ABSTRACTS OF RECENT DECISIONS.

BAILMENTS.

Deposit of grain for storage is a bailment, the title remaining in the depositor so that he is deemed to be the owner of grain in the warehouse to the amount of his deposit, although the identical grain he deposited has been removed, and other grain, of like kind and quality, substituted in its stead. *Hall* v. *Pillsbury*, S. Ct. Minn., Feb. 18, 1890.

BANKS AND BANKING.

Depositary of taxes collected to satisfy county bonds issued in aid of a railroad company, which depositary has been duly selected, cannot be held responsible, on the ground that an excess of bonds has been issued, for money which it pays out by order of the committee having charge of the fund, in the absence of any fraud or collusion between the bank and the committee, and the facts that the president of the bank was also president of the railroad company, and that one of the committee was cashier of the bank and secretary of the railroad company, do not impose upon the bank the duty of knowing which of the bonds are valid and which invalid. *Deposit Bank of Owensboro* v. *Daviess County Court*, Ct. App. Ky., Jan. 16, 1890.

Depositor drew his own check upon a bank and deposited it with another bank where he also had an account; the latter, instead of collecting the check, exchanged it for a bank-draft, which was not paid, and then notified the depositor that the draft was held subject to his order; the latter, with knowledge of all the facts, directed the bank to hold the draft a few days and then send it to him; the depositor's action amounted to a condonation of the bank's negligence and released it from liability for not collecting the check. *Hazlett* v. *Commercial Nat. Bank*, S. Ct. Pa., Feb. 3, 1890.

BILLS AND NOTES.

Indorsement is constituted by the payee writing upon the back of a promissory note, "For value received, I hereby guaranty payment of the within note, and waive demand and notice on the same when due," and signing the same. *Helmer* v. *Commercial Bank*, S. Ct. Neb., Jan. 7, 1890; *Weitz* v. *Wolfe*, S. Ct. Neb., Jan. 14, 1890.

President of corporation indorsed a promissory note for discount in the name of the corporation; he had no direct authority to do so, but the corporation was without working capital, which could be gotten only by borrowing, and the president conducted all of its business, paid its expenses and had for a number of years been accustomed to procure discounts for its benefit, with the knowledge of the directors, by indorsing in its name; a finding by a jury that the president had authority to bind the corporation by such an indorsement, would be sustained. *Fifth Nat. Bank of Providence* v. *Navassa Phosphate Co.*, Ct. App. N. Y., Feb. 25, 1890.

Time of payment, as fixed by a promissory note, may be controlled by a separate written agreement, made and entered into by the parties at the time of the execution of the note. *Jacobs* v. *Mitchell*, S. Ct. Ohio, Dec. 3, 1889.

CHATTEL MORTGAGES.

Retention of possession by a mortgagor of a stock of goods, with the understanding that he shall continue to sell them at retail in the ordinary course of trade, is fraudulent and void as to creditors of the mortgagor attaching the goods while in the hands of the latter. *Huschle* v. *Morris*, S. Ct. Ill., Jan. 21, 1890.

COMMON CARRIERS.

Fire clause in a bill of lading, which exempts from liability for loss by fire, a railroad company which has made no reduction in its freight rates in consideration of such clause, is not a valid limitation of the carrier's common law liability, and will not be enforced, and where the carrier has given its customers no choice as to whether they would ship with or without the fire clause, the acquiescence of the shipping public in the form of a bill of lading which contains such clause, does not establish the reasonableness of the exemption. *Louisville & N. R. R. Co.* v. *Gilbert*, S. Ct. Tenn., Jan 30, 1890.

Limitation of liability of a railroad company to a shipper to a certain specified amount, in case of loss or damage arising through the negligence of the company, in consideration of a reduced rate of transportation, is valid, though the property is worth much more than that amount and though it is provided by statute that any agreement to exempt the company from liability occasioned by its own neglect, shall be invalid. *Richmond & D. R. R. Co.* v. *Payne*, S. Ct. App. Va., Jan. 30, 1890.

CONSTITUTIONAL LAW.

Appointment of municipal officers, under an act authorizing the mayors of all the cities in the State to make such appointments, the act to take effect only in such cities as shall accept it at a popular election, is not unconstitutional; such act is not special or local legislation. *In re Cleveland, Mayor of Jersey City*, Ct. Err. and App. N. J., Feb. 6, 1890.

Decree of State Court restraining citizens of that State from prosecuting attachment suits begun in another State, and brought therein in order to evade the laws of the first State, is not in violation of the constitutional provisions that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State," or that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." *Cole* v. *Cunningham*, S. Ct. U. S., Jan. 20, 1890.

DEBTOR AND CREDITOR.

Acceptance of note of a third party for a pre-existing debt, and the surrender of the original notes which represented such debt,

followed by suit and recovery of judgment upon the new note, will estop the creditor from pursuing the original debtor. *Dick* v. *Flanagan*, S. Ct. Ind., Feb. 25, 1890.

