ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ALABAMA.[2]
SUPREME COURT OF ERRORS OF CONNECTICUT.[3]
SUPREME COURT OF ILLINOIS.[4]
SUPREME COURT OF INDIANA.[5]
SUPREME COURT OF LOUISIANA.[6]
SUPREME JUDICIAL COURT OF MAINE.[7]
SUPREME COURT OF MICHIGAN.[8]
SUPREME COURT OF NEW HAMPSHIRE.[9]
COURT OF APPEALS OF NEW YORK.[10]
SUPREME COURT OF PENNSYLVANIA.[11]
SUPREME COURT OF APPEALS OF VIRGINIA.[12]

ARREST.

A bystander should respond to the call for assistance in making an arrest, by the sheriff or other lawful officer, and will not be responsible to the party arrested, even if the officer was a trespasser: *Watson* v. *State*, S. Ct. Alabama, January 10, 1888.

BANKS.

Duplicate bill of lading, taken by a bank as collateral security, when discounting a draft on the consignee, transfers to the bank a title to the consigned property to the extent of the discount, paramount to that of the consignee knowing of the discount before giving value: *First Nat'l Bk. Batavia* v. *Ege*, N. Y. Ct. App., April 10, 1888.

BILLS AND NOTES.

Forgery, known or conceded, cannot be acknowledged so as to be binding upon the person whose name was forged, unless an estoppel *en pais* or a new consideration has occurred, because, unlike the act of an unauthorized agent, the forger did not pretend to act as agent: *Henry* v. *Heeb*, S. Ct. Ind., April 11, 1888.

Parol evidence cannot be introduced to show that an ordinary note for $850 at one year, with interest at 5 per cent., had been executed to the defendant's mother-in-law on an advancement to her daughter, for the purpose of securing the payment of interest for life: this would be simple destruction of the written contract: *Heydt* v. *Fry*, S. Ct. Penna., April 2, 1888.

Without recourse, indorsed on the transfer of negotiable bonds or notes, even if unaccompanied by express representations, leaves the

[1] To appear in 124 U. S. Rep.
[2] To appear in 82 or 83 Ala. Rep.
[3] To appear in 56 or 57 Conn. Rep.
[4] To appear in 121 or 122 Ill. Rep.
[5] To appear in 111 or 112 Ind Rep.
[6] To appear in 39 or 40 La. Ann.
[7] To appear in 80 or 81 Me. Rep.
[8] To appear in 60 or 61 Mich. Rep.
[9] To appear in 65 or 66 N. H. Rep.
[10] To appear in 107 or 108 N. Y Rep.
[11] To appear in 117 or 118 Pa. St. Rep.
[12] To appear in 82 or 83 Va. Rep.

assignor liable on an implied warranty for a deficiency caused by payment of usurious interest: *Drennan* v. *Bunn*, S. Ct. Ill., March 28, 1888.

Constitutional Law.

Milk may constitutionally be prohibited from sale, if it contains more than a specific per cent. of watery fluid, or less than a specified per cent. of milk solids; and in case of a prosecution under such a prohibitory statute, evidence of pure milk falling below the statutory standard is inadmissible: *State* v. *Campbell*, S. Ct. N. H., March 16, 1888.

Copyright.

Damages, as such, cannot be recovered, under § 4965 R. S. U. S., by the owner of the copyright of a photograph; the remedy is limited to the forfeiture of the plates and every sheet thereof, either copied or printed, and to the further forfeiture of one dollar for every sheet of the same found in the possession of the infringer: *Thornton* v. *Schreiber*, S. Ct. U. S., February 13, 1888; 124 U. S. 612.

Employee in the store of a firm which has control of the plates and printed photographic sheets, even although holding a principal place in the establishment, is not liable under § 4965 R. S. U. S., because not one in whose possession the same are found: *Thornton* v. *Schreiber*, S. Ct. U. S., February 13, 1888; 124 U. S. 612.

Criminal Law.

Counsel may pursue any legitimate line of argument in addressing the jury, urging the fearless administration of the law and illustrating the evidence by reference to historical facts: therefore there is no error in a trial for perjury, for the prosecuting attorney to tell the jury that criminals often escaped their just deserts and the wheels of justice were often blocked by such false affidavits for delay, as the prisoner was charged with making, and that it was their "duty to put a stop to that kind of work;" and he did no harm in referring to the destruction of the court-house in Cincinnati a few years ago, as illustrating the effect of public indignation, when aroused by the unjust escape of criminals through perjured evidence: *Sanders* v. *People*, S. Ct. Ill., March 27, 1888.

