ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF CALIFORNIA.[2]
UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF IOWA.[3]
UNITED STATES CIRCUIT COURT, DISTRICT OF MINNESOTA.[4]
UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF NEW YORK.[5]
SUPREME COURT OF COLORADO.[6]
SUPREME COURT OF ERRORS OF CONNECTICUT.[7]
SUPREME COURT OF ILLINOIS.[8]
SUPREME COURT OF INDIANA.[9]
SUPREME COURT OF KANSAS.[10]
SUPREME COURT OF LOUISIANA.[11]
SUPREME JUDICIAL COURT OF MAINE.[12]
COURT OF APPEALS OF MARYLAND.[13]
SUPREME COURT OF MASSACHUSETTS.[14]
SUPREME COURT OF MICHIGAN.[15]
SUPREME COURT OF NEW HAMPSHIRE.[16]
SUPREME COURT OF NEW JERSEY.[17]
COURT OF CHANCERY OF NEW JERSEY.[18]
COURT OF APPEALS OF NEW YORK.[19]
SUPREME COURT OF PENNSYLVANIA.[20]
SUPREME COURT OF RHODE ISLAND.[21]
SUPREME COURT OF VERMONT.[22]

ACTIONS.

Malicious abuse of judicial process can only be made the ground of an action for damages when the person aggrieved has been arrested or his property seized; bad faith in prosecuting the proceedings, even though resulting in injury to business or good name, is not abuse of process: *Bartlett* v. *Christhelf*, Ct. App. Md., June 13, 1888.

BANKS.

Deposit cannot be alleged by the bank to belong to another when it has received the deposit and credited the depositor on its books; this is an implied contract to honor the depositor's check, and it is clearly against public policy to permit the bank to refuse the check for such a reason in the absence of an attachment by a creditor or a demand by the true owner; hence, where the sureties of a county treasurer, out of precaution, required his deputy to open an account in his own name as "deputy treasurer," this, though an acknowledgment by the depositor that the money was held for some one else not

[1] To appear in 125 U. S. Rep.
[2] To appear in 35 Fed. Rep.
[3] To appear in 35 Fed. Rep.
[4] To appear in 34 Fed. Rep.
[5] To appear in 34 Fed. Rep.
[6] To appear in 8 or 9 Col. Rep.
[7] To appear in 56 or 57 Conn. Rep.
[8] To appear in 124 or 125 Ill.
[9] To appear in 113 or 114 Ind. Rep.
[10] To appear in 39 or 40 Kan. Rep.
[11] To appear in 40 or 41 La. Ann.
[12] To appear in 80 or 81 Me. Rep.
[13] To appear in 68 or 69 Md. Rep.
[14] To appear in 146 or 147 Mass. Rep.
[15] To appear in 62 or 63 Mich. Rep.
[16] To appear in 64 or 65 N. H. Rep.
[17] To appear in 50 or 51 N. J. Rep.
[18] To appear in 43 or 44 N. J. Eq. Rep.
[19] To appear in 109 or 110 N. Y. Rep.
[20] To appear in 119 or 120 Pa. State.
[21] To appear in 16 or 17 R. I. Rep.
[22] To appear in 60 or 61 Vt. Rep.

named, did not change the ordinary relations between the bank and a depositor, and would be no ground for refusal to pay his checks: *Citizens' Nat. Bk.* v. *Alexander*, S. Ct. Penna., May 21, 1888.

Bills and Notes.

Maker of a draft, which has been cashed by a bank, has only to see that it is paid and cannot be made liable to the bank after payment, for any recommendation he may have made to the bank at the time it was cashed, as to the method of collection: *First Natl. Bk. of Warren* v. *Cadwallader*, S. Ct. Penna., May 25, 1888.

Consideration of an indorsement is insufficient to hold the indorser of a promissory note, when the indorsement is made after the delivery of the note to the payee, upon the promise of the payee merely to forbear suit against the maker: *Lambert* v. *Clewley*, S. Jud. Ct. Me., Aug. 3, 1888.

Constitutional Law.

Attorney fee of $25 cannot be imposed as costs upon a railroad company who unsuccessfully defends a case: corporations have equal rights with natural persons and such a law (Pub. Acts 1885, No. 234, p. 356) is unconstitutional and void: *Wilder* v. *C. & W. M. R. R. Co.*, S. Ct. Mich., May 18, 1888.

