

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.<sup>1</sup>

CIRCUIT COURT OF THE UNITED STATES. <sup>2</sup> INTERSTATE COMMERCE COMMISSION. <sup>3</sup> SUPREME COURT OF GEORGIA. <sup>4</sup> SUPREME COURT OF INDIANA. <sup>5</sup> SUPREME COURT OF IOWA. <sup>6</sup> SUPREME COURT OF KANSAS. <sup>7</sup> COURT OF APPEALS OF KENTUCKY. <sup>8</sup> SUPREME JUDICIAL COURT OF MAINE. <sup>9</sup> COURT OF APPEALS OF MARYLAND. <sup>10</sup>	SUPREME JUDICIAL COURT OF MASSACHUSETTS. <sup>11</sup> SUPREME COURT OF MICHIGAN. <sup>12</sup> SUPREME COURT OF MINNESOTA. <sup>13</sup> SUPREME COURT OF MISSOURI. <sup>14</sup> COURT OF APPEALS OF NEW YORK. <sup>15</sup> SUPREME COURT OF PENNSYLVANIA. <sup>16</sup> SUPREME COURT OF TEXAS. <sup>17</sup> SUPREME COURT OF APPEALS OF VIRGINIA. <sup>18</sup>
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BANKS. See *Checks*.

*Examiner of National Bank cannot bind by acts in its behalf: Witters v. Sowles, C. Ct. U. S., Dist. Vt., Oct. 5, 1887.*

BILLS AND NOTES.

*Accepted draft not returned until insolvency of acceptor raises a question for a jury whether the failure to return damaged the payee: Fox v. Davenport Nat. Bank, S. Ct. Iowa, Dec. 21, 1887.*

*Collection fee stipulated for, in case of suit, is to be considered part of the matter in controversy in determining what court has jurisdiction: Blakenship v. Wartelsky, S. Ct. Texas, Dec. 2, 1887.*

*Consideration is sufficient where the note is given to plaintiff on surrender of his certificate of homestead entry to enable defendant to acquire plaintiff's interest. Fraud and bad faith of plaintiff in originally making his entry does not affect the note: McCabe v. Cuner, S. Ct. Mich., Jan. 12, 1888.*

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<sup>1</sup> To appear in 123 or 124 U. S. Rep.  
<sup>2</sup> To appear in 33 Fed. Rep.  
<sup>3</sup> To appear in 1 I. S. Com. Rep.  
<sup>4</sup> To appear in 76 or 77 Ga. Rep.  
<sup>5</sup> To appear in 111 or 112 Ind. Rep.  
<sup>6</sup> To appear in 71 or 72 Ia. Rep.  
<sup>7</sup> To appear in 37 or 38 Kan. Rep.  
<sup>8</sup> To appear in 83 or 84 Ky. Rep.  
<sup>9</sup> To appear in 80 or 81 Me. Rep.

<sup>10</sup> To appear in 67 or 68 Md. Rep.  
<sup>11</sup> To appear in 145 or 146 Mass. Rep.  
<sup>12</sup> To appear in 60 or 61 Mich. Rep.  
<sup>13</sup> To appear in 36 or 37 Minn. Rep.  
<sup>14</sup> To appear in 92 or 93 Mo. Rep.  
<sup>15</sup> To appear in 107 or 108 N.Y. Rep.  
<sup>16</sup> To appear in 115 or 116 Pa. St. Rep.  
<sup>17</sup> To appear in 77 or 78 Tex. Rep.  
<sup>18</sup> To appear in 82 or 83 Va. Rep.

*Payment* presumed when new note given to take up; and this presumption becomes conclusive when new note is indorsed to third person who brings suit: *Snow v. Foster*, S. Jud. Ct. Me., Dec. 22, 1887.

*Parol evidence* admissible to show that other persons were to sign as makers: *Merchants' Exchange Bank v. Luckow*, S. Ct. Minn., Dec. 13, 1887.

#### CHECKS.

*Defined* to include an order on a bank to pay to a named person a specified sum on deposit without designating a future day of payment: *Bull v. First Natl. Bank*, U. S. S. Ct., Oct. 31, 1887.

*Negotiability* not affected by being payable "in current funds:" *Id*

*Partnership*, drawn by one partner for his own use, with the knowledge of the bank, is paid by the bank at the risk of the other partner not assenting: *Graham v. Taggart*, S. Ct. Pa., Nov. 11, 1887.

