ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ALABAMA.[2]
SUPREME COURT OF CALIFORNIA.[3]
SUPREME COURT OF GEORGIA.[4]
SUPREME COURT OF INDIANA.[5]
SUPREME COURT OF IOWA.[6]
SUPREME COURT OF KANSAS.[7]
SUPREME COURT OF LOUISIANA.[8]
SUPREME COURT OF MINNESOTA.[9]
SUPREME COURT OF MONTANA.[10]
SUPREME COURT OF NEBRASKA.[11]
SUPREME COURT OF NEW JERSEY.[12]
COURT OF APPEALS OF NEW YORK.[13]
SUPREME COURT OF SOUTH CAROLINA.[14]
SUPREME COURT OF TEXAS.[15]
SUPREME COURT OF UTAH.[16]
SUPREME COURT OF VIRGINIA.[17]
SUPREME COURT OF WISCONSIN.[18]

Bills and Notes.

Indorser is liable upon a verbal promise to pay a note made and sold to raise money to reimburse him for losses incurred for the maker; it is not a promise to pay the debt of another, and need not be in writing: *Schultz* v. *Noble*, S. Ct. Cal., Sept. 13, 1888.

Joint promissory note of two persons, one of whom was in point of fact the principal, and the other his surety, was made to the order of and delivered for value to a third party, who indorsed it and had it discounted in bank; at maturity the note was not paid, but a renewal note was given to order of the bank and signed by all three parties as makers. When the latter note fell due the principal debtor made a payment on account, and gave a second renewal note for the balance, signed by all three as before, except that the original payee and indorser, in spite of the objection of the others and of the president of the bank, wrote the word "security" after his name: the latter was not co-surety with the original surety, who had no right to demand from him contribution: *Stump* v. *Richardson Co. Bank*, S. Ct. Neb., Sept. 25, 1888.

Parol evidence is inadmissible to show that in a promissory note which is clearly expressed in the words "We promise to pay, etc.," and signed "Ind. Mfg. Co., B. S. B. Pres., D. B. S. Secy.," the company was the only real promissor, and that the payee knew of the fact when taking the note: *Heffner* v. *Brownell*, S. Ct. Iowa, Oct. 4, 1888.

Surety on note, who makes a payment on the note and indorses thereon an extension of time, the extension being made at the in-

[1] To appear in 127 U. S. Rep.
[2] To appear in 83 or 84 Ala. Rep.
[3] To appear in 74 or 75 Cal. Rep.
[4] To appear in 77 or 78 Ga. Rep.
[5] To appear in 114 or 115 Ind. Rep.
[6] To appear in 74 or 75 Iowa Rep.
[7] To appear in 39 or 40 Kan. Rep.
[8] To appear in 40 or 41 La. Ann.
[9] To appear in 36 or 37 Minn. Rep.
[10] To appear in 37 or 38 Mont. Rep.
[11] To appear in 22 or 23 Neb. Rep.
[12] To appear in 50 or 51 N. J. Law.
[13] To appear in 110 or 111 N. Y. Rep.
[14] To appear in 28 S. C. Rep.
[15] To appear in 70 or 71 Texas Rep.
[16] To appear in 3 or 4 Utah Rep.
[17] To appear in 83 or 84 Va. Rep.
[18] To appear in 72 or 73 Wisc. Rep.

stance of the principal, does not thereby become a principal debtor: *Hayward* v. *Fullerton*, S. Ct. Iowa, Oct. 5, 1888.

Charity.

Bequest of money "in trust for the benefit of the Catholic church on my farm in T. County," with a direction that the trustees "invest said money safely for the benefit of said church," and that "service shall be held in said church for my soul yearly," is a good bequest to a charitable use, although the church is not incorporated: *Seda* v. *Huber*, S. Ct. Iowa, Oct. 9, 1888.

Corporations.

Irrigating company, incorporated to construct and operate a canal for irrigation, water-works, and manufacturing purposes, has the power, with the assent of its stockholders, to sell to another similar corporation its right of way, canal, personal and real property, if the transaction is in good faith and not for the purpose of delaying or defrauding creditors: *State* v. *Western Irrigating Canal Co.*, S. Ct. Kansas, Oct. 6, 1888.