Infectious disease must be reported to the health authorities, where an ordinance requiring such report is adopted by a city, authorized by its charter to establish ordinances "relative to the cleanliness and health of the city" and "any and all other subjects that shall be deemed necessary and proper for the protection and preservation of the health, property, and rights of the citizens; such ordinance violates neither the State nor the U. S. Constitution in not compensating the physician for the trouble of making such report: *State* v. *Wordin*, S. Ct. Errors of Conn., Dec. 1, 1887.

Signing a bill intentionally and understandingly by the governor, at any place on the bill, is a sufficient compliance with the constitutional provision, that "every bill which shall have passed the Senate and House of Representatives, shall, before it becomes a law, be presented to the governor; if he approves it he shall sign it:" *National L. & C. Co.* v. *Mead*, S. Ct. Vt., July 21, 1888.

Subscription solicitor, a citizen of Missouri, and canvassing for an Ohio firm for a book shipped from Ohio as the subscription is reported, cannot be required by the city of Fort Scott, Kansas, to pay a license fee under the city ordinance fixing the fees of all book canvassers: interstate commerce cannot be taxed at all, and this license cannot be exacted: *City of Fort Scott* v. *Pelton*, S. Ct. Kansas, July 7, 1888.

Title of "An Act to Regulate the Manufacture and Sale of Malt, Brewed, Fermented, Spirituous, and Vinous Liquors in the several counties in this State," does not express the object of the Act within the requirements of the State Constitution when that object is to

prohibit such manufacture and sale in counties when a majority of the electors so vote: *Re Hauck*, S. Ct. Mich., May 18, 1888.

Contracts.

The consideration arising from the expenditure of money for the promissee's own benefit, is sufficient to sustain a promise to repay the amount expended, and, therefore, an action will be sustained, when brought by a nephew against his uncle who told him to take a trip to Europe, promising to reimburse the expense of his return home; the case is to be distinguished from a promise to make a present or render gratuitous service, because a burden was incurred at the request of the promissor: *Devecmon* v. *Shaw*, Ct. App. Md., June 13, 1888.

Consideration of a contract is sufficient when it consists of mutual promises of the respective parties, to contribute equally to the capital required to carry out an enterprise therein agreed upon, and to share equally the profits: *King et al.* v. *Barnes et al.*, Ct. App. N. Y., April 10, 1888.

Physician may make a binding contract, unlimited in time, to refrain from practising in a particular place, and the contract will be enforced by injunction: *French* v. *Parker*, S. Ct. R. I., May 17, 1888.

Criminal Law.

Courage should not be considered when a plea of self-defence is interposed; the accused is entitled to show that he is timid, weak, and cowardly by nature, to establish the honesty of his alleged belief that he was in danger of his life or of great bodily harm, and that he necessarily acted as he did to save himself from the apparent threatened danger: *People* v. *Lennon*, S. Ct. Mich., July 11, 1888.

Marriage is not to be presumed, and a single woman need not be proved to be unmarried in an indictment for fornication, unless her celibacy is drawn into question: *Gaunt* v. *The State*, S. Ct. N. J., June 20, 1888.

Murder is not committed, as accessory, by one who hears two persons plotting to drive the deceased from the town without intending any serious injury, and then accompanies the parties to see what would happen; the fact that a fight resulted in the death of the deceased, does not establish that the accused aided and abetted in the killing: *People* v. *Fay*, S. Ct. Mich., May 22, 1888.

Easements.

Ice may be cut by the owner of land flowed by a mill-dam, so long as the head of water at the dam is not appreciably diminished: *Searle* v. *Gardner*, S. Ct. Penna., April 23, 1888.

Reservoir to store water is used by a mill owner during the dry season of three months of the year, to detain water enough to run his mill for five hours and thereby deprives another miller further down

the stream of sufficient water for five days, this is an unreasonable use of the water: the Pennsylvania doctrine, that the uppper mill owner may detain the water in times of drought until he can advantageously use it, subject to the decision of the jury as to the reasonableness of the detention, dissented from: *Mason* v. *Hoyle*, S. Ct. Errors, Conn., June, 1888.

Fire Insurance.

Insurable interest need not be alleged in an action on an insurance policy; the policy itself is *prima facie* evidence of such interest: *Tabor et al.* v. *Goss & Phillips Man'f'g Co.*, S. Ct. Colo., June 2, 1888.

