ABSTRACTS OF RECENT DECISIONS.

BANKS AND BANKING.

Deposit of collaterals with a bank for the purpose of securing certain loans and discounts, does not render the bank a gratuitous bailee, but it is liable for the want of ordinary and reasonable care in the custody of the securities so deposited, until they are redelivered to the owner. *Ouderkirk* v. *Central Nat. Bank*, Ct. App. N. Y., Feb. 25, 1890.

Holder of check cannot sue the bank on which it is drawn, unless it has been accepted by the latter, but where the bank has paid the amount of a check to one who is neither the payee nor indorsee, and has charged it up to the account of the drawer, the bank's conduct amounts to such acceptance as will enable the holder to sue upon the check. *Pickle* v. *People's Nat. Bank*, S. Ct. Tenn., Jan. 16, 1890.

Knowledge by president of a bank of equities affecting certain notes of a cattle company, in which he is interested, which notes he offers for discount to the directors of the bank, without disclosing the facts, is not imputable to the bank and will not affect the validity of its claim upon the notes. *Corcoran* v. *Snow Cattle Co.*, S. Jud. Ct. Mass., Feb. 26, 1890.

Raised check was indorsed "for collection" and given to a third party to collect from the bank on which it was drawn; the agent of the former indorsed the check in his own name and the money was paid to such agent and remitted by him who had sent the check for collection before the forgery was discovered; the bank could not recover back from the principal the amount of the check. *Nat. City Bank of Brooklyn* v. *Westcott*, Ct. App. N. Y., 2d Div., Feb. 25, 1890.

BILLS AND NOTES.

Attorney's fee of ten per cent., when stipulated for in a promissory note, may be recovered, together with the face value of the note, and it is not necessary to prove the value of the attorney's services. *Exchange Bank of Dallas* v. *Tuttle*, S. Ct. N. M., Jan. 24, 1890.

Contribution cannot be exacted by a surety upon a promissory note from his co-sureties, when the note has been renewed by a new note signed by the principal and the first mentioned surety alone, and the latter has been compelled to pay such new note. *Bell* v. *Boyd*, S. Ct. Tex., Feb. 25, 1890.

Possession by widow of an unindorsed note, payable to her husband, who owed her money, is not sufficient to establish her right to the note as against his executor, and a renewal note, given by the maker of the original note to the widow in her own name, is the property of the estate. *Buie* v. *Buie*, S. Ct. Miss., March 10, 1890.

Sale of drafts by one to whom they have been indorsed in blank for the purpose of collection, vests a good title in the purchaser, although the agent has falsely represented that he owned the drafts and has failed to account for the proceeds. *Coors* v. *German Nat. Bank*, S. Ct. Colo., Feb. 28, 1890.

COMMON CARRIERS.

Butter received by a railroad in summer for shipment South, must be shipped in such manner as to prevent injury by heat, and the railroad's liability is not altered by the fact that it has no refrigerator cars. *Beard* v. *Illinois Central R. R. Co.*, S. Ct. Iowa, Feb. 10, 1890.

CONSTITUTIONAL LAW.

Territorial statute, prohibiting the exportation of fish from the territory, is an interference with interstate commerce, and consequently void. *Territory* v. *Evans*, S. Ct. Id., Feb. 24, 1890.

CONTRACTS.

Agreement to sell a brand of cigars to no one in the State except the other party to the contract, and to give him the exclusive agency for such cigars, is not void as being in restraint of trade. *Newell* v. *Meyendorff*, S. Ct. Mont., Feb. 4, 1890.

CORPORATIONS.

Unpaid instalments upon the capital stock of a corporation, do not, in the absence of a special contract, give the corporation a lien upon the stock for the amount unpaid. *Lankershime Ranch Land and Water Co.* v. *Herberger*, S. Ct. Cal., Jan. 27, 1890.

CRIMINAL LAW.

Larceny at common law is constituted where a broker, by falsely representing to the consignee of goods that he has secured a purchaser therefor, obtains a delivery order on the carrier, gives the consignee a memorandum containing a fictitious contract of sale on the consignee's account, takes possession of the goods and stores them in his own name, and a sale by him to another than the alleged purchaser passes no title. *Soltau* v. *Gerdau*, Ct. App. N. Y., Feb. 25, 1890.

DIVORCE.

Cruel treatment by a husband of his wife, which renders her existence intolerable and endangers her life, is not excused by the fact that such treatment is the result of the habitual intoxication of the husband, unless the wife herself has induced or consented to such intoxication. *McVickar* v. *McVickar*, Ct. Ch. N. J., Feb. 21, 1890.

Excessive use of morphine by means of hypodermic injections, is not drunkenness within the meaning of a statute which makes habitual drunkenness a cause for divorce. *Youngs* v. *Youngs*, S. Ct. Ill., Nov. 26, 1889.

FIRE INSURANCE.

