## ABSTRACTS OF RECENT DECISIONS.

### AGENCY.

*Good faith*, of the highest degree, is required of an agent, and, if he negotiates a sale for his principal, he is bound to account for the full actual price received: *Jacobs* v. *George*, S. Ct. Ariz., Jan. 19, 1889.

### BANKS AND BANKING.

*Deposit by bank* with another bank of money or securities, for the purpose of paying a creditor of the former, constitutes the relation of principal and agent between the banks, until the creditor assents to or acts upon the transaction; and where the creditor has no notice or knowledge of the deposit, his assent will not be presumed: *Brockmeyer* v. *Washington Nat. Bank*, S. Ct. Kan., Dec. 8, 1888.

### BILLS AND NOTES.

*Acceptance of draft* for $2000, does not cover a draft for $2000, "with exchange on New York:" *Lindley* v. *First Nat. Bank of Waterloo*, S. Ct. Iowa, Jan. 23, 1889.

*Notice of protest* is sufficient, if properly addressed and placed in the post-office where the indorser is accustomed to receive his mail, upon the day of protest, and is actually received by the indorser on the following day: *Hendershot* v. *Nebraska Nat. Bank*, S. Ct. Neb., Dec. 13, 1889.

*Delivery* is not shown by evidence that a father, after difficulties had arisen between himself and his sons as to compensation for services rendered by the latter, by way of settlement made his notes to the sons, payable ten years after date, and promised to place them in charge of his wife; the notes were found five years after maturity among the papers of a deceased sister of the payees, but there was no explanation of her possession, nor was it shown that they were even in the possession of the payees or of their mother: *Gordon* v. *Adams*, S. Ct. Ill., Jan. 25, 1889.

*Joint note* was given for a debt and, at maturity, a partial payment was made on account and a new note given for the balance, which was invalid as to one of the makers on account of a material alteration; the latter remained liable for the unpaid balance upon the original note: *Owen* v. *Hall*, Ct. App. Md., Jan. 10, 1889.

### BILLS OF LADING.

*Stipulation* that, in case of loss, the carrier shall have the benefit of any insurance on the goods, does not entitle the carrier to receive such benefit, or to a tender thereof, before an action can be brought against it for the loss, nor can a failure to give the carrier the benefit of such insurance avail as a counter-claim, unless it be shown that the

shipper had actually received the insurance money and had refused to allow the carrier the benefit of it: *Inman* v. *South Carolina Ry. Co.*, S. Ct. U. S., Jan. 14, 1889.

### Constitutional Law.

*Railroad commission*, authorized by statute to regulate charges for the transportation of passengers and freight, is not forbidden by a constitutional provision, which prohibits the delegation of legislative power: *Mc Whorter* v. *Pensacola & A. R. R. Co.*, S. Ct. Fla., Nov. 21, 1888.

*Statute of Iowa*, which provides that any one who has in his possession Texas cattle, which have not wintered north of the southern boundary of Missouri or Kansas, shall be liable for any damages that may accrue from allowing them to run at large and to thus spread Texas fever, is not an attempted regulation of inter-state commerce, nor does it deny to citizens of other States any rights and privileges accorded to citizens of Iowa: *Kimmish* v. *Ball*, S. Ct. U. S., Jan. 28, 1889.

### Corporations.

*Purchase by officer and director* of debts owing by a corporation may be made, after an assignment for the benefit of creditors and a sale of all the assets: *Hammond's Appeal*, S. Ct. Pa., Jan. 7, 1889.

### Damages.

*Fright and mental suffering* are proper elements of damage in an action against a railroad company for unlawfully requiring a passenger, a woman, to leave a train at a dangerous point, several hundred feet from the station, in consequence of which she fell into a culvert and sustained injuries: *Stutz* v. *Chicago & N. W. Ry. Co.*, S. Ct. Wis., Dec. 4, 1888.

### Deed.

*Estate in entirety* is given by a deed conveying real estate to a husband and wife, and upon the death of either, the survivor takes the whole estate: *Baker* v. *Stewart*, S. Ct. Kan., Dec. 8, 1888.

### Elections.

*Ballots* constitute the best evidence of the choice of the voters, in an election contest, and if they have been preserved and protected from tampering, will control the evidence furnished by the official count, but the burden of proof rests upon the contestant to show that they have been kept intact, and are the identical ballots cast at the election: *Hartman* v. *Young*, S. Ct. Or., Dec. 19, 1888.

*Erasure* of printed name on a ballot, and writing opposite to the erasure another name, shows an intention to substitute the written for the printed name, and the ballot should be counted accordingly: *Fenton* v. *Scott*, S. Ct. Or., Dec. 20, 1888.

### Easement.

*Appurtenances*, used in deed, does not create an easement, where none existed before: *Bonelli* v. *Blakemore*, S. Ct. Miss., Dec. 3, 1888.