Estoppel preventing the insurers from asserting a forfeiture for breach of warranty, arising from not stating truely the amount of judgments against the insured, will occur if the insurers after a full knowledge of the facts causing the breach, subject the insured to the expense of plans of the building burned and of more formal proofs of loss than the preliminary proofs, and the delay of an appraisement, until nearly a year had elapsed, without informing him of any objection to his claim: *Niagara F. I. Co.* v. *Miller*, S. Ct. Penna., May 21, 1888.

Life Insurance.

Death ensues from bodily injuries effected through external, violent, and accidental means within such terms of a policy of accident insurance where a person in good health and generally of sound and strong constitution is driving in a public road and, upon his horse taking fright and running a considerable distance, in imminent peril of colliding with other teams, the insured exerts himself in controlling the horse, and immediately afterwards experienced great sickness and pain, and died in about an hour; if the death was caused by fright merely, still the act of the horse in running away was the efficient and true cause of death: *McGlinchey et al.* v. *Fidelity Casualty Co.*, S. Jud. Ct. Me., March 8, 1888.

Tontine policy of life insurance providing that "all surplus or profits derived from such policies on the ten-year-dividend system as shall cease to be in force before the completion of their respective ten-year-dividend periods shall be apportioned equitably among such policies of the same class as shall complete their ten-year-dividend period" gives no title to any specific moneys. The relations of the insured and the company are not a trust, and the Courts can only interfere after the company has made a division which is averred to be inequitable within the meaning of the contract: *Uhlman* v. *N. Y. Life Ins. Co.*, Ct. App. N. Y., June 5, 1888.

Wife and children of the insured take in equal shares, though one of the children has married and lives in another house, where the certificate of a mutual benefit society declares the fund is payable to the wife for the benefit of herself and his children without the proportions being prescribed by the certificate or the constitution and by-

laws of the society. The widow has no right to decide upon the amount of each child's share: *Jackman* v. *Nelson*, S. Jud. Ct. Mass., June 21, 1888.

LIMITATION.

Absence from the State, which will prevent the running of the Statute of Limitations, must be such that process cannot be served on the defendant in such a manner as to bind him personally: the keeping of a house for his wife, with occasional returns there, places the defendant in a position to be served, and his absence will not stop the running of the statute: *Quarles* v. *Bickford*, S. Ct. N. H., March 16, 1888.

MARRIAGE.

Duress, which avoids a marriage cermony, occurs when a young man of sixteen, is falsely arrested in bastardy proceedings, is greatly frightened at the thought of being committed to jail for want of bail before trial, and is advised by his father, who refuses to become bail for his son, to marry the woman and never live with her: the woman was old and of bad repute, and the parties never cohabited. The marriage was annulled: *Shoro* v. *Shoro*, S. Ct. Vt., June 11, 1888.

MORTGAGE.

Chattel mortgage of the goods of a boarder in a hotel may be made by his oral agreement that the goods should remain in the room occupied by him, as security for his unpaid bill: *Weil* v. *Ryus*, S. Ct. Kan., June 9, 1888.

NEGLIGENCE.

Master is responsible for an injury to an employé, occasioned by the joint negligence of the master and the fellow servant: *Faren* v. *Sellers*, S. Ct. La., December 5, 1887.

Trench dug across a city sidewalk for half of its width, with the earth thrown up on one side of it to the height of three feet, to make a sewer connection, is sufficiently guarded against the plaintiff who approached the trench at half past ten in the morning, observed it, walked around the bank of earth, and stopping to look into the store window, stepped backwards into the trench. The plaintiff was guilty of contributory negligence: *Barnes* v. *Sowden*, S. Ct. Penna., February 27, 1888.

PARTNERSHIP.

Chattel mortgage, substantially covering the stock in trade of the firm, executed by one partner without the knowledge and consent of the other partner under a promise from the creditor of a situation, and just as the firm were about making an assignment for the benefit of their creditors, is fraudulent and void under the rulings of the Iowa Courts, preventing one partner, without the assent, express or implied,

of his copartner, from disposing of the firm property in such manner as will, *ipso facto*, take away that control and management without which the business cannot be conducted: *Osborne* v. *Barge*, U. S. Circ. Ct. N. Dist. Iowa, May 9, 1888, 35 Fed. Rep. 92.

Surviving partner of an insolvent firm may make a general assignment of the firm's property for the benefit of its creditors, with preferences; the survivor is not a trustee but the legal owner of the property: *Williams* v. *Whedon*, Ct. App. N. Y., April 24, 1888.

Railroads.