#### CRIMINAL LAW.

*Removal* to district where the offense was committed, under §1014, Rev. Stat. U. S., should be preceded by preliminary examination to establish identity of person and probable guilt: *Re Burkhardt*, D. Ct. U. S., E. Dist. Wis., Oct. 27, 1887.

COMMON CARRIERS. See *Interstate Commerce Law—Railroads*.

CONSTITUTIONAL LAW. See *Liquor Laws—Railroads—Removal Cases—U. S. Constitution*.

CONSIDERATION. See *Bills and Notes—Contracts*.

CONTRACTS. See *Railroads*.

*Construction* aided only in case of uncertainty, by resort to the condition of the parties, the subject-matter and circumstances surrounding the transaction: *Plano Mfg. Co. v. Ellis*, S. Ct. Mich., Jan. 5, 1888.

*Continuing offer* to sell land does not need a formal withdrawal, and is effectually terminated at once by a sale to a third person: *Coleman v. Applegarth*, Ct. App. Md., Nov. 18, 1887.

*Interlineation* cannot be explained or shown by whom written, when there is no allegation of fraud or mistake and the contract is unambiguous: *Bowe v. Dotterer*, S. Ct. Ga., Oct. 8, 1887.

*Nudum Pactum.*—Verbal promise, without consideration, for extension of a written option to purchase land, where time is of the essence of the contract: *Coleman v. Applegarth*, Ct. App. Md., Nov. 18, 1887.

Time stipulated in a written option to purchase land, is of the essence of the contract: *Id.*

DAMAGES. See *Railroads*.

*Deductions* in case of death, not simply for personal food and clothing, but also expenses of his manner of living: *Augusta, etc., R. R. Co. v. Killain*, S. Ct. Ga., Nov. 22, 1887.

DEED. See *Land—Married Women*.

DURESS. See *Married Women*.

EMINENT DOMAIN.

*Drains* cannot be authorized to be laid on land for the benefit of an adjoining owner, because a taking for private use: *Fleming v. Hall*, S. Ct. Iowa, Dec. 20, 1887.

EXPRESS COMPANIES. See *Interstate Commerce Law*.

EXECUTOR.

*De son tort*, when sued by creditor of decedent, not allowed for his own debt, at law or in equity: *Baumgartner v. Haas*, Ct. App. Md., Dec. 9, 1887.

*Receiver* appointed on prayer of legatee, where executrix, who is the life tenant, and is directed to manage for best interests of legatees, mismanages: *Solomon v. Tarver*, S. Ct. Ga., Oct. 28, 1887.

FRAUD. See *Married Women*.

INTERSTATE COMMERCE LAW. See also *Railroads*.

*Application* of the act to a common carrier is not defeated by reason of some of the carrier's transactions being outside of the act: *Re Express Companies*. The Commission, Dec. 28, 1887.

*Common carriers*, such as stage coaches, independent steamboat lines, etc., by the implication of the first section of the act, are not subject to its provisions: *Id.*

*Definition* of the first section ("the provisions of this act shall  
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apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly water"—when the traffic is interstate), controls the application of the act to the carriers within its terms: *Id.*

*Discrimination* is unjust when a higher rate is charged for railroad ties than other rough lumber, and cannot be excused by a desire to keep the ties on the line or the price low for the benefit of the railroad company: *Reynolds v. W. N. Y. & Pa. R. R. Co. et al.* The Commission, Jan. 13, 1888.

*Express or parcel traffic*, conducted by a railroad company by its ordinary transportation staff or through an independent special bureau or by combination in a joint arrangement with other railroad companies is subject to the act as fully as ordinary freight traffic: *Re Express Companies.* The Commission, Dec. 28, 1887.

*Express companies* not owned by a common carrier are not subject to the provisions of act as they now stand: *Id.*

*Highly remedial statute*, on the whole, as it was designed to secure to the public equal and impartial rights and privileges and to put an end to well-known abuses, it is therefore to be construed liberally, though fairly, but always to attain the beneficial result purposed to its greatest available extent: *Id.*

*Jurisdiction* of the Commission is strictly statutory and cannot be extended by implication over other subjects than those defined in the act: *Id.*

*Refusal to furnish cars* to carry freight off its line is justifiable when the railroad company actually needs all its equipment in its own line: *Riddle et al. v. P. & L. E. R. R. Co.* The Commission, Jan. 17, 1888.

JURISDICTION. See *Bills and Notes—Interstate Commerce Law.*

#### LAND.

*Appurtenances* will (exceptionally) include a tract contiguous and forming one piece with that specifically conveyed as "the entire line of the P. railroad \* \* with its appurtenances \* \* and including the real estate, depots, etc.:" *M. P. R. R. Co. v. Maffit*, S. Ct. Mo., Jan. 16, 1888.

*Forfeiture* liable when deed contains recital of a condition that no building should be erected nearer to certain street than certain house and there is a breach of the condition: *Adams v. Valentine*, C. Ct. U. S., S. Dist. N. Y., Nov. 11, 1887.

## LIQUOR LAWS.

*Bar-room* is a place for the sale of intoxicating liquors by retail for consumption at the place of sale: *Bieser v. State*, S. Ct. Ga., Nov. 1, 1887.

*Kansas law*, prohibiting manufacture of liquor in that State for sale as a beverage, is valid, and does not infringe any right, etc., secured by Const. U. S.: *Mugler v. Kansas*, S. Ct. U. S., Dec. 5, 1887.

*Licensing* the sale of domestic wine, under the general law, not taken away by the Local Option Act, forbidding the manufacture and sale of all intoxicating liquors after a vote, because of the proviso in the latter act, that the act should not interfere with the manufacture and sale of domestic wines or cider: *Brown v. State*, S. Ct. Ga., Oct. 29, 1887.

*Police Power*, the authority for: *Ex parte Burnside*, Ct. App. Ky., Dec. 10, 1887.

## MAILS.

*Fraudulent scheme*, under § 5,480, U. S. Rev. Stat., causes a separate liability each time a letter is taken out of or deposited in the mail: *Re Henry*, S. Ct. U. S., Nov. 21, 1877.

## MARRIED WOMEN.

*Acknowledgment* of her deed not avoided except by duress or fraud: *Hitz v. Jenks*, S. Ct. U. S., Nov. 14, 1887.

*Duress* not made out by proof of an angry command to write her name without threats of personal violence: *Gabbey v. Fogens*, S. Ct. Kan., Dec. 10, 1887.

MASTER AND SERVANT. See *Railroads*.

NEGLIGENCE. See *Railroads*.

NUDUM PACTUM. See *Contracts*.

PARTNERSHIP. See *Checks*.

*Accounts* cannot be demanded where the agreement for a partnership never went into effect: *Davis v. Key*, S. Ct. U. S., Oct. 31, 1887.

None from receipt of a part of the profits accruing to one who is a partner: *Rockafellow v. Miller*, Ct. App. N. Y., Dec. 13, 1887.

Profits received by B. as compensation for real estate and money contributed to A.'s business constitutes a partnership as to third persons: *Marbut v. Moore*, S. Ct. Ga., Oct. 26, 1887.

#### PATENTS.

Prior public use for more than two years before application invalidates the L. A. Sprague patents for buckle levers, Nos. 228,136 and 231,199, and the driven-well patent, No. 4,372: *Smith, etc., Mfg. Co. v. Sprague* and *Andrews v. Hovey*, S. Ct. U. S., Nov. 14, 1887.

Specific performance of parol agreement to assign a patent obtained at joint expense will be enforced, notwithstanding § 4,898 Rev. Stat. U. S.: *Serle v. Hill*, S. Ct. Iowa, Dec. 10, 1887.

PRINCIPAL AND AGENT. See *Banks—Railroads*.

POLICE POWERS. See *Liquor Laws—Railroads—U. S. Constitution*.

RAILROADS. See *Damages—Land*.

Contract of carriage from E. in Alabama to A. in Georgia is not proved by evidence of such a contract from L. in Kentucky to A. in Georgia: *Central R. R. Co. v. Tucker*, S. Ct. Ga., Feb. 29, 1887.

Fellow-Servants.—Trackman and engineer or brakeman: *Connelly v. Minneapolis, etc., R. R. Co.*, S. Ct. Minn., Dec. 27, 1887.

Fence not kept secure by, renders liable for value of a horse, although the owner was guilty of contributory negligence: *Balt., etc., R. R. Co. v. Everts*, S. Ct. Ind., Dec. 7, 1887.

Not liable for death of another employee, caused by the head of an unusually tall brakeman breaking a telegraph wire while standing on top of a freight car, there being no evidence of any absence of precaution which a prudent person would have taken: *Wabash, etc., R. R. Co. v. Locke*, S. Ct. Ind., 1887.

Not liable for consequences of advice given by conductor as to passenger's proceedings after leaving the train: *Cincinnati, etc., R. R. Co. v. Carper*, S. Ct. Ind., 1887.

