ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF CALIFORNIA.[1]

SUPREME COURT OF GEORGIA.[2]

SUPREME JUDICIAL COURT OF MAINE.[3]

COURT OF APPEALS OF MARYLAND.[4]

SUPREME COURT OF MINNESOTA.[5]

SUPREME COURT OF MONTANA.[6]

SUPREME COURT OF NEW JERSEY.[7]

COURT OF ERRORS AND APPEALS OF NEW JERSEY.[8]

COURT OF APPEALS OF NEW YORK.[9]

SUPREME COURT OF NORTH CAROLINA.[10]

SUPREME COURT OF PENNSYLVANIA.[11]

SUPREME COURT OF SOUTH CAROLINA.[12]

SUPREME COURT OF APPEALS OF VIRGINIA.[13]

SUPREME COURT OF APPEALS OF WEST VIRGINIA.[14]

ATTORNEY AND CLIENT. See *Criminal Law. Deed.*

BAILMENT.

Livery-Stable Keeper—Liability.—The owner of a livery-stable is bound to exercise ordinary care over the property intrusted to his charge, and is liable for the negligence of his servants in the performance of any duty in regard to the care and custody of such property, within the general scope of their employment: *Eaton* v. *Lancaster*, 79 or 80 Me.

BILLS AND NOTES.

Certificate of Deposit—Demand—Statute of Limitations.—A certificate of deposit in the ordinary form issued by a bank is, in substance and legal effect, a promissory note. It is due immediately, and no actual demand is necessary in order to set the statute of limitations running: *Mitchell* v. *Wilkins*, 36 or 37 Minn.

Payment—Promissory Notes—Renewal.—A promissory note given for a debt, and notes given in renewal, merely extend the credit, and do not, unless paid, discharge the debt, or give any ground of defence to a

---

1 To appear in 71 or 72 Cal. Rep.
2 To appear in 76 or 77 Ga. Rep.
3 To appear in 79 or 80 Me. Rep.
4 To appear in 67 or 68 Md. Rep.
5 To appear in 36 or 37 Minn. Rep.
6 To appear in 7 or 8 Mont. Rep.
7 To appear in 49 or 50 N. J. Law Rep.
8 To appear in 43 or 44 N. J. Eq. Rep.
9 To appear in 106 or 107 N. Y. Rep.
10 To appear in 95 or 96 N. C. Rep.
11 To appear in 114 or 115 Pa. St. Rep.
12 To appear in 25 or 26 S. C. Rep.
13 To appear in 81 or 82 Va. Rep.
14 To appear in 29 or 30 W. Va. Rep.

suit founded on the original cause of action: *Fry* v. *Patterson*, 49 or 50 N. J. (Law).

Promissory Notes—Interpretation—Default.—A promissory note provided that "if default be made in the payment of the interest as above provided, then this note shall immediately become due at the option of the holder thereof." *Held*, that the holder was entitled only to a reasonable time after default in which to exercise his option, and that seven months was not a reasonable time: *Crossmore* v. *Page*, 71 or 72 Cal.

COMMON CARRIERS.

Limiting Liability—Prior Parol Contract—Failure to Furnish Cars—Special Damages.—A parol undertaking was made by a railroad company to furnish cars on a particular day to transport cattle from a point in North Carolina to Richmond, with knowledge of the shipper's purpose to have the cattle delivered at the destination in time for a particular market day. The company failed to have the necessary cars in readiness, and the shipment was delayed until a later day, when the cattle were sent, and a bill of lading then given, the form of which limited the liability of the company as to detention, measure of damages, &c., in consideration of a reduced rate of freight. *Held*, that the parol undertaking was not merged in the contract arising out of the bill of lading, and that the shipper was therefore entitled to damages consequent upon the detention: *Hamilton* v. *Western N. C. R. Co.*, 95 or 96 N. C.

It is not error in such case to charge the jury that, if a certain day in question was a sale day, and the best sale day, and the shipper wished his cattle to be at their destination on that day, and this was known to the railroad company, and was in view of both parties when the contract was made, the shipper would be entitled to such special damages as actually resulted from the circumstances: *Id.*

