ABSTRACTS OF RECENT DECISIONS.

APPEAL. See *Damages.*

ASSIGNMENT. See *Mortgage.*

For Benefit of Creditors.—An assignee for the benefit of creditors in Pennsylvania may make a valid sale at a public auction room in Philadelphia of lands of the insolvent situated in New Jersey, if such sale is fairly and properly conducted, and in the absence of proof to the contrary, it will be presumed that the assignee did his duty: *Pemberton* v. *Klein*, Ct. of Chan. N. J., 1887.

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[1] To appear in 82 or 83 Ala. Rep.
[2] To appear in 1 or 2 Ariz. Rep.
[3] To appear in 50 or 51 Ark. Rep.
[4] To appear in 4 or 5 Dak. Rep.
[5] To appear in 76 or 77 Ga. Rep.
[6] To appear in 121 or 122 Ill. Rep.
[7] To appear in 111 or 112 Ind. Rep.
[8] To appear in 37 or 38 Kan. Rep.
[9] To appear in 83 or 84 Ky. Rep.
[10] To appear in 39 or 40 La. Rep.
[11] To appear in 80 or 81 Me. Rep.
[12] To appear in 145 or 146 Mass. Rep.
[13] To appear in 66 or 67 Md. Rep.
[14] To appear in 60 or 61 Mich. Rep.
[15] To appear in 65 or 66 Miss. Rep.
[16] To appear in 22 or 23 Neb. Rep.
[17] To appear in 19 or 20 Nev. Rep.
[18] To appear in 43 or 44 N.J.Eq.Rep.
[19] To appear in 95 or 96 N. C. Rep.
[20] To appear in 15 or 16 Ore. Rep.
[21] To appear in 115 or 116 Pa.St.Rep.
[22] To appear in 15 or 16 R. I. Rep.
[23] To appear in 25 or 26 S. C. Rep.
[24] To appear in 86 or 87 Tenn. Rep.
[25] To appear in 4 or 5 Utah Rep.
[26] To appear in 3 or 4 W. T. Rep.
[27] To appear in 68 or 69 Wis. Rep.

ATTORNEY AND CLIENT. See *Bills and Notes.*

Authority of Counsel to Make Stipulations—Estoppel—Rehearing —Failure of Counsel to Offer Evidence.—Defendant submitted the bill of plaintiffs to W., a counselor at law, who, conceiving that he had full authority to act for defendant, entered into a stipulation with plaintiffs' counsel waiving service of process and the right to file answer, and admitting the facts stated in the bill. W. represented defendant at the hearing of the case before the chancellor and the master. *Held*, that defendant's employment of W., and appearance with him in the subsequent stages of the suit, without objection to the stipulation, and plaintiffs' prosecution of the suit in reliance upon the stipulation, estopped defendant from denying the authority of W. to make the stipulations: *Patterson* v. *Read*, Ct. of Chan. N. J., Oct. 21, 1887.

Defendant moved for a rehearing, on the ground that his counsel had not offered evidence before the master which he was urged to put in. *Held*, that the counsel not deeming the evidence necessary to the proper conduct of the case, at best it was but an error in judgment, and no ground for a rehearing: *Id.*

BAILMENT.

Deposit—Ordinary Diligence—Use by Bailee.—Where a bailee not for hire allows money to be deposited in his safe for safe-keeping, and without his fault the safe is robbed, the owner must bear the loss: *Carlyon* v. *Fitzhenry*, S. Ct. Ari., Sept. 1, 1887.

In such a case, if the bailor consents to the use of the money by the bailee, and a robbery occurs before there has been such use of the money, the bailor must bear the loss: *Id.*

BANKS AND BANKING. See *Bills and Notes—Checks—Forgery.*

BILLS AND NOTES. See *Contract—Limitation.*

Bona fide Purchase—Future Consideration—Negotiability.—If it were known to the transferee of a negotiable promissory note, acquired for value and before maturity, on taking it, that the consideration was future and contingent, and that there might be offsets against it, this would not make him liable to the equities between the original parties: *State Nat. Bank* v. *Cason*, S. Ct. La., July 5, 1887.

