ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ARKANSAS.[2]
SUPREME COURT OF CALIFORNIA.[3]
SUPREME COURT OF COLORADO.[4]
SUPREME COURT OF FLORIDA.[5]
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SUPREME COURT OF JUDICATURE OF INDIANA.[8]
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AGENT. See *Banks and Banking. Criminal Law.*
ASSESSMENTS. See *Constitutional Law.*
ASSIGNMENT. See *Garnishment.*

BANKS AND BANKING.

Savings Banks.—Managers—Evidence.—Managers of a savings bank may be charged with liability, if they participate in the prohibited acts

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1 To appear in 122 U. S. Rep.
2 To appear in 47 or 48 Ark. Rep.
3 To appear in 70 or 71 Cal. Rep.
4 To appear in 9 or 10 Col. Rep.
5 To appear in 22 or 23 Fla. Rep.
6 To appear in 76 or 77 Ga. Rep.
7 To appear in 120 or 121 Ill. Rep.
8 To appear in 110 or 111 Ind. Rep.
9 To appear in 70 or 71 Ia. Rep.
10 To appear in 39 or 40 La. Rep.
11 To appear in 144 or 145 Mass. R.
12 To appear in 90 or 91 Mo. Rep.
13 To appear in 21 or 22 Neb. Rep.
14 To appear in 64 or 65 N. H. Rep.
15 To appear in 42 or 43 N. J. Eq. Rep.
16 To appear in 45 or 46 Ohio Rep.
17 To appear in 114 or 115 Pa. St. Rep.
18 To appear in 25 or 26 S. C. Rep.
19 To appear in 66 or 67 Tex. (Law) Rep.
20 To appear in 81 or 82 Va. Rep.
21 To appear in 59 or 60 Vt. Rep.
22 To appear in 67 or 68 Wis. Rep.

which lead to loss complained of, or if they in any way promote them, or if they neglect to bestow, in their conduct of the affairs of the bank, that measure of care which the law exacts of them, and in consequence thereof their associates are not restrained, or are enabled to do those acts which prove disastrous to the institution: *Dodd* v. *Wilkinson*, 42 or 43 N. J. Eq.

It is competent to consider the illegal course of conduct in which managers have engaged, when present, with their associates, in order to determine whether such managers are liable for like illegal acts done by such associates in their absence: *Id.*

Directors—Relation to Depositors—Liability.—In an action by a general depositor in a bank against its directors, *held*, that the directors of a bank are trustees for depositors: *Delano* v. *Case*, 120 or 121 Ill.

Held, also, that the directors of a bank are liable for injuries resulting from the non-observance of ordinary care and diligence, in permitting the bank to be held out to the public as solvent, when it was in fact insolvent: *Id.*

Promissory Note—Signing by Cashier—Liability.—One signing his name on the back of a piece of commercial paper, as the cashier of a bank, cannot be held as surety thereon, in case of its non-payment, if he was, at the time of signing, duly authorized to sign as such: *State Nat. Bank* v. *Singer*, 39 or 40 La.

Agent or Trustee—Form of Bank Account.—One who is employed by the purchasers of goods at sheriff's sale to dispose of the goods for them, and who deposits the proceeds of sales made from time to time in bank to his account as "trustee," using the word "trustee" because he has another account with the bank as "agent," is nevertheless only an agent, and not a trustee, as to the fund so deposited: *Rowe* v. *Rand*, 110 or 111 Ind.

Gifts Inter Vivos—Bank Deposit.—A deposit of money in a bank in the name of another, subject to the right of the depositor to take the income during his life, to which arrangement the donee assents, constitutes a valid gift *inter vivos*, if the donor intended it as a present gift, though he retains the bank-book: *Smith* v. *Ossipee Valley Ten-Cent Sav. Bank*, 64 or 65 N. H.

Executor—Assets—Deposit, as Guardian.—Money deposited in a bank to the credit of "G., guardian," is not assets of G. in the sense that it is subject to be checked out, upon the death of G., by his executor: *Gary* v. *People's Nat. Bank*, 25 or 26 S. C.

Payment—Application of Funds.—A bank, being the payee and owner of an accepted bill, is under no duty to the acceptor to apply funds which the drawer has with it on general deposit to payment of the bill: *Flournoy* v. *First Nat. Bank of Jeffersonville, Indiana*, 76 or 77 Ga.

