ABSTRACTS OF RECENT DECISIONS.

ACCIDENT INSURANCE.

External and visible signs, in a policy excepting "any bodily injury of which there be no external and visible signs upon the body of the injured," apply only to bodily injuries not resulting in death. *Paul* v. *Travelers' Ins. Co.*, Ct. App. N. Y., March 5, 1889.

Inhaling of gas, when excepted in a policy, does not apply to accidental death, caused by breathing, while asleep, the atmosphere of a room filled with illuminating gas. *Id.*

ATTORNEY-AT LAW.

Testimony, in an action by a creditor to set aside a deed as fraudulent, that, before the execution of the deed, the debtor consulted an attorney professionally and requested him to draw a deed of the property, saying that he did not want the title in his own name, because of his creditors, and that the deed and receipt for the consideration were drawn, but never executed, cannot be given by the attorney, being confidential communications between attorney and client. *Watson* v. *Young*, S. Ct. S. C., Feb. 13, 1889.

BAILMENT.

Slight care only is required on the part of a bailee, where the bailment is for the benefit of the bailor; such bailment must be founded on express contract, and requires the assent of the bailee to make him responsible, and he then can be held liable only for fraud or gross negligence. *Heatherington* v. *Richter*, S. Ct. App. W. Va., Dec. 14, 1888.

BILLS AND NOTES.

Collateral pledge of note constitutes between the indorser and indorsee the relation of pledgeor and pledgee, and, if such collateral paper matures before the principal debt, the duty and obligation of the pledgee in the collection thereof is performed by the exercise of reasonable and ordinary care and diligence; if the note is made payable at a particular bank, it is the duty of the pledgee to lodge it with such bank for collection. *Mt. Vernon Bridge Co.* v. *Knox Co. Sav. Bank*, S. Ct. Ohio, Jan. 29, 1889.

CORPORATIONS.

Agreement among stockholders, whose subscription to the capital stock has never been made public, entered into in good faith and before the corporation has incurred debts, whereby, instead of issuing stock to the amount of the original subscriptions, each subscriber is given full paid-up stock to the amount that he has actually paid on his subscription, is valid, as against creditors, and they cannot enforce the original subscriptions, except as to the deficiency between the amount of paid-up stock so issued, and the minimum allowed by the charter for the transaction of business. *Hill* v. *Silvey*, S. Ct. Ga., Feb. 1, 1889.

Criminal Law.

After commencement of trial for a misdemeanor, the court decided to try the prisoner upon another complaint, and discharged him; this action barred another trial for the same offence. *Commonwealth* v. *Hart*, S. Jud. Ct. Mass., March 1, 1889.

Deed.

Alteration of deed by grantee, before registration, by erasing his own name, wherever it occurs, and inserting that of his wife, without the knowledge of the grantor, renders the deed inoperative, and the title remains in the grantor. *Respess* v. *Jones*, S. Ct. N. C., Feb. 18, 1889.

Ancient deed may be challenged on the ground of forgery. *Parker* v. *Waycross & F. R. R. Co.*, S. Ct. Ga., Feb. 20, 1889.

Domicile.

Alleged lunatic, pending proceedings for the appointment of a guardian, can, if mentally capable, change his domicile to another State, though the guardianship resulting from the proceedings continues until his death, and the courts of the new domicile have original probate jurisdiction of his estate. *Talbot* v. *Chamberlain*, S. Jud. Ct. Mass., March 11, 1889.

Donatio Causa Mortis.

Delivery, either of the articles given or of the means of obtaining them, is essential to the validity of a gift, and it makes no difference that, subsequently to the time of the alleged gift, the donor declared to a third party that he had given the articles in question to the claimant, nor that his administrator acknowledged that such gift had been made. *Yancey* v. *Field*, S. Ct. App. Va., Feb. 14, 1889.

Fire Insurance.

Agent, authorized to procure policies of insurance and forward applications for acceptance to the company, must be deemed the agent of the company in all that he does in preparing the application, and in any representation he may make as to the character or effect of the statements therein contained; this rule is not changed by a stipulation in the policy subsequently issued, that the acts of such agent in making out the application shall be deemed the acts of the assured. *Deitz* v. *Providence-Washington Ins. Co.*, S. Ct. App. W. Va., Dec. 14, 1888.

Jurisdiction.