*Right of way* is an interest in lands and cannot be granted by parol, nor does it pass, when not of necessity, by a conveyance of the common owner: *Id.*

### Fire Insurance.

*Arbitration clause* in policy, providing that no suit "shall be sustained in any court of law or chancery until after an award of arbitrators shall have been obtained," fixing the amount of loss, is void, as ousting the courts of their legitimate jurisdiction: *German-American Ins. Co.* v. *Etherton*, S. Ct. Neb., Jan. 16, 1889.

*Breach of contract to insure* made with the agent of an insurance company, will support an action of damages against the company, although no premium was paid: *Campbell* v. *American Fire Ins. Co.*, S. Ct. Wis., Dec. 4, 1888.

*Waiver of forfeiture* for non-payment of premiums, when due, may be constituted by habits of business on the part of an insurance company, which tend to create in the mind of a policy-holder the belief that payment may be delayed until demanded: *Home Protection of North Alabama* v. *Avery*, S. Ct. Ala., Dec. 7, 1888.

*Wife* cannot maintain action upon a policy on her separate property, taken out in the name of her husband: *Zimmerman* v. *Farmers' Ins. Co.*, S. Ct. Iowa, Dec. 21, 1888.

### Husband and Wife.

*Money given* by wife to husband, to be employed in his business to the best advantage, belongs to him, and does not constitute a valuable consideration for conveyance by him to her: *Diggs* v. *McCullough*, Ct. App. Md., Jan. 9, 1889.

### Insolvency.

*Discharge* by an insolvent Court of one State is no bar to an action by a creditor, who is a citizen of another State and was not a party to the insolvency proceedings: *Main* v. *Messner*, S. Ct. Or. Nov. 20, 1888.

### Libel.

*Newspapers* are not privileged in the publication, before trial, of pleadings or other proceedings in civil causes: *Park* v. *Detroit Free Press Co.*, S. Ct. Mich., Nov. 28, 1888.

### Life Insurance.

*Notice of assessments* by a mutual benefit association, according to the practice adopted, was always sent to a particular class of members by letter through the mail, although the charter of the association provided

only for notice by posting; a failure to send such notice would estop the association from claiming a forfeiture, where a member who was not notified, had failed to pay his assessment within the time limited: *Gunther* v. *New Orleans C. E. Mut. Aid Asso.*, S. Ct. La. Nov. 19, 1888.

*Paid-up policy*, issued in pursuance of an express agreement in a prior policy, without new consideration, is not a new contract, so as to be affected by a change in the constitution of the insuring company, made between the dates of the two policies, which abolishes individual liability of stockholders for the debts of the company: *McDonnell* v. *Alabama Gold L. Ins. Co.*, S. Ct. Ala., Dec. 5, 1888.

### Liquor Laws.

*Cider* cannot be held, as a matter of law, not to be a vinous or spirituous liquor, within the prohibition of a license law, but the question is one of fact, to be determined by a jury: *Commonwealth* v. *Reyburg*, S. Ct. Pa., Jan. 14, 1889.

*Conviction* for selling liquor without a license does not bar a prosecution for selling to a minor, although both indictments are based upon the same sale: *Ruble* v. *State*, S. Ct. Ark., Jan. 12, 1889.

### Marine Insurance.

*Abandonment* is accepted, where an insurer, after notice of the abandonment, gets the vessel off, brings it to port, repairs it at great expense and never offers to return it, believing the loss to have been caused by a peril covered by the policy, and the insurer cannot afterwards deny its liability: *Richelieu & O. Nav. Co.* v. *Thames & M. Ins. Co.*, S. Ct. Mich. Nov. 28, 1888.

*Insurable interest* is had by a part owner of a vessel for advances and disbursements made by him upon a venture engaged in with such vessel by himself and the other owners; he is in the position of a partner making advances to his firm, and has a lien on the vessel and cargo for his reimbursement: *International Marine Ins. Co.* v. *Winsmore*, S. Ct. Pa., Jan. 28, 1889.

### Marriage.

*Statutory prohibition* of re-marriage of the guilty party, after a divorce for adultery, renders such marriage void in Tennessee, when the parties, although domiciled in that State, for the purpose of evading the statute, are married in Alabama, where such marriage is not prohibited: *Pennegar* v. *State*, S. Ct. Tenn., Jan. 29, 1889.

### Negotiable Instruments.

*Collateral note*, containing a power to the payee, upon non-payment, to sell the pledged securities, is not negotiable: *Continental Nat. Bank* v. *Wells*, S. Ct. Wis., Jan. 29, 1889.

*Order* for payment of school funds is not negotiable, and a third person can acquire no greater right under it than belonged to the original holder: *Shakespear* v. *Smith*, S. Ct. Cal. Dec. 29, 1888.