Insolvency—Fraudulent Conveyance.—A bank made an assignment for the benefit of its creditors, February 16th 1882. On March 2d 1880, it had conveyed a tract of land to W., one of its directors, and on February 11th 1882, another tract. The consideration of both of

the deeds was the surrender to the bank by W. of certain shares of its capital stock held by him, the market value of which was more than the fair price of the land. At the time of these transfers the bank was insolvent, and W. had heard rumors as to its unsoundness. W. had held his office as director since 1874. *Held*, that the transfers were void, as in fraud of the creditors of the bank, the position occupied by W. being that of a trustee, and the rumors about the bank's condition which had come to him being sufficient to put him on inquiry: *Roan* v. *Winn*, 90 or 91 Mo.

Powers—Mortgage—Rev. Stat. U. S. sect. 5137, provides that a national bank "may purchase, hold and convey real estate * * * mortgaged to it in good faith by way of security for debts previously contracted." *Held*, that a mortgage given to such a bank by way of security for an indebtedness previously contracted, and evidenced by new notes of the mortgagor, was valid: *Farmers' and Merchants' Nat. Bank* v. *Wallace*, 45 or 46 Ohio.

The defence cannot be urged to defeat securities given for a loan made by a national bank, that the loan was for an amount in excess of the restriction of the United States statute upon the amount of loans which may be made by such banks: *Mills Co. Nat. Bank* v. *Perry*, 70 or 71 Iowa.

Removal of Causes—Federal Question—Taxation.—The rule of taxation prescribed by Rev. Stat. U. S. sect. 5219, which provides that the taxation of shares of national banking associations "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens," is a federal question, within the meaning of the removal acts. Consequently a case in which such question arises may be removed to a federal court, although the provisions of the United States statute have been re-enacted by the state legislature: *Richards* v. *Town of Rock Rapids*, 70 or 71 Iowa.

National Bank Shares—Taxation of.—A bill in equity cannot be maintained by a shareholder in a national bank to enjoin the collection of a tax assessed, in accordance with the provisions of a state statute, upon national bank shares, on the ground that the tax is at a greater rate than upon other moneyed capital, contrary to the act of congress, where it appears that the statute provides that the shares shall be assessed according to their actual value; and in arriving at that value the liabilities of the bank are deducted from the credits, and the shareholders thus given the benefit of the reduction, the value of the shares being decreased to an extent proportionate to the debts and liabilities of the banking institution; and, if the claim of the plaintiff in such bill is that his individual debts should be taken from the value of the shares held by him, he should show that he owes such debts; otherwise the law is valid as to him: *Rosenburg* v. *Weekes*, 66 or 67 Tex.

BILLS AND NOTES. See *Banks and Banking.*

Promissory Note—Pledge—Pledgee of Note—Duty.—The payee of a promissory note, who has received from the maker other notes as collateral security, is liable to the latter, on the collateral notes, only for failure to present them, and give notice of non-payment, and his liability

extends only so far as the owner of the collateral notes has been damaged by his neglect; and an instruction to the jury that seems to hold that his duty is that of an indorsee is erroneous: *Kennedy* v. *Rosier*, 70 or 71 Iowa.

Pledge—Application of Security—Promissory Note.—Where A. indorses a note for the accommodation of B., A. cannot use an indemnity against his liability for such indorsement, a security previously transferred to him by B., as indemnity against an entirely different liability; nor can A. confer on the holder of the accommodation note any right to apply such security on that note: *Anderson* v. *Sims*, 66 or 67 Tex.

Conflict of Laws.

Will—Devise—Bequest.—The validity of a devise is governed by the law of the place where the land is situated, and this includes not only the form and mode of the execution of the will, but also the lawful power and authority of the testator to make such deposition: *Ford* v. *Ford*, 67 or 68 Wis.

The validity of a bequest is governed by the law of the testator's domicile, at the time of his death, and this includes, not only the form and mode of the execution of the will, but also the lawful power and authority of the testator to make such disposition. This rule is particularly applicable where the testator's domicile, at the time of the making of the will, continues to be the same until the time of his death: *Id.*

Constitutional Law.

Assessment by Legislature—District Benefited.—The legislature has authority to declare what district is benefited by a local improvement, and to levy on such district an assessment therefor, and the courts will interfere to set aside such assessment only where there has been a manifest abuse of discretion: *Lent* v. *Tilson*, 70 or 71 Cal.

