrepresentation or concealment, "the policy shall be absolutely null and void;" and, as to matters material to the risk, some of the answers and statements are untrue in fact, though made without actual fraud and under an innocent misapprehension of the purport of the questions and answers; no contract of insurance is thereby made, and the policy does not attach but it is void *ab initio: Conn. Mut. Life Ins. Co.* v. *Pyle*, 44 Ohio St.

When, for such a policy, premium has been paid by the applicant to the insurance company, such payment may be recovered back: *Id.*

JUDGMENT. See *Constitutional Law.*

JUDICIAL SALE.

Purchaser under Sale subsequently set aside—Liability of—Insurance.—Where parties take possession of property, purchased by them at a sheriff's sale, under circumstances that induced a Court of Equity from considerations of public policy, to set the sale aside, the sale cannot be said to have been void, and the purchasers *tort feasors*, nor can they be regarded like to trespassers taking possession *vi et armis*, but their relation to the execution debtor is like to that of trustee to *cestui que trust: Bath South Carolina Paper Co.* v. *Langley*, 23 S. C.

Where a *quasi* trustee has insured property of his *cestui que trust*, for which, being burned, he receives the insurance money, he is accountable for the amount so received, less his payments in effecting and collecting the insurance: *Id.*

LICENSE.

When Irrevocable — Contract with Railroad Company.—Where a license is a power coupled with an interest of a permanent character, it is irrevocable; and if the interest be an interest in land, and the contract be by parol only, the Court of Equity will hold the contract binding, where the licensee has incurred trouble and expense in carrying out such contract: *Meetze* v. *Railroad Co.*, 23 S. C.

Thus, where a railroad company, for certain privileges, was permitted by parol to construct upon the plaintiff's land a dam, a canal, and a water-wheel, for the purpose of keeping its tank supplied with water, the license was irrevocable and might be enforced in equity notwithstanding the Statute of Frauds: *Id.*

And this special contract being valid and therefore of force, the plaintiff, upon the withdrawal by the railroad company of such privileges, could not bring action for the value of the use and occupation of the land, but only for damages for breach of the special contract: *Id.*

LIMITATIONS, STATUTE OF.

Demurrer—Liability created by Statute.—Where the petition on its face shows a cause of action which is barred by the Statute of Limitations, no legal cause of action is stated, and a demurrer thereto, on the

ground that the petition does not state facts sufficient to constitute a cause of action, raises the question of the Statute of Limitations as well as other defects in the petition, though the better practice undoubtedly is, to specifically state in the demurrer that the cause of action is barred: *Seymour* v. *P. C. & St. L. R. Co.*, 44 Ohio St.

An action against a railroad company to recover damages for killing or injuring a domestic animal which had strayed upon its track, and was killed or injured without fault or negligence of the railroad company in operating its train, but solely by the neglect to fence the road as required by law, is founded upon "a liability created by statute, other than a forfeiture or penalty," and is barred in six years: *Id.*

Master and Servant.

Relation existing between Hack Driver and Hirer—Negligence.—The plaintiff while being driven in a hired hack was injured by its collision with a railroad train, the accident being due to the concurrent negligence of the hackman and the engineer, and sued the railroad company. *Held*, that the court below was right in leaving it to the jury to say whether the plaintiff had exercised any control over the conduct of the driver further than to indicate the places to which he wished him to drive, and instructing them that, unless he did exercise such control, and required the driver to cross the track at the time the injury occurred, the negligence of the driver was not imputable to him so far as to bar his right of action against the defendant: *Little* v. *Hackett*, S. C. U. S., Oct. Term 1885.

Municipal Corporation.

Liability of New Corporation succeeding to Old.—Where the legislature of a state has given a local community, living within designated boundaries, a municipal organization, and a subsequent act, or series of acts, repeals its charter and dissolves the corporation, and incorporates substantially the same people as a municipal body under a new name, for the same general purpose, and the great mass of the taxable property of the old corporation is included within the limits of the new, and the property of the old corporation used for public purposes is transferred, without consideration, to the new corporation for the same public uses, the latter, notwithstanding a great reduction of its corporate limits, is the successor, in law, of the former, and liable for its debts; and if any part of the creditors of the old corporation are left without provision for the payment of their claims, they can enforce satisfaction out of the new: *Mobile* v. *Watson*, S. C. U. S., Oct. Term 1885.

Negligence.

Proximate Cause—Fire.—Where fire is negligently thrown from a mill smoke-stack and carried to a building outside the mill property, and thence to another building of a third party, and thence to other property that is damaged by the fire; whether such negligence is the proximate cause of such damage, is a question of fact for the determination of the jury under the instructions of the court: *Adams* v. *Young*, 44 Ohio St.

In an action against a mill owner for damages to property caused by fire negligently or carelessly thrown by sparks from the smoke stack of

the mill and carried to the property by a gale of wind blowing at the time in the direction of the property, by which fire the same was damaged; where the conditions continue the same as when the negligent and careless act was done, and no new cause intervenes, it is no defence that the fire first burned an intervening building and was thence communicated by sparks and cinders in the same manner to the building in which such fire consumed the property; though the buildings were separated by a space of two hundred feet: *Id.*

NOTICE.

Possession.—Without proof of notice, either actual or constructive, an unregistered title is void, and of no effect against a subsequent judgment creditor of its grantor: *Executors of Hodge* v. *Amerman*, 40 N. J. Eq.

The burden of proving notice in such a case rests on the holder of the unregistered title: *Id.*

Constructive notice of an unregistered title is just as effectual as actual notice: *Id.*

Possession, if open, notorious, exclusive and unequivocal, will constitute notice, and such possession may exist without actual residence on the land: *Id.*

It is not necessary, in order to prove notice, to show that the person to be effected by the notice knew of the possession of the other. If the possession of the other is of such a character as to constitute notice, then notice is a legal deduction from the fact of possession: *Id.*

PARTNERSHIP.

Account as to Funds resulting from Illegal Transaction.—Where one partner was township treasurer and with the knowledge of his co-partner deposited the township funds in the bank to the firm credit, *Held*, that this was a conversion of the public moneys; that both partners were *particeps criminis*, and that as to such funds the law will aid neither party against the other, either in the way of account, contribution or otherwise: *Davis* v. *Gelhaus*, 44 Ohio St.

PROHIBITION.

When a Defendant is entitled to a Writ of, as a Matter of Right—A Common-Law Writ.—Where an inferior court has clearly no jurisdiction of a suit or prosecution instituted before it, and the defendant therein has objected to its jurisdiction at the outset, and has no other remedy, he is entitled to a writ of prohibition as a matter of right; and a refusal to grant it, where all the proceedings appear of record may be reviewed on error: *Smith* v. *Whitney*, S. C. U. S., Oct. Term 1885.

It seems, that a writ of prohibition issues from the law side of a court which has both common-law and equity powers: *Id.*

SALE.

Rescission—Fraud of Purchaser—Ratification.—If a vendor of goods after being advised of the fraud of the purchaser in obtaining credit by misrepresenting his ability to pay, accepts further security instead of demanding a rescission of the contract and a return of the goods, he thereby ratifies the contract and cannot afterwards demand a rescission: *Bridgeford* v. *Adams*, 45 Ark.