It cannot affect the negotiability of a note that its consideration is to be thereafter realized, or that from some contingency it may never be enjoyed: *Id.*

Collection Fee.—A stipulation for an unreasonable attorney fee is void: *Kimball* v. *Moir*, S. Ct. Ore., Nov. 21, 1887.

Estoppel.—Maker of judgment note and his assignee cannot set up failure of original consideration against one who bought it on the representation of the maker that it was good: *Wilcox* v. *Rowley*, S. Ct. Pa., Oct. 3, 1887.

Interest.—Omission of the words "until paid" in a note bearing interest will not be rectified in equity on the ground that the parties thought the words unnecessary: *Hicks* v. *Coody*, S. Ct. Ark., Oct. 22, 1887.

Where a note stipulates for ten per cent. interest until maturity, that rate does not continue after maturity: *Hamer* v. *Rigby*, S. Ct. Miss., Nov. 21, 1887.

Indorsee "for collection" may sue, but subject to the same defences as the payee: *Wilson* v. *Tolson*, S. Ct. Ga., March 14, 1887.

Non-Negotiable.—Note proving for seizure of property sold: *South Bend Iron Works* v. *Paddock*, S. Ct. Kan., Nov. 5, 1887.

Checks.

Memorandum on.—A practice among banks not to observe memorandum upon checks has the sanction of law: *State Nat. Bank* v. *Reilly*, S. Ct. Ill., 1887.

Consideration. See *Contract—Mortgage.*

Conspiracy.

Requisites of Complaint.—A complaint charged a conspiracy on the part of defendants to control the coal trade in the city of M., and the injury to plaintiff resulting directly therefrom, connecting defendant by overt acts in the carrying out of such conspiracy. *Held*, that the complaint stated a cause for action: *Murray* v. *McGarigle*, S. Ct. Wis., Oct. 11, 1887.

Contempt.

Affirmance on Appeal—Power of Trial Court to remit Fine.—Where a party has been found guilty of contempt, and a fine imposed, and the case appealed to the Supreme Court, which court affirms the judgment appealed from, the trial court has no power afterwards to modify or remit the fine imposed: *In re Griffin*, S. Ct. N. C., Oct. 24, 1887.

Continuance.

Discretion of Trial Court.—An application for the postponement of a trial, on the ground that the attorneys of the party are engaged in another trial, is addressed to the discretion of the trial court; and the Supreme Court of Indiana will not reverse for a refusal to postpone the trial, unless it clearly appears that there was an abuse of the discretion: *Evansville & I. R. Co.* v. *Hawkins*, S. Ct. Ind., Sept. 28, 1887.

Contract. See *Municipal Corporations.*

Public Policy—Agreement for "Lobby Services."—It is against public policy for a person to hire himself out to perform "lobby services" with members of the legislature, and a contract for such services is illegal and invalid: *Sweeney* v. *McLeod*, S. Ct. Ore., Oct. 17, 1887.

Criminal Law.

Resisting Arrest by Private Person without Warrant.—A private person may, in a temperate manner and without a warrant, arrest one who has just committed a felony; and it is murder for the person so attempted to be arrested to kill one whom he knows is in fresh pursuit and endeavoring to arrest him for such felony: *State* v. *Mowry*, S. Ct. Kan., 1887.

Practice—Peremptory Challenges—Talesmen.—In a criminal action after the peremptory challenges allowed a defendant have been exhausted, he will not be permitted to withdraw his challenge to one of the rejected jurors, and have him substituted in the place of a talesman that has been called to complete the jury: *Biddle* v. *State*, Ct. App. Md., June 21, 1887.

Damages.

In an action of claim and delivery, the verdict of the jury was that the goods be delivered up to the defendant, or that he recover a certain sum as the value thereof. The sum mentioned was in excess of the highest value of the goods proved in evidence. *Held*, that, although the attention of the trial court was not called to this variance at the rendering of the verdict, and before the jury were discharged, and although the motion for new trial was made and denied *pro forma* without argument, the appellate court would reverse the judgment and order a new trial, unless both parties consent to a modification of the judgment by reducing it to the proved value of the goods: *North Star Boot and Shoe Co.* v. *Braithwaite*, S. Ct. Dak., Feb., 1887.