Assignment of a fire insurance policy to a mortgagee was written by the agent who had solicited the insurance, upon the policy being brought to him by the insured and the mortgagee, and was subsequently approved by the company; afterwards the insured sold the property, and again called to get the policy transferred to

the same mortgagee, but was informed by the agent that such transfer was unnecessary; the company was estopped to set up the non-transfer of the policy on the sale of the property as a defense to an action by the mortgagee. *Phœnix Assurance Co.* v. *Wachter*, S. Ct. Pa., Feb. 24, 1890.

By-law of a mutual fire insurance company, the effect of which is to limit the company's liability on certain insured property, is binding upon a member of the company who receives a copy of such by-law and makes no objection to it, but continues his membership in the company. *Borgards* v. *Farmers' Mut. Ins. Co.*, S. Ct. Mich., Feb. 20, 1890.

Giving possession to lessee of insured property, under a contract that he shall buy the property at the termination of the lease, or, at his option, at any time during its continuance, is a breach of a condition that the policy shall become void if any change takes place in the title or possession of the property insured, without notice to, and the consent of, the insuring company. *Smith* v. *Phenix Ins. Co.*, S. Ct. Cal., March 10, 1890.

Wilful false statement in a proof of loss, rendered after the fire, of some pretended losses, will forfeit the entire policy, which provides that "any fraud, or attempt at fraud, or any false swearing on the part of the assured, shall cause a forfeiture of all claims," —even though the actual losses may exceed the entire amount of the policy. *Dolloff* v. *Phœnix Ins. Co.*, S. Jud. Ct. Me., Jan. 20, 1890.

JURORS.

Member of Mormon Church cannot be a juror in Idaho, for jurors must have all the qualifications prescribed for electors. *Territory* v. *Evans*, S. Ct. Id., Feb. 24, 1890.

LIBEL.

Caricature in a newspaper, purporting to be a design for a monument to a member of the Legislature and capable of no meaning, except that liquor and money were the sources of his success in passing a certain bill, is libelous *per se*, and no innuendo is required. *Randall* v. *Evening News Assn.*, S. Ct. Mich., Jan. 24, 1890.

Name mentioned in an alleged libelous newspaper article was John F———, which was the actual name of the person claiming to have been libeled, but such person was generally known as John D. F———, and had adopted the middle letter for the express purpose of distinguishing him from other persons of the name of John F———; in the absence of evidence that he was the person intended to be referred to in the article, recovery cannot be had. *Finnegan* v. *Detroit Free Press Co.*, S. Ct. Mich., Dec. 28, 1889.

LIFE INSURANCE.

Assignment of policy, absolute on its face, by a debtor to his creditor, passes no greater interest to the latter than such sum as will pay the debt, with interest, and whatever premiums may have been paid by the creditor, with interest on the same. *Cawthorn* v. *Perry*, S. Ct. Tex., March 4, 1890.

MASTER AND SERVANT.

Carpenter, porter and stewardess of a steamship, all of whom have signed shipping articles, are fellow-servants, though the former belongs to that division of the ship's company known as the "deck department," and the latter two to the "steward's department," such divisions being made merely for convenience of administration and the captain being in command of the whole. *Quebec Steamship Co.* v. *Merchant*, S. Ct. U. S., March 3, 1890

MUNICIPAL CORPORATIONS.

Injuries to a pedestrian, received by him without fault on his part, through stumbling over a hydrant owned by a private company, which a city has allowed to be maintained upon its sidewalk in a position dangerous to travelers, will entitle him to recover damages against the city. *King* v. *City of Oshkosh*, S. Ct. Wis., Jan. 28, 1890.

MUTUAL BENEFIT INSURANCE.

Insanity is such "sickness or other disability" as will entitle a member of a mutual benefit association to receive benefits. *McCullough* v. *Expressman's Mut. Ben. Assn.*, S. Ct. Pa., March 10, 1890.

NEGLIGENCE.

Contributory negligence cannot be charged to one, who, having been placed through the negligence of another in a position of danger, does not exercise coolness and presence of mind in his endeavors to escape from such danger. *Silver Cord Combination Mining Co.* v. *McDonald*, S. Ct. Colo., Feb. 28, 1890.

NOTARY PUBLIC.

A woman cannot be appointed a notary public under the laws of Massachusetts. *Opinion of the Justices*, S. Jud. Ct. Mass., March 18, 1890.

OYSTERS.

Natural oyster-bed, as distinguished from artificial, is one not planted by man, in any shoal, reef or bottom where oysters are to be found growing, not sparsely or at intervals, but in a mass or stratum, and in sufficient quantities to be valuable to the public. *State* v. *Willis*, S. Ct. N. C., Jan. 14, 1890.

PUBLIC OFFICERS.

Habitual drunkenness, when made by constitutional provision a ground of removal from office, is chargeable to an officer who has been drinking to excess six or eight times a year, at intervals of from one to two months, for over three years, and whose fits of intoxication lasted from one to two days, and once for two or more weeks. *State* v. *Savage*, S. Ct. Ala., Feb. 1, 1890.

RAILROADS.

Child, ten years of age, who was lying across a railroad track

just before he was run over, is not chargeable with his own negligence, but recovery for his death is precluded by reason of his trespass. *Pennsylvania R. R. Co.* v. *McMullen*, S. Ct. Pa., Feb. 3, 1890.