President may, with the assent of the directors, agree to the affirmance of a judgment against the company, and thereafter, in the absence of any actual fraudulent intent, may agree with the creditor to indirectly buy the corporate property at the execution sale for his own benefit; he does not deal with the company and does not, therefore, transgress the rule that a trustee will not be permitted to act under a temptation destructive of his duty: *Inglehart et al.* v. *T. I. Hotel Co. et al.*, Ct. App. N. Y., June 5, 1888.

Criminal Law.

Conviction of manslaughter will be sustained where the evidence shows that the accused allowed the deceased, who was his wife, and who had become intoxicated, to lie in mid-winter all night out-of-doors upon the ice and poorly clad, within easy reach of the house, making no effort to aid her, so that she died the next day from the effects of the cold and exposure: *Territory* v. *Manton*, S. Ct. Mont., July, 1888.

Damages.

Latent hereditary disease, which had never before exhibited itself, was developed in a child as the result of an injury occasioned by the negligence of a railroad company, the latter was liable for the entire damage as the direct result of the accident, that being the proximate cause: *Lapleine* v. *Morgan's L. & T. R. & S. S. Co.*, St. Ct. La., July, 1888.

Debtor and Creditor.

Time of debtor is his own, and his creditors have no control over it; he may, where there is no fraudulent intent shown, work gratuitously upon the separate property of his wife and pay for materials

used in such work, without charging such property with his own debts: *Eilers* v. *Conradt*, S. Ct. Minn., Sept. 17, 1888.

Deed.

Condition subsequent in deed, when broken, does not inure to the advantage of the owner of an adjacent property, deriving his title from the same grantor under a subsequent deed, when he is not a party to the prior deed and the conveyance to himself does not refer to such condition: *McElroy* v. *Morley*, S. Ct. Kan., Oct. 6. 1888.

Divorce.

Acts of Cruelty, antedating the charges specifically made in the complaint and not specially pleaded, may be shown as confirmatory and cumulative evidence in support of the facts pleaded: *Segelbaum* v. *Segelbaum*, S. Ct. Minn., Oct. 5, 1888.

Compromise of a suit for divorce by wife by which the husband, who was an habitual drunkard, conveyed certain lands to the wife and further promised to reform and drink no more, was no bar to a subsequent divorce suit by the wife, the husband having continued and increased his drunken habits, nor would a reconveyance of the lands conveyed to the wife be decreed upon the granting of a divorce in the second suit: *Lewis* v. *Lewis*, S. Ct. Iowa, Sept. 8, 1888.

Desertion is not constituted by a refusal to occupy the same bed, where the parties have continued to live together in the same house and other marital duties are observed: *Segelbaum* v. *Segelbaum*, *supra.*

Fire Insurance.

Penalty denounced upon an insurance company by the statutes of Wisconsin for failure to make an annual statement of business, is a pecuniary fine by way of punishment, and cannot be made the foundation of a civil action in the U. S. Courts: *Wisconsin* v. *Pelican Ins. Co. of N. O.*, S. Ct. U. S., May 14, 1888; 127 U. S. 265.

Prior policy, although in the name of only one of two joint owners of a property, will avoid a subsequent policy in the name of both, containing a condition that prior insurance upon the same property shall avoid it, if not disclosed: *Horridge* v. *Dwelling House Ins. Co.*, S. Ct. Iowa, Oct. 6, 1888.

Smoking tobacco not having caused the fire by which the mill was damaged, will not prevent a recovery upon the policy, although the application for the insurance answered "no" to the question, "Is smoking or drinking of spirituous liquors allowed on the premises?" *Hosford* v. *Germania F. I. Co.*, S. Ct. U. S., May 14, 1888; 127 U. S. 399.

Fixtures.

Pump placed in basement of a building, planted down on the ground and connected to pipes belonging to water-works, so as to

admit steam and water, is sufficiently affixed to the water-works to render them subject to a mechanic's lien for the price of the pump: *Goss* v. *Helbing*, S. Ct. Cal., Oct. 5, 1888.

Gambling Contract.

Grain deal was found by a jury, under proper instructions, to be a gambling transaction; no recovery could be had upon the contract: *Washer* v. *Bond*, S. Ct. Kansas, Oct. 6, 1888.

