ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES.[2]
INTERSTATE COMMERCE COMMISSION.[3]
SUPREME COURT OF CALIFORNIA.[4]
SUPREME COURT OF FLORIDA.[5]
SUPREME COURT OF GEORGIA.[6]
SUPREME COURT OF IDAHO.[7]
SUPREME COURT OF KANSAS.[8]
COURT OF APPEALS OF KENTUCKY.[9]
SUPREME COURT OF MISSOURI.[10]
COURT OF CHANCERY OF NEW JERSEY.[11]
SUPREME COURT OF NORTH CAROLINA.[12]
SUPREME COURT OF PENNSYLVANIA.[13]
SUPREME COURT OF RHODE ISLAND.[14]
SUPREME COURT OF TEXAS.[15]
SUPREME COURT OF VERMONT.[16]
SUPREME COURT OF APPEALS OF VIRGINIA.[17]

BANKRUPTCY.

Discharge will be refused, where the bankrupt has lost his money in stock speculations by dealing in "puts" and "calls:" *In re Hunt*, U. S. Dist. Ct. Dist. N. J., 1887.

BILLS AND NOTES.

An Accommodation maker cannot defend against payment of the note, on the ground that the holder had advanced money on the note, solely on the credit of the indorsers: *Leatherman* v. *Van Dusen*, S. Ct. Penna., January 23, 1888.

Blank in a note, can be filled before it reaches the hands of an innocent holder for value, without liability for so doing, to the maker: *Lowden* v. *Schoharie Co. Nat. Bank*, S. Ct. Kan., February 11, 1888.

The Consideration is sufficient, where the note is given by a widow to her adult daughter for domestic service already rendered; and the note is evidence that the services were not rendered out of filial affection solely: *Petty* v. *Young*, Ct. Chan. N. J., February, 1888.

A Consideration does not exist for a note given in payment of interest due on a prior note, where the new note is received conditionally; and if the new note is not paid, suit should be brought on the original note: *Taylor* v. *Slater*, S. Ct. R. I., January 28, 1888.

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[1] To appear in 123 or 124 U. S. Rep.
[2] To appear in 34 or 35 Fed. Rep.
[3] To appear in 1 I. S. Com. Rep.
[4] To appear in 72 or 73 Cal. Rep.
[5] To appear in 23 or 24 Fla. Rep.
[6] To appear in 76 or 77 Ga. Rep.
[7] To appear in 3 or 4 Idaho Rep.
[8] To appear in 37 or 38 Kan. Rep.
[9] To appear in 83 or 84 Ky. Rep.
[10] To appear in 91 or 92 Mo. Rep.
[11] To appear in 43 or 44 N. Eq. R.
[12] To appear in 95 or 96 N. C. Rep.
[13] To appear in 117 or 118 Pa. St. Rep.
[14] To appear in 15 or 16 R. I. Rep.
[15] To appear in 67 or 68 Tex. Rep.
[16] To appear in 60 or 61 Vt. Rep.
[17] To appear in 82 or 83 Va. Rep.

Maker is a competent, because disinterested witness, to prove, in a suit by one surety on the note, against the estate of the other surety, that the surviving surety only agreed to become surety for the deceased and not co-surety with him for the maker, and that having paid the note, is entitled to be re-imbursed its full amount by the decedent's estate: *Canfield* v. *Bentley*, S. Ct. Vt., February 22, 1888.

Pledgee of a promissory note for the sum of $2,500 to secure $200, but ignorant of the history of the note, can only recover the amount of his debt, when the drawer establishes that the note pledged was without consideration: *Bell* v. *Bean*, S. Ct. Cal., February 2, 1888.

CHECKS.

Payment by a cashier's check on his own bank, when shown to be the established course of dealing between the parties, becomes a matter of fact to be found by the jury in the particular case on trial: *Briggs & Drum* v. *Holmes & Son*, S. Ct. Penna., January 3, 1888.