Injunction will not be granted by a Massachusetts court to enjoin a citizen of that State from prosecuting a suit in a State court of South Carolina to foreclose a mortgage of land situated in the latter State, by reason of the fact that the Supreme Court of South Carolina, as indicated by previous rulings in the case, entertains views of the law governing the rights of the parties, which differ from

those held by the Supreme Court of the United States, as indicated by its previous rulings in the case. *Carson* v. *Dunham*, S. Jud. Ct. Mass., March 5, 1889.

Life Insurance.

Wife and Children of the insured were the beneficiaries of a life policy, which, after the death of his wife, the insured surrendered, taking in its place another policy payable in the same manner; he never married again and but one child survived him; the fund arising from the policy was not liable for the debts of the insured, and was payable to the surviving child and the administrator of the deceased one, the provision for the wife being a nullity. *Hooker v. Sugg*, S. Ct. N. C., Feb. 26, 1889.

Limitation.

Stock Subscriptions are not subject to the running of the statute, until called in, and where a corporation assigns for the benefit of creditors, the statute does not begin to run against the stockholders' liability, until the court of chancery makes a call. *Glenn* v. *Howard*, S. Ct. Ga., Jan. 28, 1889.

Mortgage.

Proceeds of foreclosure sale under a mortgage, given to secure two notes of the mortgagor, with different sureties, should be applied to the payment of both notes *pro rata;* the right of a creditor to apply a payment made by his debtor applies only to voluntary payments and not to money received from a judicial sale. *Orleans Co. Nat. Bank* v. *Moore*, Ct. App. N. Y., March 5, 1889.

Partnership.

Sealed instrument, executed in the firm name by one partner only, does not bind the firm, though executed in a State where, by statute, specialties are negotiable by indorsement. *Hull* v. *Young*, S. Ct. S. C., Feb. 9, 1889.

Railroads.

Depot grounds are under the same complete and exclusive dominion of a railroad corporation as that which is exercised by every individual over his own property; the corporation may exclude or admit whom it pleases, when they come to transact their own private business with passengers or other third persons; and this rule applies to persons selling lunches or soliciting orders from passengers for the sale of lunches, no matter how long such privilege may have been enjoyed, without objection by the corporation. *Fluker* v. *Georgia R. R. & Banking Co.*, S. Ct. Ga., Jan. 21, 1889.

Recovery for fire, alleged to have been started by a locomotive, cannot be had, where experts testify that the locomotive was new, of the best make and with the best appliances, and that the spark-arrester was the best in use and in perfect order; and other witnesses testify that the fire did not start on the railroad company's

right of way and that there were no combustible substances thereon; the claimant's witnesses, who saw the fire, did not contradict these witnesses, and two of them testified that the fire started on adjoining land, in a cluster of bushes. *Bernard* v. *Richmond F. & P. R. R. Co.*, S. Ct. App. Va., Feb. 21, 1889.

Ticket of firm, given by a railroad company under a contract, the consideration of which was "a ticket, entitling either one of said firm, but only one on any train, to occupy one seat, and travel on the passenger trains of said railroad company," must be presented whenever any one of the firm takes passage on a train of the company. *Knopf* v. *Richmond F. & P. R. R. Co.*, S. Ct. App. Va., Feb. 21, 1889.

USURY.

Stipulation for interest on semi annual payments of interest on a promissory note, if not paid when due, does not render the contract usurious. *Taylor* v. *Hiestand*, S. Ct. Ohio, Feb. 26, 1889.

WILLS.

Testamentary capacity is not shown, where the alleged will was made five days before testator's death, while he was very ill, being sometimes unconscious; the dispositions were unjust and unnatural, some of his children—an infant among them—being unprovided for, and his wife being given a pittance only; the draughtsman, who was named as executor and was the proponent, though living near the testator, was not respected by him, while in health; the proponent testified that he wrote the will according to testator's direction, previously received, and took it with the subscribing witnesses, one of whom he himself suggested, to testator's house; upon going to testator, proponent thought him dying, but afterwards discovered that he was asleep; when he awakened the others went out, whereupon proponent read the will to him loudly, asking at the end of each clause if it was right, to which he assented; the witnesses were then brought in, and testator, in answer to a question from proponent, said that it was his will, and he desired the witnesses to sign it, whereupon proponent raised him up, and one of the witnesses guided his hand and assisted him in signing; after the witnesses had signed, testator requested proponent to keep the will; the witnesses testified that they heard the reading of the will in part, and the questions of proponent, but not testator's answers; while in the room testator did not speak to them, nor recognize them; when asked if it was his will, he only nodded, and spoke but once, which was to ask for water; neither proponent nor the witnesses were related to the testator or his family. *Tucker* v. *Sandidge*, S. Ct. App. Va., Dec. 13, 1888.

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