Dedication. See *Municipal Corporations.*

What Constitutes—Plat and Sale of Lots.—The act of dividing up a parcel of land into lots, streets, and alleys, and selling lots with clear reference to a map or plan respresenting such divisions, is an immediate and conclusive dedication of such streets and alleys to the use of the purchaser and of the public: *Schneider* v. *Jacobs*, Ct. App. Ky., Sept. 22, 1887.

Deed.

Construction—Existing Rights of Parties.—The respondent, under a claim of right, had maintained certain drains for more than twenty years, through an avenue, a private way belonging to L., and with his knowledge, when the respondent bought land from L. bounded on said avenue. The deed contained the clause: "It is distinctly understood by and between the parties hereto that there shall be no right of frontage on or access to the said avenue for any land of this grantee, except for the parcel hereby conveyed." After receiving the deed, respondent continued his drains as before through said avenue. *Held*, that the clause did not affect respondent's right of drainage acquired by twenty years' adverse use before he took the deed: *Fiske* v. *Wetmore*, S. Ct. R. I., July 30, 1887.

ESTOPPEL. See *Attorney and Client—Bills and Notes.*

To Deny Delivery of Written Guaranty—Delivery to Beneficiary—Notice of Acceptance—When Unnecessary.—One who signs a guaranty, and intrusts it with the person for whom he thus becomes responsible, is estopped from claiming that he did not authorize its delivery to the obligee: *Snyder* v. *Click*, S. Ct. Ind., Oct. 20, 1887.

Where a guaranty is direct and certain, and the thing guaranteed is definite in amount, and known to the guarantor, or might have been known by him by the exercise of ordinary care, at the time the guaranty was given, notice of the acceptance of such guaranty is not necessary in order to bind the guarantor; and upon performance of the consideration on which it rests, the contract becomes complete and enforceable: *Id.*

FORGERY.

Notwithstanding § 5209, U. S. Rev. Stat., a State court can try the bookkeeper of a National bank, who without authority filled a draft signed in blank by the assistant cashier, and also made false entries in his books to conceal the fact: *Hoke* v. *The People*, S. Ct. Ill., 1887.

FRAUDULENT CONVEYANCES. See *Husband and Wife.*

Conveyance by Creditor—Intent—Knowledge of Vendee.—W. sold goods to plaintiff, the clerk in his store, by an absolute conveyance, taking in payment the notes of plaintiff due in one, two, and three years. Defendants, at the instance of creditors of W., levied upon and sold the goods, and for defence claimed that the sale to plaintiff by W. was for the purpose of "hindering, delaying, and defrauding his creditors." *Held*, that it was error not to submit to the jury the issue as to the intent to defraud: *Beasley* v. *Bray*, S. Ct. N. C., Oct. 10, 1887.

In order to impeach an absolute conveyance on the ground that it was made for the purpose of hindering, delaying, and defrauding the creditors of the vendor, it must appear that the vendee participated in the fraud: *Id.*

Defence of Fraud—Sufficiency on Appeal.—In an action against the vendee to enforce a vendor's lien, defendant pleaded "that said conveyance was not made for any good or valuable consideration, but with intent and for the express purpose to hinder, delay, and defraud the creditors" of the vendor. The plaintiff failed to object to the sufficiency of the plea of fraud, and at the trial evidence was admitted to the effect that the plaintiff at the time of making the conveyance was largely indebted; also other and conflicting evidence upon the question of fraud between the parties. *Held*, that no objection having been made to the sufficiency of the plea of fraud it was sufficient to sustain, under the evidence, the court's finding that the conveyance was fraudulent: *Reese* v. *Kinkead*, S. Ct. Nev., Sep. 10, 1887.

FRAUDS, STATUTE OF.