Husband and Wife.

Divorce does not place the wife in the position of a surety; consequently where a wife joined her husband in executing a mortgage on the husband's land for the payment of her husband's debt, and was afterwards divorced and then the mortgage was foreclosed, she cannot sue her husband for the value of her former inchoate estate in his land: *Tennison* v. *Tennison*, S. Ct. Ind., May 8, 1888.

Life Insurance.

Presumption of death, arising from absence for more than seven years, does not involve a presumption that death did not occur until the end of that period, but the exact time of death, when material, is a fact to be established by evidence; *Whiteley* v. *Equitable Life Assn. Soc. of U. S.*, S. Ct. Wisc., Sept. 18, 1888.

Suicide to avoid arrest and trial for a crime committed by the assured upon a policy of insurance which provides that "if the assured shall die in consequence of the violation of any criminal law of any country, State, or Territory in which the assured may be," then the policy shall be "null and void," is not within the proper meaning of the condition and does not avoid the policy: *Kerr* v. *Minnesota Mut. Ben. Assn.*, S. Ct. Minn., Aug. 31, 1888.

Suicide, committed while the assured is temporarily insane and in no manner conscious or responsible, avoids a policy containing a condition that it shall become void "if the member shall commit suicide, felonious or otherwise, sane or insane:" *Scarth* v. *Security Mut. Life Soc.*, S. Ct. Iowa, Oct. 4, 1888.

Master and Servant.

Defective machine renders an employer liable for injuries caused thereby to an employé, notwithstanding the fact that the negligent management of the machine by a co-employé contributed to the accident: *Sherman* v. *Menomonee River Lumber Co.*, S. Ct. Wisc., Sept. 18, 1888.

Implements furnished by an employé must be selected with reasonable care, such as ordinarily prudent persons would employ, considered with reference to the risk to be incurred, and must be kept in good and safe repair; an employé does not assume risks flowing from his employer's negligence in these duties, nor is there imposed upon him

any duty of watchfulness and care to discover defects, when not specially directed thereto by the employer: *Missouri Pac. Ry.* v. *Crenshaw*, S. Ct. Tex., Oct. 9, 1888.

Mortgage.

Ice cut and stored in ice-houses by a lessee of the mortgagor before the foreclosure of the mortgage, does not belong to the purchaser at the foreclosure sale, though the houses in which the ice was stored, the land on which the houses were situated, and the pond from which the ice was cut, were all covered by the mortgage: *Gregory* v. *Rosenkrans*, S. Ct. Wisc., Sept. 18, 1888.

Principal and Agent.

Drafts of travelling salesman drawn on his principal were, on two occasions, indorsed by a firm with whom he had dealings, in order that he might have them cashed at bank, and were paid; the salesman was subsequently discharged by his employer, and afterwards secured the indorsement of a third draft by the same firm, who were ignorant of his discharge, which last draft was dishonored; the indorsement was a personal accommodation to the agent and his employer was not liable for the amount paid to take up the protested draft: *Groneweg* v. *Kusworm*, S. Ct. Iowa, Sept. 10, 1888.

Ratification of the agent's acts by an absent principal is necessary where four persons owned a steam dredge in common and agreed that an agent should sell, with the consent of all. The agent sold to himself, with the consent of three of the owners, but one of them withdrew his consent before the fourth ratified the sale; this ratification could not be made to relate back so as to prevent the withdrawal of the assent before the ratification: *Pinckney* v. *Inglesby*, 28 S. C. 345.

Railroads.

Disorderly persons may be removed from the cars by the city police with force, without having any right to sue the railroad company for unnecessary force; the acts of the police will be presumed to have been done by virtue of official character, notwithstanding the fact that the conductor called in the police: *Jardine* v. *Cornell et al.*, S. Ct. N. J. June 20, 1888.

No negligence is shown where the testimony is that the trackwalker of a railroad company discovered a man about 10 o'clock at night, lying on the track in such a position that a passing train would kill him, and, when he aroused him and told him that the train was coming presently and he had better get off the track, the man raised his head, leaned on his elbow, and by an exclamation assented to the suggestion, showing no signs of intoxication, whereupon the trackwalker passed on, and the man was killed two hours afterwards by an express train: *Virginia M. Ry. Co.* v. *Boswell's Adm.*, S. Ct. Va., Feb. 17, 1887.