*Stock certificate* is not negotiable, any usage among stock-brokers to the contrary notwithstanding, and an innocent purchaser for value of a certificate, indorsed in blank by the owner and stolen from him without negligence on his part, acquires no title: *East Birmingham Land Co.* v. *Dennis*, S. Ct. Ala., Jan. 15, 1889.

### Physicians.

*Surgical operation* upon a married woman may be performed, where the attending physicians, after consultation, deem it necessary and the patient consents, notwithstanding the fact that the husband's consent is not given: *State* v. *Housekeeper*, Ct. App. Md., Jan. 10, 1888.

### Railroads.

*Public use*, such as will authorize the exercise of the right of eminent domain, does not exist, where land is sought to be condemned for the purpose of building thereon a switch or branch road, to reach a private manufactory, for the purpose of transporting freight thereto from the main line of a railroad: *Pittsburgh, W. & K. R. Co.* v. *Benwood Iron Works*, S. Ct. W. Va., Dec. 15, 1888.

*Sick passenger* may be removed from a car, but not without due care and provision for his safety; so, where one riding in a street car and stricken with apoplexy, attended with severe vomiting, to the discomfort of other passengers, was removed, while in a speechless and helpless condition, and laid in the open street, on a bleak, drizzling December day, and there abandoned with no effort to procure him attention, there was a gross violation of its duty by the railroad company, and it was liable for the resulting damage: *Conolly* v. *Crescent City R. R. Co.* S. Ct. La., Dec. 3, 1888.

*Punitive damages* may be recovered by a woman, who got on a railroad train, having purchased a ticket to the station nearest her home, but was carried past such station by the failure of the train to stop there; she requested to be put off at her destination, but the conductor refused, and upon her declining to go to the next station, stopped the train; she then alighted, the conductor offering no assistance, but addressing her in a rude and insulting manner; she was compelled to walk back about a mile to the station to which she had purchased her ticket, carrying a bundle and valise, her route lying through an uninhabited country; and, as a result of her walk and excitement, was sick for several days: *Louisville & N. R. R. R. Co.* v. *Ballard*, Ct. App., Ky., Jan. 22, 1889.

### Statute of Frauds.

*Parol agreement* by purchaser of property to pay the price to a third person in liquidation of a debt due the latter by the vendor, is not within the statute, and an action may be maintained upon the agreement by such third person: *Piano Manufacturing Co.* v. *Burrows*, S. Ct. Kan., Dec. 8, 1888.

### Stock-Brokers.

*Refusal to sell stocks*, when directed by telegraph by principal to do so, such refusal being communicated to the principal, not by telegraph, but by letter delivered two days later, renders a broker liable for the loss resulting from his failure to obey instructions, although his principal is indebted to him for previous advances in a greater sum than the market value of the stocks: *Gallagher* v. *Jones*, S. Ct. U. S., Jan. 21, 1889.

### Taxation.

*Franchise* granted by the United States is not subject to State taxation: *San Benito Co.* v. *Southern Pacific R. R. Co.*, S. Ct. Cal., Dec. 13, 1888.

### Trusts.

*Resulting trust* arises where a testator, desiring that his property should go to his own heirs, is ind uced by his wife to give her some of the personalty and to devise and bequeath the residue of his estate to her absolutely, upon her promise to use it for certain purposes during her life and transfer all that should remain to his heirs, which promise she failed to perform; and such trust will be enforced in equity, notwithstanding the statute of frauds: *Gilpatrick* v. *Glidden*, S. Jud. Ct. Me., Dec. 27, 1888.

### Usury.

*Advance by commission merchants* for the purchase of goods, the borrower agreeing to pay, in addition to interest, a commission upon sales of 50 per cent. more than the customary price charged, where no money is advanced, is a usurious transaction: *Harmon* v. *Lehman*, S. Ct. Ala., Dec. 18, 1888.

### Wills.

*Declarations of testator*, made within a reasonable time before and after the execution of a will, are admissible, in an issue to try questions of fraud and undue influence, as showing the condition of his mind, though they have no force to establish the fact of undue influence; but in order that such declarations may be considered, there must be proof of other facts and circumstances supporting the allegations of fraud and undue influence: *Herster* v. *Herster*, S. Ct. Pa., Jan. 7, 1889.

*Estate in fee simple* is given, where a testator, after using the following introductory words: "Touching such worldly estate wherewith it hath pleased God to bless me, I give and dispose of in the following manner," and after giving legacies to each of his children and heirs-at-law, except one son, each bequest ending with the words, "and no more," devises to the excepted son all his real estate, omitting the clause, "and no more," but using no words of inheritance: *Doe* v. *Patten*, Ct. Err. & App. Del., Jan. 16, 1889.

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