Contract.

Covenant—Construction—Estoppel.—In an action upon an indenture, in which the defendant had covenanted to transfer to the plaintiff "the moneys originally deposited in her name in the P. Savings Bank, amounting to about $284," (the money so deposited having previously been transferred by the plaintiff to the defendant), the words of the covenant will be construed as an agreement by the defendant to transfer to the plaintiff all the money originally deposited by the latter in the P. Savings Bank, although it in fact amounted to a sum much greater than $284; and, where the defendant has paid over a part of the sum found due under the covenant, the plaintiff is entitled to interest on the balance, no demand being necessary: *Birch* v. *Hutchings*, 144 or 145 Mass.

A receipt by a plaintiff of a bank-book containing a credit of $284.01, would not create an estoppel as against the plaintiff, where it appeared that the latter was an ignorant person, and there was evidence that she did not know what she was signing when she put her mark to the indenture: *Id.*

Engineer's Estimates—Stipulation against Recourse or Appeal.—A stipulation in a written contract for the construction of part of a railroad that the engineers of the railway company should make final estimates of the work done thereunder, and that such estimates should be conclusive as against the contractor, "without recourse or appeal," is invalid, and will not deprive him of the right to resort to the courts for redress of wrongs, or recovory of what is due: *Louisville, E. & St. L. Ry. Co.* v. *Donnegan*, 110 or 111 Ind.

Corporations.

Charters—Stock.—When the charter of a railroad company requires that the stock shall be paid for in cash, and that no certificate shall issue until such payment is made, it is a sufficient compliance with the statute prescribing that the charter of such companies must set forth the time when the manner in which "the stock shall be paid for:" *New Orleans & G. R. Co.* v. *Frank*, 39 or 40 La.

Criminal Law.

Practice—Trial without Plea—Act as Agent.—When a defendant is put on trial for a misdemeanor, without a plea to the indictment having been entered, it is a mere technical error or irregularity which does not affect any of his substantial rights, and affords no ground for reversal of a judgment of conviction: *Allyn* v. *State*, 21 or 22 Neb.

The fact that a defendant was acting as the agent of another in the commission of an offence will afford no excuse or justification for the act in a prosecution therefor; *Id.*

Practice—Reasonable Doubt—Sufficiency of Evidence—Arson.—In a trial for arson, evidence wholly circumstantial that defendant, who had been unfriendly towards prosecutor, became particularly polite just before the burning; that he claimed to have spent the night at a place some distance away, but was seen going towards prosecutor's farm one and one-half hours before the fire, and was in that neighborhood at daybreak; that he requested a witness to swear that a boy likely to testify in the case was not of good sense, and was refused; and that, when committed, he said he could find two witnesses to prove another person's guilt if prosecutor would go bail for him, but said nothing about it afterwards, —all tends to throw suspicion on the defendant, but does not so connect him with the felony as to prove his guilt beyond a reasonable doubt: *Anderson* v. *Commonwealth*, 81 or 82 Va.

Damage. See *Libel.*

Estoppel. See *Contract. Insurance.*

Evidence. See *Banks and Banking. Criminal Law.*

Competency—Conversations.—If what was overheard in a conversation is competent evidence, the fact that the witness who overheard it did not catch all that was said does not render such parts as he did hear inadmissible: *Denver & R. G. Ry. Co.* v. *Neis*, 9 or 10 Col.

EXECUTORS AND ADMINISTRATORS. See *Banks and Banking.*

Executors—Accounts—Testator's Realty.—Though executors who have, without warrant, had possession of testator's realty, managing and directing the same, be admittedly chargeable with rents and profits, these are not proper items of charge against them in their administration account, nor should credit be allowed them therein for taxes, repairs, insurance, &c., with which the testator did not contemplate making them chargeable. Where creditors are not concerned, it might be fair enough to adjust these matters between the parties, if all were willing, in this way; but, where they are disputed, the parties must seek a forum which has proper jurisdiction of the subject-matter: *Walker's Appeal,* 114 or 115 Pa.

Administrator—Liability—Claims—Accounting.—Where it appears that the creditor of an estate had been dead for two years at the time the administrator alleged in his account that he paid his claim; that the claim had not been assigned; that the claimant had not been through bankruptcy; and that no letters had, prior to the alleged date of payment, been taken out on his estate,—the administrator, and the surety on his bond, are liable to the personal representatives of the claimant for the full amount, with interest, although the administrator had been allowed credit for the claim in the final settlement of the estate: *Williamson* v. *Whittington,* 47 or 48 Ark.