Bridge constructed with trestles in 1853 and so maintained until it backed up the stream in 1883 and, for the first time, destroyed plaintiff's crops, is not protected by the lapse of more than twenty years, the time for acquiring a prescriptive right; until the plaintiff suffered an injury there could be no prescription: *Sherlock* v. *L. N. A. & C. R. R. Co.*, S. Ct. Ind., May 28, 1888.

Stations for freight or passengers cannot be established by Courts entertaining a writ of *mandamus:* an abuse of corporate powers in captiously withholding convenience from the public, must generally be redressed by the Legislature; as a general rule, railroad management cannot be judicially interfered with, unless there is a specific act to be done in a clear and undoubted manner: *People, ex rel.*, v. *C. & A. R. R. Co.*, S. Ct. Ill., June 16, 1888.

Surety on an injunction bond, given to stay the sale of railroad rolling stock, under a judgment against the railroad company, is entitled to be reimbursed out of the proceeds of the sale of the railroad under a mortgage thereon; the case is a special one, dependent upon the discretion of the Court under the circumstances that the trustees of the mortgage might have protected their interest in the rolling stock by filing a foreclosure bill and obtaining an injunction and a receiver, but did not, and permitted the railroad and the surety to act for their benefit: *Union Trust Co.* v. *Morrison*, S. Ct. U. S., April 2, 1888, 125 U. S. 591.

Through bill of lading, with a deposit on account of the freight, issued by the first of several connecting carriers, amounts to an engagement not only to carry over that carrier's line, but also so to deliver the goods to the next carrier as to create the same obligation in the second carrier: consequently, where the connecting carriers had agreed that neither would consider goods as delivered by the other to it, unless freight charges were prepaid or guaranteed on the way bill, the first carrier remains liable to the consignor until this agreement is carried out, though physically the goods have been placed in the station of the second carrier: *Palmer* v. *C. B. & Q. R. R. Co.*, S. Ct. Err. Conn., April, 1888.

TRADEMARK.

Name of a person cannot be made a trademark by him, even with the addition of the word "improved," when he has used his name as a description of an article of his own manufacture and has sold the trademark with the business of such manufacture: *Adams* v. *Messenger*, S. Jud. Ct. Mass., June 19, 1888.

Title to a trademark does not arise from adopting some mark, not in use to distinguish goods of the same class or kind already on the market, and the public declaration that such mark would be applied to goods to be put on the market in the future; the goods must be actually on the market marked with the particular mark: *Schneider* v. *Williams*, Ct. Chan. N. J., July 24, 1888.

U. S. COURTS.

Jurisdiction of cases involving less than $500, wherein the U. S. are plaintiffs, was not vested in the U. S. Circuit Courts by Rev. Stat. § 629, giving them original jurisdiction, "of all suits at common law, where the U. S. or any officer thereof, suing under the authority of any Act of Congress, are parties," and any uncertainty was removed by § 1 of the Act of 1875, substantially continued in the Amendatory Act, March 3, 1887 (24 Stat. U. S. 552); the U. S. must go into the State Courts if such small amounts are to be litigated: *U. S.* v. *Huffmaster*, U. S. Circ. Ct. N. D. Cal., May 21, 1888, 35 Fed. Rep. 81, 83.

Removal of a cause from a State Court, on the ground of prejudice or local influence, since the Act of 1887, cannot be made by filing an affidavit of belief of such prejudice: the fact of inability to obtain justice in the State Court must be established by an affidavit or otherwise: *Short* v. *C. M. & St. P. R. R. Co.*, U. S. Circ. Ct. Dist. Minn. March 12, 1888, 34 Fed. Rep. 225.

Removal may take place where a citizen of Massachusetts files a bill in a State Court of New York against a Connecticut corporation and a New York corporation, praying for damages and an accounting by the Connecticut corporation only. There is a separable controversy, which the Connecticut corporation might remove to the U. S. Circ. Ct. under the provisions of the Act of 1887: *Vinal* v. *Continental Construc. and Imp. Co.*, U. S. Circ. Ct. N. Dist. N. Y. March 19, 1888, 34 Fed. Rep. 228.

WILLS.

Charity, such as the Courts will recognize, cannot be created by a devise of the rest and residue of the testator's estate to Henry George, for the free distribution of such of his works as he may think proper; the Court, considering that certain passages in such works to be a denunciation of secure title to land in private individuals, held this clause of the will to be void: *Hutchins' Exr.* v. *George*, Ct. Chan. N. J., May 21, 1888.

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