

## ABSTRACTS OF REGENT DECISIONS.

## AGENCY.

*Authority to sell* goods does not, of itself and alone, apparently give to the agent authority to collect the price of such goods. *Kane v. Barstow*, S. Ct. Kan., Nov. 9, 1889.

## ANIMALS.

*Cattle running at large* on a range, which is common pasturage for everybody, are in the actual possession of no one, and the constructive possession accompanies the title. *Budd v. Power*, S. Ct. Mont., Oct. 5, 1889.

## BANKS AND BANKING.

*Exemption of national bank from suit in State courts*, except in the county or city where it is located, may be waived by the bank, and it cannot, after submitting to trial in another county, raise the question of jurisdiction and claim the statutory immunity, on writ of error to the State supreme court. *First Nat. Bank of Charlotte v. Morgan*, S. Ct. U. S., Nov. 11, 1889.

## BILLS AND NOTES.

*Indorser* may maintain an action against the maker of a promissory note for the amount paid to take up such note, and the maker cannot defend on the ground that the payment was made without proper demand and notice; as these are for the benefit of the indorser, he may waive any defects therein. *Stanley v. McElrath*, S. Ct. Cal., Nov. 27, 1889.

*Substitution of new note*, made by an indorser for the original note, after it had been dishonored by the maker, the new note being given and accepted in full payment of the other, is such a payment of the latter as will entitle the indorser to maintain an action upon it against the maker. *Id.*

## CHATTEL MORTGAGES.

*Mortgagee* of a chattel may purchase at a sale under the mortgage, but the burden is upon him to show the fairness of his own sale. *Wygat v. Bigelow*, S. Ct. Kan., Nov. 9, 1889.

## CORPORATIONS.

*Misappropriation of corporate funds* was constituted where the trustees of a society, incorporated without capital stock "for the purpose of promoting the cause of temperance," under a statute providing for the incorporation of "religious, social, benevolent and learned associations," passed a resolution to sell the property of the society, pay off some outstanding indebtedness, and "purchase other cheaper property suitable for the uses and purposes of the association"; a sale was made, under an order of court, and subsequently a portion of the proceeds was divided among a part of the members, including the trustees, pursuant to a motion "that the association donate to each member in good standing the sum of \$1500, for past services, on signing a receipt for the same," no serv-

ices having been rendered by the persons receiving this money, other than being good and efficient members of the organization ; and any member not a party to the transaction could maintain an action to compel restitution. *Ashton v. Dashaway Asso.*, S. Ct. Cal., Nov. 22, 1889.

*Misappropriation of stock* by the attorney in fact of a stockholder, who presents the certificate with a power of attorney giving him full authority to deal with the stock, and thereupon obtains a new certificate in his own name, the officers being ignorant of any fraudulent intention on his part, will not render the corporation liable for the conversion of the stock ; and it makes no difference that the attorney was a director of the corporation, nor that the certificate of stock was not indorsed by the owner. *Tafft v. Presidio & Ferris R. R. Co.*, S. Ct. Cal., Oct. 30, 1889.

#### DAMAGES.

*Expected profits* are not a proper element of damages in an action for false representations, used as an inducement to the purchase of mining stock ; recovery can be had only for the actual loss sustained. *Smith v. Bolles*, S. Ct. U. S., Nov. 11, 1889.

*Liquidated damages* will be changed by the waiver of complete, and the acceptance of part performance, of an entire contract, into a penalty, which will entitle the party injured to recover only for the damages actually sustained through a partial breach of the contract. *Wibaux v. Grinnell Live-Stock Co.*, S. Ct. Mont., Oct. 5, 1889.

#### EMINENT DOMAIN.

*Municipal corporation*, whose charter contains no provision by which private property can be taken for a public use, has no power to open a street through private lands, and where such power is conferred by the Legislature, provision must be also made for means by which the owner can have his damages assessed by an impartial tribunal, and on his own motion obtain the compensation to which he is entitled ; otherwise he may resist the initial attempt to divest him of his title, and will be sustained by the courts. *State v. City of Perth Amboy*, S. Ct. N. J., Nov. 8, 1889.

#### GIFTS.

*Receipt in full* for a bond given by a daughter to her father, payable to his estate one year after his death, was found among his papers by his executor ; the receipt being dated eight years prior to the father's death ; there having been no delivery of the receipt, the daughter was liable upon the bond. *Justice v. Justice's Ex'rs*, Ct. Ch. N. J., Nov. 16, 1889.

*Satisfaction of mortgage* by a father, payment of which had been assumed by his son, such satisfaction being entered of record two months before the father had executed his will, but no consideration having been paid by the son, will operate to discharge the son's liability, which cannot be reasserted after the death of the father, in the absence of proof of mental incapacity, fraud or undue influence. *Id.*

## HUSBAND AND WIFE.

*Taxes on wife's real estate*, which is occupied by both as a homestead, do not constitute a personal liability of the husband. *Richards v. Tarr*, S. Ct. Kan., Nov. 9, 1889.