CONSIDERATION. See *Estoppel. Fraudulent Conveyances.*

CONTRACT. See *Infant. Vendor and Vendee.*

Construction—Sale—Pledge.—A., a dealer in drugs, &c., in Boston, obtained letters of credit on B. Bros., bankers in London, through their agents in Boston; A. at the time agreeing that "all property which shall be purchased by means of the within credit, * * * together with the bill of lading for the same, are hereby pledged and hypothecated to B. Bros., as collateral security, with authority to take possession and dispose of the same at discretion for their security and reimbursement;" and, by means of the credit thus advanced, A. bought a quantity of shellac from a dealer in Calcutta, the bill of lading being made in the name of B. Bros. at New York. On the arrival of the property at New York, A., who had previously got from B. Bros., agents there, the bills of lading of other goods for the purpose of warehousing them in the name of B. Bros., obtained this bill of lading, saying he was going to enter the goods at the custom-house and warehouse them in the name of B. Bros., and his receipt for the bill of lading specified this as the only object. Instead of so doing, A. entered the goods in the name of his broker, who warehoused them, and gave the receipt therefor to A. A. then pledged this receipt, with others, to M., the plaintiff, for a loan. B. Bros., and their agents, upon learning of this, seized the goods. M., the plaintiff, then brought an action to recover the value of the goods and damages

for their seizure, claiming that B. Bros. were only pledgees of, and that A. was the owner of the property. *Held*, that B. Bros. having advanced, at the request of A., their credit for the purchase of the property, and taken the bill of lading in their own name, and having relied upon the property as the means of reimbursing themselves, became the owners and not the pledgees of the property. And their relation to A., the original mover in the transaction, is that of owners, under a contract to sell and deliver when the purchase price is paid: *Moors* v. *Kidder*, 106 or 107 N. Y.

Corporations.

Preferred Stock—Right to Dividends—Net Earnings—Future Indebtedness—Sinking Fund.—A by-law of a railroad company provided that "dividends on the preferred stock shall first be made semi-annually from the net earnings of said road, not exceeding 6 per centum per annum; after which dividend, if there shall remain a surplus, a dividend shall be made upon the non-preferred stock up to a like per cent. per annum; and should a surplus then remain of net earnings after both of said dividends, in any one year, the same shall be divided *pro rata* upon all the stock." *Held*, that this by-law forming part of the contract of the company with subscribers to the preferred stock, holders thereof were entitled to a dividend in each year in which any net earnings existed, but, it appearing from the terms of the by-law, that the whole net earnings were intended to be paid in dividends in each year, the dividends upon the preferred stock were not cumulative: *Hazeltine* v. *Belfast & M. H. L. Rd.*, 79 or 80 Me.

A railroad company leased its road for a term of fifty years, expiring in 1920, at the annual rent of $36,000, the lessee undertaking to maintain the track, &c., and keep it in repair. There was a mortgage upon the road for $150,000, payable in 1890; the annual interest thereon being about $9000. The company had no floating or unsecured debt, and there was a sum of $22,412 of cash in the treasury after payment of the current expenses and interest on the mortgage. *Held*, that the company was not entitled, as against the preferred creditors, to retain the sum of $19,900 as a contribution to a sinking fund to pay off the mortgage debt when it became due, but that, after payment of the current expenses and the interest on the mortgage, the balance of the rent received formed the net earnings out of which the dividend to the preferred stockholders was payable: *Id.*

Creditor's Bill.

Insolvency—Parties.—To a creditor's bill to annul deeds made by a debtor, on the ground of fraud, alleging that the debtor was thereafter adjudged a bankrupt, and had never obtained a discharge, the assignee in bankruptcy is a necessary party: *Tabb* v. *Hughes*, 81 or 82 Va.

Criminal Law.

Practice—Trial—Presence of Accused.—After convictions of arson and house-burning, motions for new trials were made on behalf of the accused, but in his absence. Subsequently, while personally present in court, he was given an opportunity to renew the motions, but he declined to do so. *Held*, that the error of proceeding with the motions in his absence was thereby cured: *Bond* v. *Commonwealth*, 81 or 82 Va.

Homicide—Insanity as a Defence—Argument of Counsel.—On indictment for murder, where the defence is insanity, the court may in its discretion permit counsel for the prosecution to read to the jury decisions of English and American courts on such defence: *Territory* v. *Harl*, 7 or 8 Mont.

DAMAGES. See *Common Carrier. False Imprisonment.*

DEED.

Construction—Conveyance in Trust—Alienation—Municipal Corporations—Sale of Real Estate—Notice.—A conveyance of property to the mayor and council of Baltimore city, on which it was proposed to erect a McDonough Institute, "in trust for the uses and purposes, and subject to the limitations, powers and provisions" expressed in a city ordinance on the subject, but containing no other words of restriction or limitation on the right of alienation on the part of the grantee, vests in the mayor and council an absolute fee-simple title to the property so conveyed: *Newbold* v. *Glenn*, 67 or 68 Md.