Payment through the clearing house is to be considered with regard to the rules, allowing its members a certain time to return checks which they decline to pay. Receiving a check and entering it with others which it does pay, indicate an intention to pay, but this will not prevent it returning the check and declining to pay it, before the expiration of the time allowed by the rules, differing in this respect from a check offered directly to the bank for payment: *German N. Bk.* v. *Farmers' D. N. Bk.*, S. Ct. Penna., January 3, 1888.

Stopping payment by the depositor, will be allowed after the check has come through the clearing house, if directed within the time allowed by the clearing house rules for declining to pay: *Id.*

CONSTITUTIONAL LAW. See *Negligence.*

Amending the Political Code of California (which constitutes a single statute) by reference to its title and then re-enacting and publishing at length the amended section, is a valid compliance with Art. IV, § 24, Constitution of California: *People ex rel.* v. *Parvin*, S. Ct. Cal., January 25, 1888.

Local or Special act, forbidden by the Constitution of the State, is such as the Act of March 19, 1879, providing "for incorporation and for the government and regulation of street railway companies now incorporated or which may hereafter be incorporated, in cities of the second and third class." The act is void, as the only classification permitted by the Constitution is that which affects all the subjects of each class, as requiring peculiar legislation for matters of local government: *Weinman* v. *W. & E. L. P. R. Co.*, S. Ct. Penna., January 3, 1888.

Presumption, adopted by § 3033, Code of Georgia, from the common law, that a railroad company is negligent when a passen-

ger is hurt, is not in conflict with the Fourteenth Amendment to the Constitution of the United States: *Augusta, etc., R. R. Co.* v. *Randall*, S. Ct. Ga., November 10, 1887.

Title of Act of February 27, 1886, viz.: "An Act to create the Newport fire and police district in Campbell County, and to provide for the government thereof," is in conformity with the constitutional requirement (Art. II, § 37), directing that "no law enacted by the general assembly shall relate to more than one subject, and that shall be expressed in the title:" *Ader* v. *City of Newport*, Ct. App. Ky., January 26, 1888.

CONVEYANCE.

Ambiguity in the description of the land described as parts of mentioned lots, allows the admission of parol evidence to particularize the ground; there is a patent ambiguity to be explained without adding to, contradicting or varying the writing: *Shore* v. *Philler*, S. Ct. Ga., December 3, 1887.

Nebraska Code, § 429, providing that a judgment or decree rendered in any court of the State for the conveyance of land, if not complied with, shall have the effect of a conveyance, is valid and applies to such a judgment or decree rendered by any U. S. court in Nebraska: *Langdon* v. *Sherwood*, S. Ct. U. S., January 9, 1888.

INSURANCE.

Subrogation cannot be claimed by the insurance company who has paid the shipper his loss upon a shipment for which he had accepted a bill of lading, giving the carrier the benefit of the insurance on paying the loss. The general principles of the contract of indemnity are the foundation for the equity and it ceases where the assured has no further right to demand payment from the carrier: *Platt* v. *R. Y. R. & C. R. R. Co.*, Ct. App. N. Y., February 10, 1888.

INTERSTATE COMMERCE ACT.

Colored passengers, who have paid a first-class fare, cannot be required to occupy a car set apart for negroes, with accommodations and comforts inferior to the car for white passengers on the same train, who have paid the same fare: *Heard* v. *Georgia R. R. Co.* The Commission, February 15, 1888.

Common Carriers have no right to select either goods or customers: *Riddle* v. *N. Y., etc., R. R. Co.* The Commission, February 24, 1888.

Damages, when claimed before the Commission, present a case for a common law trial by jury, and will not be entertained by the Commission: *Heck* v. *E. T. Va. & Ga. R. R. Co.* The Commission, February 15, 1888.

