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NOTES.

CHECKS—FORGERY—LIABILITY OF DRAWEE BANK.—In Weisberger Co. v. Barberton Savings Bank Co.,[1] the plaintiff was indebted to Max Roth, whose address was 48 Walker St., New York City. The plaintiff drew a check on the defendant bank to the order of Max Roth and inadvertently addressed the envelope to 48 Walker St., Cleveland, Ohio. A Max Roth, who lived on Henry Street in Cleveland, obtained possession of the check, had it cashed by a saloonkeeper and it passed through two collecting banks before being finally paid by the defendant bank. The amount of the check was debited to the plaintiff's account and this action was brought for the recovery of the money. A judgment for the defendant was affirmed, the court saying: "We decide this case on its own peculiar facts and make no search for, or examination of, reported cases."

Under the law merchant, the forgery of the name of the payee precludes recovery by any indorsee,[2] and the money paid to an indorsee when the drawee bank is ignorant of the forgery of the payee's name can be recovered.[3] