ABSTRACTS OF RECENT DECISIONS.

ATTORNEY-AT-LAW.

Contract between attorneys, one of whom had employed the others to assist him in a case in which he was to receive a contingent fee of one-sixth the amount recovered, stipulated that the former should pay the latter one-half his fee for their services; upon being tendered half of one-sixth the sum recovered the attorneys who had been thus employed expressed dissatisfaction with the amount, but finally gave a receipt in full, refusing to wait until application could be made to their clients for the allowance of an additional fee; such additional fee was, however, subsequently allowed to the attorney who was originally in the case; recovery for one-half of such additional fee could not be had against him by his former associates, the settlement between them being final and conclusive: *Conyers* v. *Graham*, S. Ct. Ga., Dec. 10, 1888.

BANKS AND BANKING.

Liquidating National Bank, whose franchises have been extended under the provisions of Act of July 12, 1882, may, after the expiration of the term of its charter, continue to elect officers and directors for the purpose of effecting the liquidation, but after such expiration the stock of the bank cannot be transferred, so as to give the transferree the right to share in the election of directors or to serve as a director. *Richards* v. *Attleborough Nat. Bank*, S. Jud. Ct. Mass., Jan. 2, 1889.

BILLS AND NOTES.

Draft was written by the person to whom it was directed, and made payable to the drawer's order; the former indorsed an acceptance before the drawer had signed and then gave the draft to the latter to raise money; the acceptor was liable to an indorsee for value before maturity. *Hopps* v. *Savage*, Ct. App., Md., Dec. 6, 1888.

Law of State where note, given in pursuance of a wagering transaction, is made, determines its validity, and the question is not affected by the law of another State where suit has been brought upon the note. *Sondheim* v. *Gilbert*, S. Ct. Ind., Nov. 27, 1888.

Notice of protest is sufficient under a statute, requiring it to be directed to the indorser's residence, when given as follows: Indorser had lived after the death of her father with her mother, in F., but after her marriage spent most of her time abroad, where her first husband died and she married again; in 1886, she returned with her husband to the home of her mother, in F., where she remained until June, 1887, and where the indorsement of the note was made; she and her husband then left F. for the purpose of going to England, with no intention of returning, but proceeded to

the seashore before sailing, for the health of a child; the sickness and death of the child detained them, and on August 23, they returned to F. for the sole purpose of burying their child, the funeral taking place from the house of indorser's mother; they remained in F. several days, not at the mother's house, but visiting other friends, and then returned to the sea-shore; the note was protested August 25, and the notice was mailed the same day, directed to indorser at her mother's house, although the notary was well acquainted with her plans. *Wachusett Nat. Bank* v. *Fairbrother*, S. Jud. Ct. Mass., Jan. 2, 1888.

Stipulation, in case of non-payment of note at maturity, to pay "costs of collecting the same, including attorney's commissions," is valid. *Bowie* v. *Hall*, Ct. App. Md., Nov. 23, 1888

Champerty and Maintenance.

Contingent fee, to be paid for the prosecution of a claim before the Court of Commissioners of Alabama Claims, is not illegal on the ground of champerty. *Maning* v. *Sprage*, S. Jud. Ct. Mass., Nov. 28, 1888.

Chattel Mortgage.

Crop to be grown may be mortgaged by the owner of the soil before the crop is planted. *McCown* v. *Mayer*, S. Ct. Miss., Nov. 5, 1888.

Corporations.

Mortgage bondholders, who subscribe to the debenture bonds of a corporation, agreeing to pay specified portions of their subscriptions as called for, thereupon receiving the bonds, are not in a position analogous to subscribers to capital stock; their undertaking is no more than an agreement to loan the corporation money, and creditors cannot maintain a bill to compel payment of such subscriptions. *Pettibone* v. *Toledo, C. & St. L. R. Co.* S. Jud. Ct. Mass., Jan. 2, 1889.

Evidence.

Proof is admissible, in an action to recover for injuries sustained from a vehicle, driven at an immoderate rate of speed through the streets of a city, that there was more travel upon the street where the accident occurred than upon any other street in the city. *Stringer* v. *Frost*, S. Ct. Ind., Jan. 8, 1889.

Fire Insurance.

Live stock, insured, together with a barn and contents, against fire or lightning, by a policy which provided that the insurer should not be liable for the loss of any property, while removed from the barn, were killed by lightning while at pasture in a field; the loss was not covered by the policy. *Haws* v. *St. Paul Fire & Marine Ins. Co.*, S. Ct. Pa., Oct. 29, 1888.

Notary's certificate, in proof of loss, furnished in compliance with the requirements of the policy, is not conclusive upon the assured,

and evidence is admissible to show that the loss actually sustained was greater than the amount certified to. *Birmingham Fire Ins. Co.* v. *Pulver*, S. Ct. Ill., Nov, 15, 1888.

Recovery on policy may be had, although the insurer has already paid the amount of a second policy issued as a substitute for that sued on to a person, who, wrongfully claiming the property insured, took out such policy without the consent of the original insurer, and was subsequently compelled by a decree in chancery to account to the latter for its proceeds. *Commercial Union Assur. Co.* v. *Scammon*, S. Ct. Ill., Nov. 15, 1888.

Husband and Wife.

Marriage contract, which provides that all the furniture, plate, horses, carriages, and other personal property, "in use by the parties for family purposes," at the death of either, shall vest in the survivor, does not include property in the nature of heir-looms. *Gorham* v. *Fillmore*, Ct. App. N. Y., Nov. 27, 1888.

Landlord and Tenant.

Death of lessee does not break a clause in the lease against alienation, as the stipulation refers only to a voluntary transfer. *Charles* v. *Byrd*, S. Ct. S. C., Nov. 27, 1888.

Leasehold estate for ninety-nine years, renewable forever, though a chattel real, is personalty and subject to the rules governing that class of property, and the unexpired term may, therefore, be conveyed by a deed reserving its use and enjoyment during the life of the grantor. *Culbreth* v. *Smith*, Ct. App. Md., Nov. 23, 1888.

Libel and Slander.

Communication to wife by husband of slanderous words in regard to a woman, is a publication, and will sustain a criminal prosecution. *State* v. *Shoemaker*, S. Ct. N. C., Dec. 18, 1888.

Life Insurance.

Knowledge of assistant superintendent of district for an insurance company, obtained while performing the duties of his agency, that a policy-holder is engaged in the liquor business, will be imputed to the company, and, where the latter continues to receive premiums from such policy-holder, a forfeiture stipulated in the policy for carrying on such business will be considered waived, even though the policy expressly states that agents have no authority to waive forfeitures. *McGurk* v. *Metropolitan Life Ins. Co.*, S. Ct. Err. Conn., Dec. 18, 1888.

Refusal to furnish blanks for proof of death, on the ground that a policy had been forfeited, is a waiver of the condition requiring such proof to be made. *Dial* v. *Valley Mut. Life Asso.* S. Ct. S. C., Nov. 27, 1888.

LIMITATION.

Payments on joint note by one maker will arrest the running of the statute as against another maker, although the latter does not authorize nor participate in such payments. *Woonsocket Inst. for Savings* v. *Ballou*, S. Ct. R. I., Nov. 10, 1888.

War period, from Jan. 11, 1861, to Sept. 21, 1865, is to be deducted in Alabama in any computation covering those years in which the time necessary to perfect a statutory bar is the subject of inquiry, but not from the twenty years necessary to raise a presumption against claims suffered to slumber for that length of time. *Black* v. *Pratt Coal and Coke Co.*, S. Ct. Ala., Dec. 6, 1888.

LIQUOR LAWS.

Selling from wagon on highway, not at or near the seller's house, without a license, will not sustain a conviction under a statute which forbids the unlicensed sale of liquor to be drank in the seller's "house, out-house, yard, garden, or the appurtenances thereto belonging." *Schilling* v. *State*, S. Ct. Ind., Nov. 27, 1888.