Local railroad, wholly within one State, and owning no equipment, but operated by another road as an instrumentality of interstate commerce, is subject to the provisions of the Act: *Id.*

Petroleum oil, whether carried in barrels or in tanks, must be charged the same rate per hundred pounds, for transportation, without regard to probability of return loads or any other matter. A reasonable allowance can, however, be made to the owner of a tank car who sends his oil in that way, for the use of the car: *Rice* v. *R. R. Co.* (Standard oil case). The Commission, February 15, 1888.

Rates for tank cars, loaded with oil, and also that the use of the car on its return would be paid for, must be made known to the public, and ought to be given in the published rate sheets, and if given in an ambiguous or blind manner, cannot be refused to an applicant, on the ground that they had not been asked in good faith: *Id.*

Rolling stock must be provided in adequate numbers by the carrier, and if there is a special pressure, cars must be furnished with all possible equality, without preference of regular over occasional shippers: *Riddle* v. *N. Y., etc., R. R. Co.* The Commission, February 24, 1888.

Rolling stock, when furnished by the consignor, should be received on terms uniform to all and published with the rate sheets; these charges cannot lawfully be the subject of private bargains and granting different terms to different shippers: *Id.*

Transportation can be claimed without a previous special contract, and as a matter of right, arising from the duties of a common carrier, as distinguished from a private carrier: *Id.*

Limitation.

Adverse possession to defeat the true title, can be claimed by the vendee of a mere intruder, where the intruder before the period of limitation had acquired a title from a person claiming to own the land: *Dame* v. *Chandler*, S. Ct. Ga., December 20, 1887.

A promise to pay an existing indebtedness, before the bar of the statute has attached, does not create a new cause of action, but merely a suspension of the bar of the statute for the period of limitation, to be computed from the time of the new promise: *Taylor* v. *Slater*, S. Ct. R. I., January 28, 1888.

Master and Servant.

The Malicious acts of a servant cannot be made the ground for an action for damages against the master, unless there is proof that the master ratified the acts of the servant, with a full knowledge of the facts: *Gulf, etc., R. R. Co.* v. *Moore*, S. Ct. Texas, November 18, 1887.

Negligence of an independent contractor, who has charge and exclusive control of the laying of pipes to convey natural gas, cannot render his employer liable: *The Chartiers Valley Gas Co.* v. *Lynch*, S. Ct. Penna., January 3, 1888.

Unskilfulness, as a cause for discharge, is not made out by proof of loss from the servant's conduct in the business, when it appears that the loss really arose from experimental attempts made by the servant with the approval of the master: *Wood* v. *Alpaugh*, Ct. Ch. N. J., November 30, 1887.

MORTGAGE.

Limitation of suit by statute of 1872, to twenty years, when the action is founded upon an instrument of writing under seal, applies to a suit in equity to foreclose a mortgage under seal: *Jordan* v. *Sayre*, S. Ct. Fla., January, 1888.

Limitation of a personal action on the promissory note secured by a mortgage, to six years, does not bar a foreclosure suit on the mortgage itself, after the expiration of the six years: *Id.*

Possession by mortgagor or his vendee with covenant of warranty, is not adverse to the mortgagee, whose mortgage is, in law as well as in equity, simply a lien on the land it covers, giving no right of possession: *Id.*

NEGLIGENCE. See *Master and Servant—Railroads.*

Mill owner, who gave away a lot of cotton seed hulls with permission to the donee to haul them away from his mill, is liable in damages for an injury to a team sent to haul them away, which injury was caused by caustic soda escaping from the oil mill, though there was no evidence to show why the soda had escaped. The mill property should have been kept in a safe condition for the entrance of those invited to be there, though it would be otherwise as to a trespasser: *Atlanta, etc., Mills* v. *Coffey*, S. Ct. Ga., November 29, 1887.

A Statute is unconstitutional when it provides in indictments for killing livestock by railroad cars, that proof of killing in that way shall be *prima facie* evidence of negligence, because such a law subverts the presumption of innocence and takes away the equal protection of the law from the railroad company: *State* v. *Divine*, S. Ct. N. C., December 5, 1887.