Not liable for attempt to cross a double track railroad at a highway crossing immediately after the passage of a train without stopping, looking, and listening for a train in the opposite direction: *Marty v. Chicago, etc., R. R. Co.*, S. Ct. Minn., Jan. 2, 1888.

*Not liable, prima facie*, for an injury on a familiar crossing: *Indiana, etc., R. R. Co. v. Hammock*, S. Ct. Ind., Dec. 29, 1887.

*Not liable* for failure to look in the direction from which a train would ordinarily come, although a brakeman stood at the crossing (without being recognized or making any sign): *Young v. N. Y., etc., R. R. Co.*, Ct. App. N. Y., Dec. 6, 1887.

*Not liable* when there is a failure to stop, look, and listen at a crossing, unless the engineer did not use proper means to avoid the accident: *Norfolk, etc., R. R. Co. v. Burge*, S. Ct. of App. Va., Nov. 17, 1887.

*Not liable* for death of a man caught on a trestle, when he knew the locality, might have jumped off, and was only discovered when the train rounded a curve a quarter of a mile off, and could not be stopped: *May v. Central B. & R. R. Co.*, S. Ct. Ga., Nov. 4, 1887.

*Switching charges*, even if against interstate commerce, may be regulated by State commission under the police powers of the State: *Chicago, etc., R. R. Co. v. Becker*, C. Ct. U. S. D. Minn., Dec., 1887.

*Track* must be safe or the owner will be liable to the employees of a user under license: *Augusta, etc., Co. v. Killian*, S. Ct. Ga., Nov. 22, 1877.

#### REMOVAL CASES.

*Neglect* to present the Federal question in the State court, is not sufficient reason for that court overlooking it when necessarily involved in determining the case: *Des Moines N. & R. R. Co. v. Iowa Homestead Co.*, S. Ct. U. S., Dec. 5, 1887.

*Remanding order* cannot be reviewed in S. Ct. U. S., since Act March 3, 1887: *Wilkinson v. Nebraska*, S. Ct. U. S., Nov. 14, 1887.

STAGE COACHES. See *Interstate Commerce Law*.

STATUTES. See *Interstate Commerce Law*.

*Variance* between public printed copy and the act as passed and approved, the latter should govern: *Epstin v. Levenson*, S. Ct. Ga., Nov. 12, 1887.

#### TENDER.

*Insufficient* in amount is of no avail: S. Ct. Mich., Jan. 5, 1888.

TIME. See *Contracts*

TRUSTS. See *Wills*.

#### U. S. CONSTITUTION.

*Fourteenth Amendment* does not conflict with a State law, making a railroad liable for negligence of employees in the use and operation

of train: *Reyburn v. Central Iowa R. R. Co.*, S. Ct. Iowa, Dec. 19, 1887.

*Fourteenth Amendment* does not take away from the States the police powers reserved by the U. S. Const. of 1789: *Mugler v. Kansas*, S. Ct. U. S., Dec. 5, 1887.

#### USURY.

*Loan to discharge* a previous usurious debt is a distinct transaction and not affected by use of the money or knowledge of the lender: *Vaught v. Rider*, Ct. App. Va., Sept. 15, 1887.

*Personal plea* generally, but where borrower is insolvent and a fund is in court for distribution, any other creditor may compel the lender to receive only principal and legal interest: *Brooks v. Todd*, S. Ct. Ga., Dec. 3, 1887.

#### WILLS.

*Devise to widow of income for life*, with so much of principal of the estate as would be necessary for her comfortable support, under which the widow received \$2,500 for the purchase of a house to live in, will not, after sixteen years, and a deficiency in the income then arising, require the sale of the house before any additional allowance is given from the principal of the estate: *McKenzie v. Ashley*, S. Jud. Ct. Mass, Jan. 7, 1888.

*Destruction of a will with the intention of writing another*, does not *ipso facto* revive a former will: *McClure v. McClure*, S. Ct. Tenn., Dec. 10, 1887.

*Revocation* requires testamentary capacity: *McIntyre v. Worthington*, Ct. App. Md., Dec. 19, 1887.

*Trusts*, by implication from words of recommendation, request, entreaty, wish, or expectation, addressed to a legatee or devisee, with certainty and clearness in subject-matter and object, are not overthrown by recent decisions which tend to restrict precatory trusts: *Noe v. Kern*, S. Ct. Mo., Dec. 19, 1887.

*Trust* is created by wife's will and fastened on devise to the husband, in full confidence that he would properly provide for children of a deceased brother "whom we have undertaken to raise and educate:" *Id.*

JOHN BETHELL UHLE.