The mayor and city council of Baltimore sold certain property belonging to the city, at private sale, without complying with the statute authorizing the sale of the city property, which requires notice of such proposed sale to be given in a newspaper printed in Baltimore city once a week for three successive weeks. *Held*, that the property being sold for its full value, in the absence of fraud or collusion, such sale was valid, and vested a good title in the purchaser: *Id.*

Execution of by Attorney—Signing Deed—Insertion of Wrong Name—Effect.—A deed was signed by an attorney-in-fact in his own name as attorney for the grantors. *Held*, that the execution was defective, but in equity was good as an execution of the power, and would vest the equitable title in the grantees: *Ramage* v. *Ramage*, 25 or 26 S. C.

A deed was made naming M. R. and J. C. R. as grantees. M. R. had paid all of the purchase-money, and expected the deed to name herself and C. P. R. as grantees. In consequence of the representations of J. C. R., the grantor inserted his name, and he went into possession of the land. *Held*, that if J. C. R. had authority to procure the insertion of his name, he held it in trust for M. R.; if he had no authority, but obtained it by misrepresentation, the deed was void: *Id.*

DIVIDENDS. See *Corporations.*

EJECTMENT. See *Infant.*

ELECTIONS.

County Seat—Re-location—Contest—Exceptions—Mandamus.—The fifteenth section of chapter 5 of the acts of 1881 (Worth's Amended Code, c. 39, § 15), provides that the clerk of the county court shall lay before the county court, at its next session after an election wherein a vote has been taken on the re-location of a county seat, the separate certificates of the precinct commissioners of the vote on this question, at each precinct, and the law then provides: "The said court shall thereupon ascertain and declare the result of said vote, and enter the same of record." *Held*, under this law any voter of the county has a right to appear and contest the validity of these returns, and ask that the court go behind these returns and ascertain what was the actual

legal vote cast at such election for and against re-location, and has a right to demand that the evidence he offers be heard on this question; and, if the court refuse to permit him to be heard, he has a right to demand of them to settle and sign a bill of exceptions, setting out the refusal of the court to permit him to be heard or to introduce any evidence on the question before them. And if they refuse to sign and settle such bill of exceptions, the circuit court may, by *mandamus*, compel them to do so, and then perfect their record so that the action of the county court in this matter may be reviewed on writ of *certiorari* by the circuit court: *Poteet* v. *Cabell County*, 29 or 30 W. Va.

ESTOPPEL.

Declarations—Privity—Assignment of Mortgage.—Plaintiff in ejectment claimed title under a mortgage foreclosure. The defendant was the mortgagor's grantor. The consideration of the mortgage was in part a prior mortgage and debt to other parties, which were assigned to the subsequent mortgagee. *Held*, that by such purchase the subsequent mortgagee succeeded to all the rights of the prior mortgagees, and was in direct privity with them; and evidence of declarations of the defendant to the prior mortgagees, at the time that mortgage was made, to the effect that he had sold the land to the mortgagor, and that it was hers, as well as evidence of similar declarations to the subsequent mortgagee before his mortgage was made, are admissible, and will operate as an estoppel upon defendant from setting up a claim to the land in opposition thereto: *Wardlaw* v. *Rayford*, 25 or 26 S. C.

To Claim Title—Effect of Deed—Belief and Declarations.—The facts that a purchaser at a sheriff's sale did not believe and had no idea that the levy, and the deed to him thereunder, covered a certain part of the tract sold, and that he subsequently made declarations to that effect, both orally and in writing, do not estop him from setting up title to such part of an action of ejectment against him to recover it, where the return on the levy and the deed call for it: *Stroup* v. *McCloskey*, 114 or 115 Penn. St.

Maker of Note — Representations to Purchaser — Failure of Consideration—Ignorance of Facts by Maker.—A. having purchased a jackass of B., at B.'s request gave his note for part of the purchase-money to T., a creditor of B. After the note became due, the plaintiffs, with a view to purchasing it, asked A. if the note was all right, and he replied that "it was all right, and that he expected to pay it the first of January." Upon this information the plaintiffs purchased the note. *Held*, in a suit upon the note, that A. was estopped from pleading a failure of consideration: *Lites* v. *Addison*, 25 or 26 S. C.

Such estoppel was effectual, even though A. was at the time unaware of the facts on which he based his defence of a failure of consideration: *Id.*

EVIDENCE.

Documentary—Copy of Poll-Book.—Defendants, who had been judges and clerks of election, were on trial for conspiring to count and return illegal votes cast at a municipal election, and falsely returning and counting such votes, and entering on the poll-books the names of persons who did

not vote at said election. *Held*, that to prove that the persons named in the indictment as having been falsely returned as voting did not in fact vote, the certified copy of the registration poll-book of the precinct, kept by a challenger, in which he checked off the names of all persons voting, supported by his own testimony and that of another witness, who had charge of the book during the challenger's temporary absence, that the contents of the book were true, was competent evidence: *Owens* v. *State*, 67 or 68 Md.

False Imprisonment.