Servant, who, in the absence of proprietor of a saloon, makes illegal sales of liquor, or otherwise assumes control of the premises, may be convicted of keeping and maintaining such saloon. *Comm.* v. *Brady*, S. Jud. Ct. Mass., Nov. 26, 1888.

Validity of election, by which a local option law was adopted, cannot be called in question by way of defence to a prosecution for the violation of such law. *State* v. *Cooper*, S. Ct. N. C., Dec. 10, 1888.

MASTER AND SERVANT.

Chief manager, employed by corporation at a monthly salary, to take charge of works, without authority to buy new articles or repair machinery, but who sometimes makes slight repairs without orders, hires and discharges employés, and keeps and reports their time to the officers of the corporation, who themselves frequently inspect the works, is but a fellow-servant of a workman, and the corporation is not liable to the latter for such manager's negligence in the care of the machinery. *Yates* v. *McCullough Iron Co.*, Ct. App. Md., Nov. 22, 1888.

NEGLIGENCE.

Contributory negligence is chargeable to one who is injured by falling at night into a hole in a side-walk, which was between, and about eighty feet from, two gas-lamps, by the light of which the hole could have been plainly seen. *Moore* v. *City of Richmond*, S. Ct. App. Va., Dec. 13, 1888.

Municipal corporation is not liable for damages sustained by one driving in a public street, by reason of a rope having been stretched across the street, by order of the judge of a State Court, in order to prevent travel on the street, and the resulting noise. *Belvin* v. *City of Richmond*, S. Ct. App. Va., Dec. 13, 1888.

PUBLIC OFFICERS.

Clerk of Court is liable to the county, upon his official bond, for a failure to record pleadings and judgments, as required by law, especially in criminal cases, for which he has been paid by the county. *Chester Co.* v. *Hemphill*, S. Ct. S. C., Nov. 27, 1888.

AILROADS.

Disorderly passenger, or one using profane, obscene, or vulgar language, notwithstanding that he has a ticket, has no right to remain on a train, and, if he resists expulsion by drawing a pistol, and a combat with pistols results between him and the conductor, during which he is wounded, the railroad company is not liable for the injury sustained. *Peavy* v. *Georgia R.R. Co.*, S. Ct. Ga., Dec. 3, 1888.

STATUTE OF FRAUDS.

Memorandum in writing, sufficient to comply with statute, is constituted, where a salesman took a verbal order for goods, reduced it to writing and mailed it to the vendor, and the vendee subsequently wrote, "Don't ship paint ordered through your salesman," but before the letter was received, the goods had been already shipped, there being no other transaction between the parties. *Louisville Asphalt Varnish Co.* v. *Lorick*, S. Ct. S. C., Nov. 27, 1888.

TRADE-MARKS.

Assignment of business, with debts and plant, includes trade-marks used in such business, and gives the assignee the exclusive right thereto. *Merry* v. *Hoopes*, Ct. App. N. Y., Nov. 27, 1888.

WASTE

Taking clay from soil by life-tenant, and manufacturing the same into brick, to be sold, is waste, and will be restrained by injunction upon application of a contingent remainderman. *University* v. *Tucker*, S. Ct. App. W. Va., Dec. 1, 1888.

WILLS.

Condition annexed to devise or bequest, avoiding it if the devisee or legatee marry into the "family" of a person named, without any limitation over, is valid, and, in the absence of anything in the context to the contrary, means marriage with one of the children of such person. *Phillips* v. *Ferguson*, S. Ct. App. Va., Dec. 5, 1888.

Gift of income of fund, without limitation as to continuance or time, passes the fund itself, whether the gift be made directly or through the intervention of a trustee. *Bishop* v. *McClelland's Ex'rs*, Ct. Ch. N. J., Nov. 13, 1888.

JAMES C. SELLERS.