EASEMENTS.

Stairway, leading from the street to the second story of a three-story building, erected upon a corner lot, and covering the whole of it, was constructed in the corner room of the first story; at the landing of the stairway, and connected with it, a hall was made, extending over the room next to the corner room and connecting, with the room over the next adjoining room; the rooms in the second story were intended for offices, and, to adapt them for such use doors were made opening into this hall; another stairway was also put in, running from the hall to the third story; the stairway leading from the street to the second story was the only means of access to the hall above and to the rooms opening into it, and its use was necessary to their proper enjoyment; while the premises were in this condition, the owner sold and conveyed a part thereof, described by metes and bounds, which included the hall connected with the landing of the stairway leading from the street, and the office rooms on the second floor opening into the hall, and the purchaser, with the knowledge of his vendor, who retained the corner room in which was the stairway, immediately entered upon and continued the use of such stairway as his only means of access to the hall and connecting rooms purchased on him: a right to the use of the stairway passed by the conveyance to the purchaser as an easement appurtenant to the premises conveyed. *Nat. Exchange Bank* v. *Cunningham*, S. Ct. Ohio, Nov. 19, 1889.

FIRE INSURANCE.

Delivery by agent, who has been informed by the assured that the building covered is on leased land, of a policy in which this fact is not noted in writing, amounts, in the absence of collusion, to a waiver of the condition requiring it to be so noted, although the policy provides that, "the use of general terms, or anything less than a distinct agreement indorsed on the policy, shall not be construed as a waiver of any restriction therein." *Home Ins. Co.* v. *Stone River Nat. Bank*, S. Ct. Tenn., Jan. 14, 1890.

Mortgage placed upon the insured property is of itself an increase of the risk and a decrease of the security of the insurer, since it lessens the interest of the insured in the property, even though no right of action has accrued upon such mortgage, which is given to secure a surety on a debt not yet due. *Lee* v. *Agricultural Ins. Co.*, S. Ct. Iowa, Feb. 6, 1890.

Transfer of property, covered by a policy of fire insurance, in a mutual company, the policy-holder retaining an insurable interest in the property, will not prevent recovery for a subsequent loss, although a by-law of the company provides that "policies of insurance may be assigned with the consent of the president and secretary, the parties paying fifty cents recording fees, at the same time giving his undertaking to the company, and the company

will not hold itself responsible for loss on property so transferred until such assignment so made and undertaking given." *Jerdee* v. *Cottage Grove Fire Ins. Co.*, S. Ct. Wis., Jan. 7, 1889.

FIXTURES.

Mortgagee of real estate, in order to establish a claim to chattels as fixtures, must show, (1) that the chattels were actually annexed to the realty, or something appurtenant thereto; (2) that they were applied to the use or purpose to which that part of the realty with which they were connected was appropriated; and (3) that the person who annexed them intended to make them a permanent accession to the freehold. *Speiden* v. *Parker*, Ct. Err. and App. N. J., Feb. 6, 1890.

Railroad cars, used in a quarry, are not fixtures. *Id.*

GIFTS.

Bill of sale of life insurance policy, made out to the niece of the insured, who was seventy years of age and had suffered two strokes of paralysis, and given by him to his attorney with the direction to give it to the niece in case of the insured's death, which soon occurred, from a third stroke, was not a valid gift *inter vivos*, as the donor had not relinquished control of his property, but will be sustained as a gift *causa mortis*. *Williams* v. *Guile*, Ct. App. N. Y., Nov. 26, 1889.

Deposit in savings bank by a father of money to the credit of his infant son, who died sixteen years after attaining his majority, without knowledge of the deposit, the father retaining possession of the deposit-book and on one occasion drawing from the account and receipting in his own name, does not constitute a gift, as the facts show no intent to give and there was no delivery. *Beaver* v. *Beaver*, Ct. App. N. Y., Nov. 26, 1889.

JURISDICTION.

Supreme Court of the United States has no jurisdiction to review the decision of a State Court that a party was not liable in damages for the reason that he was acting, in the matters complained of, within the scope of judicial authority conferred upon him by Act of Congress. *Manning* v. *French*, S. Ct. U. S., Jan. 27, 1890.

LIFE INSURANCE.

Beneficiary named in the certificate of a mutual benefit society has no vested interest in such certificate until the death of the insured member, and the insured may change his designation of the beneficiary at will and against the latter's consent, provided that he makes such change in the manner pointed out by the policy and by-laws of the society; but there are three exceptions to this rule: (1) If the society has waived a strict compliance with its own rules, and in pursuance of a request of the insured to change his beneficiary, has issued a new certificate, the original beneficiary will not be heard to complain that the course indicated by the regula-

tions was not pursued; (2) If it be beyond the power of the insured to comply literally with the regulations, a court of equity will treat the change as having been legally made; and (3) If the assured has followed the course indicated by the regulations, and has done all in his power to change the beneficiary, but dies before the new certificate is actually issued, a court of equity will treat such certificate as having been issued. *Supreme Conclave, Royal Adelphia* v. *Cappella*, U. S. C. Ct., E. D. Mich., Jan. 20, 1890.