A Team was left unattended, in a city street, and suddenly starting, ran over the plaintiff. The owner of the team was held guilty of negligence in leaving the team unhitched and in a condition to start off unexpectedly: *Bowen* v. *Flanagan*, S. Ct. App. Va., January 12, 1888.

NUISANCE.

Disease from a common nuisance, attacking only the defendant out of many other persons similarly situated, allows the jury to in-

fer that the sick person was peculiarly susceptible to the disease, although there may be no direct evidence of this: *Price* v. *Grautz*, S. Ct. Penna., January 3, 1888.

Damages for an injury resulting from the exercise of a lawful business, require proof of something more than mere trifling annoyance: *Id.*

An undertaker's establishment, where coffins, ice boxes, and cases are kept and cleansed after use, is not *per se* a nuisance, though in a populous place, and will not be closed by the court to remove the physical discomfort of a neighbor, arising from a morbid taste or an excited imagination: *Westcott* v. *Middleton*, Ct. Ch. N. J., December 9, 1887.

PARTNERSHIP.

Accounting between the partners, is not barred by lapse of time, as on an account stated, where the individual accounts of the partners have been marked as "settled" at different times, but no final balance has been struck, showing the division of the assets as well as the profits: *Rhyne* v. *Love*, S. Ct. N. C., December 30, 1887.

Guaranty, in the articles of copartnership, by one partner to another that his share of the profits should be made equal to twenty per centum on his capital, is no part of the agreement of copartnership, but an independent undertaking having no necessary connection with the partnership affairs: *McIntire's Appeal*, S. Ct. Penna., January 3, 1888.

RAILROADS.

Baggage of a jewelry salesman, containing trade articles, may be recovered for, when stolen, after being checked as ordinary baggage, by an agent who knew its contents, there being no concealment of its value: *Jacobs* v. *Tutt*, U. S. C. Ct. W. D. Mo., January 16, 1888.

Baggage is not called for in a reasonable time when it reached the station in the afternoon and is not claimed until ten o'clock the next morning: *Id.*

Passengers are entitled to have a train stopped for such reasonable and sufficient length of time as to leave the cars in safety, with their baggage, minor children and traveling companions: *Hurt* v. *St. L., etc., R. R. Co.*, S. Ct. Mo., February 20, 1888.

Reasonable time for passengers to leave the train at a station, may be inferred by the jury to have elapsed, where other passengers similarly situated in respect to age, sex, etc., have safely left the cars before the accident complained of: *Id.*

Responsibility for negligent operation of the road cannot be avoided by permitting others to control and manage the track and traffic, unless the power to make such an arrangement has been

given by the State: *Palmer* v. *U. & N. R. R. Co.*, S. Ct. Idaho, February 8, 1888.

SUBROGATION.

A mortgagee, subsequent to the lien of certain judgments, is entitled to be subrogated to the rights of the owners of the judgments, where the judgments acquired a lien on other lands after the execution of the mortgage; and this subrogation will also be allowed to the first mortgagee where the lands have been mortgaged to another person, after the lien of the judgments has been extended to the other lands: *Robeson's Appeal*, S. Ct. Penna., January 3, 1888.

Payment must be made to the creditor by the person secondarily liable, before he can demand subrogation, and no conditional tender will be sufficient: *Appeal of the Forrest Oil Co.*, S. Ct. Penna., January 3, 1888.

WILLS.

Contract by decedent to leave a person and his family a sufficient amount to justify their removal from a distant State to live with him, is satisfied by his supporting them for eight years and leaving them at his death, a small property, without more: *Rice* v. *Hartman's Admr.*, S. Ct. App. Va., January 5, 1888.

Contract to make a particular devise or bequest, will be sustained, if entered into fairly and without surprise or imposition, but it must be reasonable and not against public morals: *Vanvactor* v. *State*, S. Ct. Ind., February 8, 1888.

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