Damages—Inadequacy.—Though an arrest without warrant be justifiable, yet to detain the prisoner longer than a reasonable time for suing out a warrant, then to handcuff him, carry him out of the county, and there incarcerate him for days under no warrant whatever, is false imprisonment, if not kidnapping, and a finding by the jury of twenty-five dollars damages is no compensation for the injury: *Potter* v. *Swindle*, 76 or 77 Ga.

Fraudulent Conveyances.

Conveyance to Son—Consideration.—A father who was largely in debt, and harassed by creditors, conveyed to his son, who lived with him, and who was possessed of limited means, apparently inadequate to pay the purchase-money, a tract of land, by a deed acknowledged and recorded more than a year after the date of the execution, for the express consideration of $3000, payable, $500 in cash, $500 on demand, and the balance in annual payments of $500 each, reserving no lien for the deferred payments, and following the conveyance by no change in the occupancy of the property. The evidence showed the express consideration to be both inadequate and not *bona fide*. *Held*, that the conveyance was fraudulent and void as to the creditors of the father. Fauntleroy, J., dissenting: *Hickman's Executors* v. *Trout*, 81 or 82 Va.

Infant.

Disaffirmance of Contract—Return of Consideration—Ejectment—Notice of Disaffirmance—Recovery for Improvements.—In an action of ejectment, defendant answered that he had purchased the land from plaintiff while the latter was a minor, and had paid him the price agreed upon, and taken a written obligation from him to make a deed when he came of age, and had also taken a written obligation from plaintiff's father, for a valuable consideration, binding him to have a deed made by his son when the latter came of age. No other consideration passed on either agreement than the price paid for the lot. *Held*, that under these peculiar facts plaintiff was not obliged, in order to maintain the action, to allege a return of the consideration, or inability to return it: *Clark* v. *Tate*, 7 or 8 Mont.

In such a case no notice of disaffirmance is required to be given before commencing the action, and where the defendant has made some improvements on the land during minority, and there has been no fraud or concealment on the part of the plaintiff, the former cannot recover from the plaintiff, therefor, but must look to the father: *Id.*

Insanity. See *Criminal Law.*

Insolvency. See *Creditor's Bill.*

MORTGAGE. See *Estoppel.*

Validity—Invalidity of Note—Alteration.—A mortgage on real estate, given to secure a debt, the amount and terms of which sufficiently appear therein, is valid, and may be enforced against the estate of the maker, although the note representing the same debt is declared void, because of a material alteration made therein by the payee after the death of the maker: *Smith* v. *Smith*, 25 or 26 S. C.

MUNICIPAL CORPORATIONS. See *Deed.*

NOTICE. See *Deed.*

PARTNERSHIP.

Existence and Termination of—Setting Aside a Confession of Judgment.—In a suit to have a certain transaction between the complainant and the defendants declared to be a partnership, and to set aside a judgment confessed by complainant in favor of a third party for the benefit of one of the defendants, it appeared that the agreement of association provided that complainant should make saddle-trees for which complainant owned a patent jointly with defendants; that one of the latter should provide the money, and the other should act as legal attorney, each party to receive one-third of the profits. One of the defendants destroyed the agreement of association, with the consent of complainant, at a time when a suit was pending for infringement, to which complainant and such defendant were made defendants. The attorney defendant, acting as attorney for his co-defendant, his brother, and for complainant, induced the latter to confess judgment in favor of a third party, in order to protect his brother in respect of the money advanced by him. *Held*, that there was a co-partnership which continued notwithstanding the destruction of the agreement, or that, at all events, the assets of the business were subject to all the consequences of such relation, even though such destruction were a dissolution, and that the judgment should be declared void: *Teas* v. *Woodruff*, 43 or 44 N. J. Eq.

PLEDGE. See *Contract.*

SALE. See *Contract. Deed.*

TRIAL. See *Criminal Law.*

TRUST. See *Deed.*

VENDOR AND VENDEE.

Executory Contract—Rights of Purchasers.—A purchaser of land, while part of the price remained unpaid, and before the legal title had been conveyed to him, conveyed a portion of the land to A. After the purchaser's death, all the right, title and interest of his estate in and to the land was sold under order of the probate court to B., who had notice of A.'s claim, but who paid to the original vendor the balance due on the purchase price, and obtained a deed to the whole land to himself. In a suit by B. against A., to quiet title, in which A. filed a cross-bill, *held*, that B. took title subject to the equitable rights of A. in the part of the land conveyed to him, and that A., although not entitled to a decree declaring B. to have no right, title or interest in such part, was entitled to a conveyance of such part from B.; but this, only on condition that A. pay to B. a ratable proportion of the sum paid to the latter to get the title to the whole: *Hilton* v. *Young*, 71 or 72 Cal.