Contributory negligence is not chargeable to a passenger in the caboose of a freight train, who gets up and starts to go out at the sound of a whistle indicating approach to a station and is thrown down by a sudden jerking of the train and injured, unless it is shown that the jerking was so usual that he should have anticipated it. *Lusby* v. *Atchison, T. & S. F. Ry. Co.*, U. S. C. Ct., D. Colo., Jan. 21, 1890.

Stockholder of a railroad company is not liable for the negligence of the officers, agents or employes of the company in the operation of its road, and it makes no difference that the stockholder is another railroad corporation which lawfully owns a majority of the stock of such company. *Atchison, T. & S. F. R. R. Co.* v. *Cochran*, S. Ct. Kan., Feb. 8, 1890.

Stumbling over baggage in the aisle of a passenger car, which could have been plainly seen, will not entitle a passenger to damages for the injuries thereby sustained. *Stimson* v. *Milwaukee, L. S. & W. Ry. Co.*, S. Ct. Wis., Jan. 7, 1890.

Train despatcher of a railroad company, who has absolute control over the runing of its trains and is charged with the duty of directing their movements, is not a fellow-servant of the employes in charge of the trains, who are bound to obey his directions. *Hunn* v. *Michigan Central R. R. Co.*, S. Ct. Mich., Dec. 28, 1889.

Yard switchman is not a fellow-servant with a locomotive engineer. *Louisville & N. R. R. Co.* v. *Sheets*, Ct. App. Ky., March 13, 1890.

SLANDER.

Words spoken of a public officer, in order to be actionable without averment of special damage, must impute to him some incapacity or lack of due qualification to fill his position, or some positive past misconduct which will injuriously affect him in it, or the holding of principles hostile to the maintenance of the government; when the words spoken simply express the speaker's opinion of the public officer referred to, but do not charge any positive misconduct, special damages must be averred. *Sillars* v. *Collier*, S. Jud. Ct. Mass., Feb. 25, 1890.

SUNDAY LAWS.

Indictment for running trains on Sunday cannot be sustained against a railroad company in West Virginia; there is no law to warrant such an indictment. *State* v. *Norfolk & W. R. R. Co.*, S. Ct. App. W. Va., Jan. 29, 1890.

Will made on Sunday is valid, although the testator was in good health at the time. *Rapp* v. *Reehling*, S. Ct. Ind., Feb. 26, 1890.

TRADE-MARKS.

"*Lightning Hay-Knives*," when used and advertised for years as

the description of knives made by certain manufacturers, who have registered the word "lightning" as a trade-mark, will be protected by injunction against the use of the name "Lightning Pattern Hay-Knives," as the word "lightning" is not merely descriptive of the quality or characteristic of the knives. *Hiram Holt Co.* v. *Wadsworth*, U. S. C. Ct., N. D. N. Y., Dec. 30, 1889.

Old machines, of another make than his own, may be bought by a manufacturer, repaired, repainted and sold again, without removing the trade-mark put upon them by the original manufacturer. *Singer Mfg. Co.* v. *Bent*, U. S. C. Ct., N. D. Ill., Dec. 23, 1889.

"*Singer*," the name which has come to publicly identify the special kinds of sewing-machine made by the patentee, Singer, and his successors, cannot, after the expiration of their patent, be protected to the latter as a trade-mark so that they may have the exclusive right to use the name as applied to sewing-machines. *Singer Mfg. Co.* v. *June Mfg. Co.*, U. S. C. Ct., N. D. Ill., Dec. 23, 1889.

"*Tycoon*," having been in common and general use, as descriptive of a certain class of teas for many years, cannot now be appropriated by a particular dealer as a trade-mark. *Corbin* v. *Gould*, S. Ct. U. S., Feb. 3, 1890.

WATER-RIGHTS.

Pollution by oil of a spring of water upon an adjoining property to that on which the oil is stored in large quantities, such pollution being caused by the oil leaking from the casks containing it, saturating the ground and penetrating to the hidden veins of water feeding the spring, will entitle the owner of the spring to recover damages from the person thus storing the oil. *Kinnaird* v. *Standard Oil Co.*, Ct. App. Ky., Jan. 25, 1890,

WILLS.

Contract to make a will, bequeathing all the property of a decedent to an adopted daughter, is not shown by evidence that such decedent, before adopting such daughter and procuring an act of the legislature changing her name and making her capable of inheriting from him, agreed to make her his heir, entered into some written contract with her father, which could not be produced at trial, and afterwards declared that she would have all his property. *Davis* v. *Hendricks*, S. Ct. Mo., Jan. 27, 1890.

Devise of "all my estate, both real and personal, that I shall inherit as my portion after my father's death," made by a testatrix whose father was living, and whose only estate in land was that inherited by her from her mother, subject to her father's estate by the curtesy, passes her estate in such land. *Graham* v. *Grugan*, S. Ct. Pa., Feb. 3, 1890.

JAMES C. SELLERS.