FRAUDULENT CONVEYANCE. See *Banks and Banking.*

GARNISHMENT.

Assignment—Frauds, Statute of—Check.—The keeper of a boarding-house for railroad employees made an agreement with the railroad company whereby the boarding dues of each employee were deducted from his pay, and forwarded in the form of a check to the boarding-house keeper each month. Subsequently he procured an advance of money from a bank on the credit of the amounts which were to fall due on the following pay-day, and by promising to turn such amounts over to the bank. The railroad company consented to transfer such payments to the bank. *Held,* that this constituted an equitable assignment of such sums so as to vest title in the bank as against a creditor of the boarding-house-keeper, who garnished the same in the hands of the railroad company: *Chamberlin* v. *Gilman,* 9 or 10 Col.

Such an assignment may be by parol, and is not affected by Gen. Stat. Colo., sects. 1523, 1527, which require sales and assignments of goods, and grants or assignments of trusts, to be evidenced in writing: *Id.*

The mere fact that the railroad company, after it had consented to the transfer of the indebtedness to the bank, continued to draw its check in favor of the boarding-house-keeper, *held,* not to divest the bank of the title acquired under the equitable assignment: *Id.*

GIFT. See *Banks and Banking.*

GUARANTY.

Surety on Promissory Notes—Contract to Protect Surety.—A surety on a note has the right, without compulsion, to pay it when due, and to

immediately institute proceedings necessary for his reimbursement, and a written agreement by a third party to "secure and protect" the surety "at any time payment must be made," constitutes an unconditional contract to secure the surety, whenever the note became payable, whether the payee demanded it then or not: *Nixon* v. *Beard*, 110 or 111 Ind.

GUARDIAN. See *Banks and Banking.*

HUSBAND AND WIFE.

Conveyance to Wife—Validity—Homestead.—A deed of conveyance of real estate executed by the husband direct to the wife, in the absence of fraud, and where neither the rights of creditors nor subsequent purchasers intervene, will convey to her such real estate without the intervention of a third party as trustee: *Furrow* v. *Athey*, 21 or 32 Neb.

Where the husband and wife occupy a homestead, the title to which is in the name of the husband, a deed of conveyance from the husband to the wife, signed and acknowledged by him alone, is valid, although not signed by and acknowledged by the wife: *Id.*

INSURANCE.

Condition against Additional Insurance—Parol Contract—Estoppel.—A complaint upon an insurance policy alleging an express agreement permitting the plaintiff to take additional insurance in any other company, which agreement the company promised to insert in the policy, but failed to do so, and that, relying thereon, the plaintiff did take out additional insurance, is insufficient upon demurrer, where the policy provides that such permission must be indorsed thereon, for not showing, if made before the execution of the policy, that the plaintiff was induced to accept it without knowledge that the stipulation was not inserted, or, if after, for not showing that the assured had presented the policy to the company, and requested the insertion of such stipulation, or that the company had notice of such additional insurance: *Havens* v. *Home Ins. Co.*, 110 or 111 Ind.

JUROR.

Qualification of—Opinion—Cross-examination.—Where a proposed juror, who was challenged for actual bias, stated on his examination that he had formed an opinion on the subject of defendant's guilt which it would require evidence to remove, but that he could give the defendant a fair trial, *held*, that the exclusion of questions asked by defendant's counsel, evidently designed to bring out the character and force of the opinion, was error: *People* v. *Brown*, 70 or 71 Cal.

JURY.

Oath—Objection—Motion for New Trial.—Objection to the oath administered to the jury should be made at the time it is administered: *Seymour* v. *Parnell*, 22 or 23 Fla.

Where the oath is administered to a jury in a civil action is not the one prescribed by statute for such action, yet is sufficient to cover the inquiry involved in or the issues covered by the pleading therein, and the plaintiff makes no objection but proceeds to trial, and there is a

verdict against him, such irregularity in swearing the jury is not good ground for setting aside a verdict on a motion for a new trial: *Id.*

LIBEL.