Memorandum—Letter.—A person made a parol agreement to convey land to his mother, as evidence of which the contents of a letter from him to his sister was testified to, the testimony being as follows: "He said that he was in great trouble, and that he had to have assistance from some source or other, and if his mother could assist him in any way, he was willing to relinquish all interest in the land in controversy to procure the money that he desired." *Held*, that even though the letter itself containing this language had been introduced in evidence, the writing would not have been a sufficient compliance with the statute of frauds for a court of equity to decree specific performance of the contract: *Boozer* v. *Teague*, S. Ct. S. C., 1887.

GUARANTY. See *Estoppel.*

Instrument Construed—Joint Liability.—The following writing is sufficient evidence of intention to create a joint liability:

"DETROIT, August 27, 1885.

"We, the undersigned, do hereby agree that all brick delivered to this building on corner of Hastings and Catherine streets for Mr. Finn, which is the proprietor of said building, shall be responsible of said brick for same building." (Signed by three persons): *Golden* v. *Finn*, S. Ct. Mich., Oct. 20, 1887.

GUARDIAN AND WARD. See *Infants.*

Final Settlement—Validity.—A final settlement of a resigned guardian, made during the infancy of a non-resident ward, service being had on the ward by order of publication, and no guardian *ad litem* being appointed, is *ex parte*, and, at the election of the ward, may be disregarded; and a recital, in the decree discharging the guardian, that the ward was then of full age, is not a bar to a proceeding in chancery by the ward for the settlement of the guardianship: *Turrentine* v. *Daly*, S. Ct. Ala., July 19, 1887.

HUSBAND AND WIFE. See *Infants.*

Fraudulent Conveyance—Land Bought at Foreclosure.—The maker of a promissory note gave certain mortgages to secure his indorsers. In consideration of the payment by J., a brother of the maker, of a portion of the amount due on the note, the mortgages were transferred to J.; and, upon foreclosure, the title to the property passed to his wife. Afterwards the amount advanced by J. was repaid to him. In an action by one of the indorsers to set aside the conveyance to the wife as fraudulent, she maintained that the money advanced on the note was hers, although in the answer it was averred that the husband had advanced the money. The evidence showed that, if the money was the wife's, it went into the transaction as a loan to her husband. *Held*, that the wife was not a *bona fide* purchaser: *Anthony* v. *Boyd*, S. Ct. R. I., July 30, 1887.

Infants.

Cruel and Inhuman Treatment—Custody of Child.—When it appears from the evidence in divorce proceedings that the plaintiff, during her married life with the defendant, has been subjected to the most cruel and inhuman treatment, and has been compelled to leave the defendant on account of his cruelty and tyranny in order to save herself and child from injury, the custody of the child should be given to the mother: *Pauly* v. *Pauly*, S. Ct. Wis., 1887.

Injunction.

Disputed Question of Law—Preliminary Injunction—Appeal.—A complainant is not entitled to an interlocutory injunction when the legal right on which he rests his claim depends on a disputed question of law: *Delaware, L. & W. R. Co.* v. *Central Stock Yard*, Ct. Chan. N. J., Sept. 12, 1887.

Where, on an application for a preliminary injunction, an order to show cause is granted, with an *ad interim* injunction order, and the court subsequently refuses an injunction on the ground that the law on which complainant's right depends is unsettled, the injunction order will not be continued in force pending the appeal: *Id.*

Landlord and Tenant.

Liability of Landlord to keep Premises in Repair.—Plaintiffs leased and occupied with a dry-goods store the lower floor of defendant's building, the second floor of which was occupied by other tenants. Upon the second floor was a water-closet, under the control of the tenants, but over which defendant exercised no control, and which she was under no obligation by contract to care for. By improper use of some unknown person the closet became obstructed and the water overflowed and damaged plaintiff. *Held*, in an action for these damages, that defendant was not liable: *Kenny* v. *Barnes*, S. Ct. Mich., Oct. 20, 1887.

Limitation.

The time during which defendant resided outside of the State will be deducted on the trial of a plea of the statute to a note: *Palmer* v. *Morse*, S. Ct. Maine, 1887.