LIMITATION.

Culvert under a railroad embankment, which injures adjoining land by discharging water on it, is a continuing nuisance, and an action of damages for maintaining such nuisance is not barred by the lapse of the statutory period of limitation since the completion of the structure. *Wells* v. *New Haven & N. Co.*, S. Jud. Ct., Mass., Feb. 25, 1890.

LIQUOR LAWS.

Purchase for minor of intoxicating liquor by a by-stander with the minor's money, such purchase being made at the suggestion of the liquor-seller, is in effect the same as if the sale had been made directly to the minor. *Lilas* v. *State*, S. Ct. Ala., Jan. 16, 1890.

MASTER AND SERVANT.

Board of Commissioners, incorporated as a municipal agency to furnish a city with water, and not having power to levy taxes indefinitely, but only an equitable water-rate, is not liable for injuries received from the negligence of its servants. *O'Leary* v. *Board of Fire and Water Commissioners*, S. Ct. Mich., Jan. 24, 1890.

Negligence of foreman, who is ordered to remove a barge from the water without directions as to the means to be used, and who selects unsafe ropes, by the breaking of which a laborer is injured, will render the master liable for the injuries, and such laborer is not a fellow-servant with the foreman. *Lund* v. *Hersey Lumber Co.*, U. S. C. Ct., D. Minn., Jan. 6, 1890.

Unskilled employe who is selected to run an elevator must be provided by his employer for a reasonable length of time with a competent instructor, and the employer will be liable for any injury to his servant arising from the incompetency or negligence of such instructor. *Brennan* v. *Gordon*, Ct. App. N. Y., 2d Div., Feb. 25, 1890.

MORTGAGES.

State statute, enacting that certain railroad stock held by the State shall be pledged, together with any dividends that may be declared thereon, to the payment of certain bonds and interest coupons issued by the State, does not create an actual pledge, but, at most, a mortgage, which cannot be enforced, as the State is a necessary party, and cannot be sued. *Christian* v. *Atlantic & N. C. R. R. Co.*, S. Ct. U. S., Jan. 27, 1890.

NEGLIGENCE.

Contributory negligence is chargeable to one who stands after dark between two tracks of a cable company, which are so near together that cars going in opposite directions would pass within two feet of each other, and there waits for and attempts to board a car coming on one track, without paying any attention to see whether any cars are approaching in dangerous proximity on the other track. *Miller* v. *St. Paul City Ry. Co.*, S. Ct. Minn., Feb. 7, 1890.

Defective bridge, which has been opened by a municipality for public travel, renders such municipality liable for any damages caused by its defective condition, although the defects were entirely upon one side of the bridge and the other was perfectly safe for travel. *Walker* v. *City of Kansas*, S. Ct. Mo., Feb. 10, 1890.

Discharge of fire-works from a veranda in front of the second story of a building in the center of a public square, from troughs so arranged that the fire-works would pass over the assembled people, who were there for the purpose of witnessing the display, is not of itself an unlawful act, in the absence of a statute or ordinance making it so, but where it is shown that a large quantity of fire-works was placed on the floor of a narrow veranda and the persons who had charge of the display, smoked cigars during the entire performance, towards the close of which some loose Roman candles on the floor of the veranda were discovered to be on fire and throwing out balls of fire in every direction, which ignited the sky-rockets, thereby causing spectators, to be hit and injured, there is sufficient evidence that the injuries were the result of the negligence of the persons in charge of the fire-works, to sustain a verdict for damages against them. *Dowell* v. *Guthrie*, S. Ct. Mo., Feb. 10, 1890.

Notice to owner of the dangerous condition of a building is not necessary, in order to charge him with liability for injuries sustained by reason of the falling of such building; he is bound to know the condition of his own property. *Tucker* v. *Illinois Central R. R. Co.*, S. Ct. La., Jan. 29, 1890.

Shipper of Stock is not guilty of contributory negligence in using the only platform provided by the railroad company for that purpose, although he knows it to be unsafe, if he exercises reasonable care in its use. *White* v. *Cincinnati, N. O. & T. P. Ry. Co.*, Ct. App. Ky., Jan. 25, 1890.

TELEGRAPHS.

Unfavorable atmospheric conditions do not excuse the dropping out of words in the transmission of a telegraphic message. *Western Union Tel. Co.* v. *Goodbar*, S. Ct. Miss., Feb. 3, 1890.

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