Mercantile Agency—Notification Sheet—Damages.—A communication made by the proprietors of a mercantile agency, in respect to the character and financial standing of a trader, is privileged when made to those of its patrons who have a special interest in the information communicated. But this privilege does not extend to publications made to patrons who have no such interest in the subject-matter: *King* v. *Patterson*, 42 or 43 N. J. Eq.

The publication by mercantile agency of a notification sheet, which is sent to its subscribers irrespective of their interest in the plaintiff's standing and credit, is not a privileged communication, and the proprietors are liable for a false report of the plaintiff's financial condition in such publication: *Id.*

The damages recoverable in such an action are such as might reasonably have been foreseen as the probable consequences of the wrongful act, and which were the results, in the usual order of things, of such wrongful act: *Id.*

LIMITATION OF ACTIONS. See *Pagment.*

MASTER AND SERVANT.

Dismissal—Drunkenness,—Drunkenness on the part of one employed in reducing wood to charcoal, on the premises of the employer, may be sufficient cause for dismissal, though such drunkenness does not incapacitate the employee, or cause him to fail in the performance of his part of the contract: *Bass Furnace Co.* v. *Glasscock*, 80 or 81 Ga.

MORTGAGE. See *Banks and Banking.*

NEW TRIAL. See *Jury.*

PAYMENT. See *Banks and Banking.*

Limitation of Action—Individual and Partnership Accounts—Application.—B. was indebted to H. individually, and also to him as the surviving partner of H. & G. The accounts were of long standing, and had never been looked over and balanced by the parties. B. made payments to H. without specifying upon what debts they should be applied. H. credited the payments upon his individual books. After the death of H., upon balancing the books, it was found that the payments so credited considerably overpaid the individual account. At the time of H.'s death the partnership account, without the application of any of the payments, was barred by the Statute of Limitations. *Held*, that as the payments were general, and no application was made by the debtor, the law would apply the balance overpaid upon the individual account to the partnership account as of the time when so over-paid, and thus remove the statute bar: *Robie* v. *Briggs' Estate*, 59 or 60 Ver.

Question of Fact.—A., a bank, discounted two notes for B. After the insolvency of A., its receiver brought suit against B. on these notes,

and also on a balance shown by the books. Upon the trial B. contended that these notes were paid by a check deposited by him. Plaintiff denied that the check was in payment of the notes. The court left the question of payment as a matter of fact for the jury to determine. *Held*, that this was correct: *Lingenfelter* v. *Williams*, 114 or 115 Pa.

PLEDGE. See *Bills and Notes.*

PUBLICATION.

Of Notice—Supplement.—Publication of a notice on the third sheet called the "supplement," and containing matter for which there was no room in the two sheets on which the paper was usually printed, is sufficient when it appears that the so-called "supplement" is circulated coextensively with the rest of the paper: *Lent* v. *Tilson*, 70 or 71 Cal.

SCHOOL DISTRICTS.

Abolition of—Funds.—Unexpended school money, apportioned to a district which has since been abolished, may be held by trustees appointed by the court for the benefit of the district, and the maintenance or revival of the district organization is unnecessary: *School District No.* 16 v. *City of Concord*, 64 or 65 N. H.

STATUTE OF FRAUDS. See *Garnishment.*

TAXATION. See *Banks and Banking.*

Exemption—Church Property.—A house and lot purchased as a place of residence for the bishops of the Methodist Episcopal Church who may from time to time reside in St. Louis, are exempt from taxation under Rev. Stat. Mo. sect. 6659, which provides that all property used for purely charitable purposes shall be exempt: *Bishop's Residence Co., &c.* v. *Hudson*, 90 or 91 Mo.

Steamship Co—Gross Receipts.—A state tax upon the gross receipts of a steamship company, incorporated under its laws, which are derived from the transportation of persons and property by sea, between different states, and to and from foreign countries, is a regulation of interstate and foreign commerce, in conflict with the exclusive powers of Congress under the constitution: *Phila. Steamship Co.* v. *Pennsylvania*, 122 U. S.

WILL. See *Conflict of Laws.*

Whst is—Condition.—One in contemplation of a journey signed a paper, beginning: "I am going to town with my drill and i ain't feeling good and in case if i shouldend get back do as i say on this paper." He went to town, and there became very ill. He succeeded, however, in returning home, when he shortly after died. *Held*, that this paper could not be admitted to probate as the will of decedent: *Morrow's Appeal*, 114 or 115 Pa.