Master and Servant.

Negligent Use of Defective Appliances.—In an action by an employee for damages for personal injuries, caused by the negligence of his employer in using defective appliances, where there is *prima facie* proof of the negligence charged, an instruction "that to overcome such *prima facie* evidence of negligence the burden of proof is upon defendant, and unless the defendant establish, by a clear

preponderance of evidence," the exercise of proper care, he is guilty of negligence, is erroneous: *Puget Sound Iron Co.* v. *Lawrence*, S. Ct. Wash. Ter., July 25, 1887.

Injury from Defective Appliance—Province of Jury.—An employee in a furniture factory was killed by a knife flying out of a rapidly revolving shaper-head the first time it was used, and as soon as it reached its highest velocity, before it was applied to cutting lumber to be worked. The shaper-head was invented by and made after a plan furnished by one of the principal managers of the furniture company. It differed in some respects from other heads in use, and particularly in the device to check the tendency of the knife to fly out of its socket. In an action to recover damages against the employer, the court held there was no evidence of negligence, and ordered a verdict for defendant. *Held*, that the fact that the knife did fly out when fastened in as well as it was designed to be had a tendency to prove that the design was bad, and that the question whether it was a reasonably safe implement and properly designed, and whether the principle involved in it was not a departure from safe methods as before applied, should have been submitted to the jury. SHERWOOD, J., dissenting: *Marshall* v. *Widdicomb Furniture Co.*, S. Ct. Mich., Oct. 13, 1887.

Fellow-Servants—Superintendent of Mine—Contributory Negligence.—A foreman having entire supervision of a mine and all its workings, employing and discharging laborers and prescribing their duties, is not a co-employee within the rule which exempts the master from responsibility for the injuries received by a servant through the negligence of a fellow-servant: *Reddon* v. *Union Pac. R. Co.*, S. Ct. Utah, Oct. 1, 1887.

In an action to recover damages for personal injuries received while at work in defendant's mines, the testimony of the plaintiff was to the effect that certain places in the mine had become dangerous by reason of the settling of the base of the columns or partitions left to support the roof of the mine, which caused masses of rock and coal to fall from the top and sides; that, after a portion of the dangerous section had been cased and timbered, the defendant's superintendent directed the work stopped, saying that he would timber it at another time; that coal and other material continued to fall from the sides and roof of the untimbered sections, which was known to both the plaintiff and the superintendent; that three or four days before the accident, plaintiff called the superintendent's attention to the unsafe condition of the section beyond the timbering, upon which the superintendent assured plaintiff that there was no danger, but promised to have it made secure. Subsequently the plaintiff, at the superintendent's direction, went to work at a place beyond the timbering, but not at the particular place to which he had previously called the superintendent's attention, and was injured by a fall of coal from the sides of the mine. *Held*, that a motion for nonsuit was properly overruled; the question whether plaintiff was guilty of contributory negligence by re-

maining in defendant's employ with knowledge of the danger, being for the jury: *Id.*

MORTGAGE.

Chattel Mortgage—Consideration—Release of Claims.—A. purchased a span of horses from B., giving his note therefor, with C. and D. as sureties. To induce C. to sign the note as surety, A. promised to execute a chattel mortgage on said property to C.; and further agreed that, until the execution of said mortgage, C. should retain a lien on said property. Afterwards A. executed a mortgage to one E. on said property, and soon afterwards left the State without having executed a mortgage to C. D. thereupon, in consideration that C. would release his claim on the property, executed a chattel mortgage upon other property to secure C. against payment of a part or all of the note held by B. *Held*, that the mortgage from D. to C. was not without a consideration: *Sparks* v. *Wilson*, S. Ct. Neb., 1887.