## JUDGMENTS.

*Enforcement of confessed judgment*, which has been entered without a substantial compliance with the statute authorizing such entry, may be enjoined upon principles of equity, at the suit of a third party prejudiced by such judgment. *Schuster v. Rader*, S. Ct. Colo., Nov. 1, 1889.

## JURISDICTION.

*Forgery of notes*, payable at a national bank and made by officers of the bank for the purpose of deceiving the examiner appointed under the United States national banking laws, is not an offense which is triable exclusively in the Federal courts, but may be tried by the courts of the State where the crime is committed. *Cross v. State of North Carolina*, S. Ct. U. S., Nov. 11, 1889.

## MORTGAGES.

*Mortgage upon homestead and other real estate* entitles the mortgagor, as against the mortgagee and all other creditors and lienholders whose rights are not prior or superior to those of the mortgagee, to require in foreclosure proceedings that, before the homestead shall be resorted to for the purpose of satisfying the mortgage debt, all the other mortgaged property shall first be exhausted. *Frick Co. v. Ketels*, S. Ct. Kan., Nov. 9, 1889.

## NEGLIGENCE.

*Contributory negligence* is not chargeable to a pedestrian who, being aware of defects in a sidewalk, abandons it for the roadway, and it is therefore erroneous, in charging a jury who are engaged in the trial of an action against a borough to recover damages for injuries sustained by a foot passenger by falling from such a defective walk, for the Court to say that the roadway was not intended for foot passengers. *Borough of Sandy Lake v. Forker*, S. Ct. Pa., Nov. 4, 1889.

*Contributory negligence* will be charged to one who, by the invitation of another, and not for compensation, rode with the latter in his wagon, knowing the locality well and knowing also that they were approaching a railroad crossing where a train was about due, but who sat with his back to the driver, as they approached the crossing at a fast trot, and, though he might have seen the danger, did not look, or warn the driver, or ask him to stop and listen, or take any precaution whatever; but the negligence of the driver cannot be imputed to the passenger. *Dean v. Pennsylvania R. R. Co.*, S. Ct. Pa., Nov. 11, 1889.

## POST OFFICE.

*Payments for expediting mail service*, made under a mistake of the Post Office Department as to the additional number of men and animals required, and in ignorance that none were employed, may

be recovered back by the United States Government from the contractors. *U. S. v. Barlow*, S. Ct. U. S., Dec. 2, 1889.

#### PUBLIC LANDS.

*Military land warrant*, when located, vests the title at once in the holder and locator, and is payment for the land; having located the same and received the usual certificate, the locator may at once sell and convey the land, and a patent subsequently issued will inure to the benefit of the grantee. *Stinson v. Geer*, S. Ct. Kan., Nov. 9, 1889.

#### RAILROADS.

*Condition on return ticket*, requiring it to be stamped and signed at the place of destination before it will be received for return passage, is binding upon the passenger presenting it, and it is immaterial that he failed to read the condition; nor does it alter his position that the baggageman punched the ticket and the gateman admitted him to the train, both without objection, when the ticket expressly provided that no employe of the railroad was authorized to waive any condition of the contract. *Boylan v. Hot Springs R. R. Co.*, S. Ct. U. S., Nov. 11, 1889.

*Coupon ticket*, sold by a railroad company over its own and connecting lines, which contains a condition, referred to in each coupon, that the company, in issuing the ticket, acted for itself over its own line, and as agent of the connecting lines, but assumed no responsibility beyond its own line, does not render the company issuing the ticket liable for injuries sustained by the holder while riding over one of the connecting lines. *Kerigan v. Southern Pac. R. R. Co.*, S. Ct. Cal., Nov. 22, 1889.

#### REMOVAL OF CAUSES.

*Local prejudice*, as a ground for removal, can be sustained only when all the necessary parties to the action on one side are citizens of the State where suit is brought, and all on the other side are citizens of other States, and such citizenship must exist when the action is commenced, as well as when the petition for removal is filed. *Young v. Ewart*, S. Ct. U. S., Dec. 2, 1889.

#### WILLS.

*Contingent remainders* are created by a will, in which the testator leaves part of his estate in trust for his daughters during their lifetime, giving them the income only, and provides that upon their death the estate shall descend to and become the property of their child or children respectively, his, her or their heirs, absolutely, with limitations over in case of the death of either of his said daughters without a child or children, or descendants of the same, living, but upon the death of the daughters, the respective remainders will become vested. *Larmour v. Rich*, Ct. App. Md., Nov. 15, 1889.

*Devise to wife* of one-half "of all my property of which I may die possessed," the remaining one-half to go to his children, gives the wife one-half of the testator's moiety in their community property. *Gilmore's Estate*, S. Ct. Cal., Nov. 21, 1889.

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