Damages.

Exemplary damages will be allowed, in an action of trespass *vi et armis*, for a wanton, brutal, and malicious attack with a deadly weapon and without any provocation; and evidence of the pecuniary ability of the defendant is admissible for the purpose of giving a sufficient verdict: *Webb* v. *Gilman*, S. Jud. Ct. Maine, February 11, 1888.

Hypothetical or possible damages cannot be made the foundation of an action, and for this reason, the surety in a notary's bond can-

not be sued for the notary's failure to record a mortgage in time to secure priority of lien, until the loss of priority of lien is established to be a damage and the notary is shown to be insolvent: *Dwyer* v. *Woulfe*, S. Ct. La., January 9, 1888.

Decedents.

Donatio mortis causa, does not occur where a parent requests her son to use money in her pocket-book and sundry hiding places, to pay the expenses of her last illness and funeral and to keep the balance for himself; there must be also delivery to the donee: *Dunbar* v. *Dunbar*, S. Jud. Ct. of Maine, January 31, 1888.

Easements.

Surface water must be allowed to pass off through natural existing drains, and these natural channels may be connected with ditches dug to drain the dominant property, but natural barriers or divides cannot be cut through to let water upon the servient tenement which would not otherwise pass there: *Anderson* v. *Henderson*, S. Ct. Ill., March 28, 1888.

Evidence.

Identity of name, in an act of legislature, with that of the ancestor of a party to a suit, is *prima facie* evidence of identity of person, unless the name is shown to be very common, or there are other facts which throw doubt upon the supposed identity: *Wilson* v. *Holt*, S. Ct. Alabama, December 21, 1887.

Fire Insurance.

Judgment by confession entered without knowledge of the insured, is a breach of the condition of a policy of fire insurance, providing "that if the property insured shall be encumbered at or after the date of this policy by mortgage, judgment, etc., and the assured shall neglect or fail to give written notice thereof and pay such additional premium as the company shall determine," the policy shall be void. The insured cannot set up that the judgment was entered against the agreement under which he gave it, as that is not an affair of the insurance company: *Penna. M. F. Ins. Co.* v. *Schmidt*, S. Ct. Penna., April 2, 1888.

Highways.

Dedication of a street already laid out on a city plan, but not opened, is not to be inferred from a conveyance by the owner of the soil of the street, in which he sells other property by reference to the street as a boundary of the land sold: it would be otherwise, however, if the street had been laid out by the owner, and not plotted by public authority: *In re Brooklyn St.*, S. C. Penna., February 20, 1888.

The Public Square in the city of Winchester was in use by the county as early as 1743, but the actual conveyance was not made until 1801,

when, by virtue of an enabling act, the then borough of Winchester received the legal title (without any special trust), and from that time on the county buildings and a place for hitching horses and standing wagons of those in attendance were maintained severally by the county and city authorities. *Held*, that there was an implied dedication for the said uses, and the city could not remove the hitching posts, etc., and lay out the grounds with grass and trees: *Board of Supervisors, etc.*, v. *City of Winchester*, S. Ct. App. Va., February 2, 1888.

Roadworthy and well-broken is a presumptive quality of every horse, especially in the absence of proof that shying at a pile of lumber, placed on the margin of the highway, was a vice of the particular horse: *Manhiem* v. *Arnold*, S. Ct. Penna., March 26, 1888.

Husband and Wife.

Seduction and debauching accomplished under a promise of marriage, followed by marriage as promised, cannot be made the ground for a prosecution, even if the marriage was not entered into in good faith, and followed by an immediate abandonment: *People* v. *Gould*, S. Ct. Mich., May 11, 1888.

Interpleader.

Stakeholder alone, as a general rule, can require different claimants to interplead: one who has acknowledged the right of one claimant, either expressly or impliedly, or who has disregarded the adverse claim and entered into a contract with the other claimant, creating a liability in any event, or who has a personal interest in the subject-matter, cannot be said to be indifferent and cannot require an interpleading: *Bechtel* v. *Sheafer*, S. Ct. Penna., January 3, 1888.

Judgments.

Confessed judgments are supported by the same presumptions as other judgments, when drawn collaterally into question, and all necessary preceding steps will be presumed to have been taken: *Caley* v. *Morgan*, S. Ct. Ind., April 17, 1838.

Libel.

Illegitimate child, is a libellous epithet, *per se*, when printed in a public newspaper: *Shelby* v. *Sun Print. & Pub. Ass'n*, Ct. App. N. Y., March 13, 1888.

Life Insurance.

Assignee of a policy of life insurance can recover from the insurance company, where the insurance company had learned of such a false representation in the original application as would authorize the avoidance of the policy, but failed to avoid, and

demanded and received the premiums from the assignee: *Fitzpatrick* v. *Hartford L. & A. Ins. Co.*, S. Ct. of Errors, Conn., April, 1888.

Municipalities.

Gas mains and pipes cannot be exclusively laid by a stock corporation, under the authority of the trustees of a town; no such exclusive privilege can be granted by a municipal corporation without express legislative authority: *Citizens' G. & M. Co.* v. *Elwood*, S. Ct. Ind., April 12, 1888.

Negligence.

Contributory negligence cannot be charged against a driver on a dark night, who, hearing a team approaching at a rapid rate, takes the right side of the road, although no collision would have occurred if he had remained on the side he was driving on: *Flower* v. *Witkovsky*, S. Ct. Mich., April 13, 1888.

Presumption of negligence in the driver of a street car, arises when the car is driven at an unusual rate of speed and is suddenly struck by the shaft of a passing truck, which penetrates the front of the car and injures a passenger: *Hill* v. *Ninth Ave. R. Co.*, N. Y. Ct. App., April 10, 1888.

Pledge.

Certificate of stock, with blank power of attorney, obtained by fraudulent representations, and pledged as collateral with promissory notes, may be specifically recovered, as the pledgee is not a holder for value: *Linnard's Appeal*, S. Ct. Penna., April 5, 1888.

Practice.

Mandamus is a discretionary writ, and will be granted only in furtherance of justice; where the application is made to gratify personal feeling or where the relator approved of the act complained of at the time it was done, the writ will be refused: *Hale* v. *Risley*, S. Ct. Mich., April 24, 1888.

Railroads.

Access by a recognized approach on its grounds to its passenger stations must be kept reasonably safe, and it is negligence to leave a hole near enough for a person on the approach to fall into it by a misstep: *Cross* v. *L. S. & M. S. R. R. Co.*, S. Ct. Mich., April 6, 1888.

Jumping from a moving train by a passenger or trespasser in a state of fear and panic, cannot render the company liable for the consequences, unless some agent or employee of the company by word or deed caused such fear and panic: *Reary* v. *L., N. O. & L. R. R. Co.*, S. Ct. La., January 9, 1888.

Telegraph Companies.

Delay in transmitting a telegram, when the ground of an action for damages, requires the face of the telegram to contain something which would put the company on its guard: *W. U. Tel. Co.* v. *Landis*, S. Ct. Penna., February 6, 1888.

Notice, printed on a telegraph blank, that the company would not be liable for non-delivery of any unrepeated message, whether happening by negligence of its servants, or otherwise, beyond the amount received for sending the message, will bind the sender: *Kiley* v. *W. U. Tel. Co.*, Ct. App. N. Y., April 10, 1888.

Trusts.

Resulting trusts must be established by very clear evidence, so as not to affect the stability of titles to real estate; and, consequently, the admissions of the person holding the title, that another is the real owner, ought to be received with great caution, as subject to much imperfection and frequently entitled to little weight: *Corder* v. *Corder*, S. Ct. Ill., March 28, 1888.

United States Courts.

Bill in equity, to enforce the performance of a contract, is a suit to recover the contents of a chose in action, within the meaning of § 629 R. S. U. S., and consequently where a deed of trust, in the nature of a mortgage, set out in full a contract between the mortgagor and certain parties for the conveyance of several parcels of land to the mortgagor, and then conveyed to the mortgagee all the right, title, and interest which the mortgagor had or might acquire to the said lands, this mortgage was, in legal effect, an assignment of the contract, and the mortgagee could not sue in the U. S. Circ. Ct. unless the mortgagor could have maintained the suit, if no deed of trust had been executed: *Shoecraft* v. *Bloxham*, S. Ct. U. S., February 20, 1888; 124 U. S. 730.

Wills.

Devise of land, to be sold by the executor and the proceeds divided among named children, is a devise of money, to be accounted for in good faith and with reasonable diligence; otherwise, the executor must make good the loss he occasions: *Corrington* v. *Corrington*, S. Ct. Ill., March 28, 1888.

Trust is invalid, because indefinite, where the rest, residue, and remainder of an estate are bequeathed to the testator's executors for prayers to be offered in a Roman Catholic Church, to be selected by the executors, for the repose of the souls of the testator and of his family, and of all others who may be in purgatory; the beneficiary is not sufficiently designated so that a court of equity could enforce the execution of the trust: *Holland* v. *Alcock*, Ct. App. N. Y., February 7, 1888.

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