Switchman on railroad, one of whose rules declared that no buildings or materials would be allowed nearer than six feet to the track, while standing on the platform steps of a car, ready to alight, in the performance of his duties, was struck, without negligence on his part, by a switch-stand extending to within nine or ten inches of the car, in violation of the rule, and was injured; the peril arising from such switch-stand was not assumed by the employé on entering the railroad's service: *Pidcock* v. *Union Pac. R. R. Co.*, S. Ct. Utah, Aug. 27, 1888.

Telegraph Companies.

Failure to transmit a cipher message renders a telegraph company liable for the damages sustained by the sender by reason of the non-transmission; although the printed contract contains stipulations limiting the company's liability for mistakes or delay in delivery and for non-delivery of unrepeated messages, and exempting it from liability for errors in transmitting cipher or obscure messages, where the contents are not communicated by the sender, and further exempting it in all cases where, as in the present case, claim is not made within sixty days after sending the message; these stipulations do not apply to a failure to transmit: *Western Union Tel. Co.* v. *Way*, S. Ct. Ala., Dec. 1887.

Forged message, sent by local agent of telegraph company, who was also agent of an express company at the same place, by means of which the receiver was induced to send by express money, which was intercepted and stolen, renders the telegraph company liable for the loss: *McCord* v. *Western Union Tel. Co.*, S. Ct. Minn., Sept. 4, 1888.

State tax upon receipts, returned and assessed in gross, is invalid only in proportion to the extent that such receipts are derived from inter-state commerce: *Ratterman* v. *W. U. Tel. Co.*, S. Ct. U. S., May 14, 1888; 127 U. S. 411.

Trusts.

Loan of money to purchase land where title is taken in name of lender upon his verbal agreement to convey upon the repayment of the amount loaned, the grantee also giving a mortgage for a portion of the purchase-money and being secured for his liability thereon, creates a resulting trust of the whole property in favor of the person for whose benefit the loan is made: *Thomas* v. *Jameson*, S. Ct. Cal., Sept. 22, 1888.

Usury.

Attorney's fees on sums collected by suit may be made payable by the debtor, without rendering the contract usurious: *Merck* v. *Am. Freehold Land Mortg. Co.*, S. Ct. Ga., Dec. 7, 1887.

Commission paid to intermediary, through whom a loan is effected, where the lender neither takes nor contracts to take anything beyond

lawful interest, does not render the loan usurious: *Merck* v. *Am. Freehold Land Mortg. Co.*, S. Ct. Ga., Dec. 7, 1887.

Holder of negotiable paper, which has been given originally for a usurious loan, must show affirmatively either that he is a *bona fide* purchaser before maturity without notice of the usury, or that he obtained the paper from such a *bona fide* purchaser: *Knox* v. *Williams*, S. Ct. Neb., Oct. 17, 1888.

Interest overdue may be made to bear interest, such a contract not being usurious: *Merck* v. *Am. Freehold Land Mortg. Co.*, S. Ct. Ga., Dec. 7, 1887.

WILLS.

Fee-simple is given to his wife by a testator, who devised to her all his real and personal estate, and charged her "with the raising and education of my children, such education to be the best her means will afford," and further provided that "if any of our children should voluntarily refuse education, they are not to receive any advantage in property in consequence of such refusal," and also that "my wife may give to any of our children, at any time, and in the form and manner she may think best, any portion of property she may think proper; provided, those to whom she had given shall be charged the full amount in the settlement of the estate:" *Howze* v. *Barber*, S. Ct. S. C., Oct. 23, 1888.

Life estate is created by a devise of land which provides that the devisee is to "occupy and enjoy it during his natural life," and a further provision that he cannot alienate the land, nor in any way incumber it, and that it shall not be subject to attachment or levy, is inconsistent with such life estate and void as to judgment-creditors: *McCormick Harvesting-Machine Co.* v. *Gates*, S. Ct. Iowa, Oct. 4, 1888.

JAMES C. SELLERS.