Agreement between Mortgagor and Mortgagee—Rights of Assignee.—A note and mortgage were given, the partial consideration of which was the promise of the mortgagee to assume and pay a prior mortgage upon the land. This prior mortgage was not paid by the mortgagee, but was afterwards paid by the assignee of the last mortgage, who knew nothing of the promise of the mortgagee to pay the debt, and who took the promissory note of the mortgagee for the amount so paid, under an agreement that the last note and mortgage, which had previously been assigned as security for another debt due from the mortgagee to the assignee, should also be security for the amount so paid. In an action for the foreclosure of the last mortgage by the assignee, *held*, that the mortgagor was entitled to no reduction in the amount to be recovered because of the failure of the mortgagee to pay the prior mortgage. Upon the assignment of the mortgage, the equities between the mortgagee and assignee became fixed, and the fact that the latter subsequently ascertained that the mortgagee had assumed and promised to pay the debt does not diminish his legal or equitable right to hold the note and mortgage as collateral security for the full amount of the mortgagee's indebtedness: *Blakely* v. *Twining*, S. Ct. Wis., Sept. 20, 1887.

Foreclosure—Release—Priorities.—In an action to foreclose a mortgage, given by the defendant M., conditioned to pay in one year from its date certain overdrafts by her husband, a member of the firm of S. & Son, amounting to $1,500, *held*, that deposits of the firm, made before the expiration of the year, in pursuance of a prior agreement that they might be withdrawn and used in the firm business, did not operate as an extinguishment of the overdrafts existing at the time the mortgage was given, and consequently did not release the lien of the mortgage, so as to give a junior mortgagee a priority of lien: *Sawyer* v. *Senn*, S. Ct. S. C., Aug. 22, 1887.

Subsequent to the execution of the mortgage, a note for the sum of $1,500 was made by the defendant M. to S. & Son, and by them

transferred to the plaintiff, who gave them credit for the amount on their deposit account. The note was given to change the form of the firm's indebtedness to the bank from overdrafts to bankable paper, in order that the plaintiff might make a better showing to the comptroller of the currency. Afterwards the note was returned canceled, and the mortgage, which in the meantime had remained in plaintiff's possession, was revived. *Held*, that, as the note was never intended as a payment of the overdrafts, it did not operate as a release of the mortgage, and that the junior mortgagee, whose debt was not created until after this transaction, was not entitled to a priority of lien: *Id.*

Deed of Trust—Successive Foreclosures.—Real estate held in trust as security for the payment of three purchase-money notes was sold by the trustee under power of sale, and bid in by the assignee of the first note in satisfaction thereof. The debtor redeemed, and the holder of the other two notes brought suit for the foreclosure of the trust deed. The evidence showed that the assignee of the first note bid in the land for about one-third its value; that the assignee, the trustee, and the debtor all knew that the two notes were still outstanding at the time of sale; that the debtor knew the sale was made in satisfaction of the assignee's debt only. *Held*, that the last two notes were still a lien on the land, and entitled to an equity of satisfaction with the first one: *Shields* v. *Dyer*, S. Ct. Tenn., Oct. 5, 1887.

Municipal Corporations.

Negligence—Defective Sidewalks—Notice.—Where there was evidence from which the jury might have found that a defect caused by an accumulation of snow and ice had existed for nine days on a frequented sidewalk, which during that time was patrolled by a policeman, and several times passed by one of the selectmen of defendant town, *held*, that these facts clearly afforded evidence of notice of the defect and of negligence in not remedying it: *Fortin* v. *Inhabitants of Easthampton*, S. C. Mass., Oct. 21, 1887.

Taxation of Insurance Company—Assets—Reserve Fund—Statutory Percentage on Capital Stock—Exemption.—The contingent liability of an insurance company to pay losses, and to refund unearned premiums, is not an indebtedness which may be deducted from its assets when listing its property for taxation; and in the absence of a provision of its charter, or of a statute to the contrary, a fund required by statute to be reserved free from dividends, consisting of certain securities, interest, and the amount received from premiums upon unexpired policies, declared to be unearned premiums is liable to municipal taxation: *Kenton Ins. Co.* v. *City of Covington*, C. App. Ky., Oct. 27, 1887.

The legislative requirement that an insurance company pay into the treasury a certain percentage upon its capital stock does not exempt it from further taxation, or from taxation for municipal purposes, in the absence of such an exemption in its charter, or in any statute: *Id.*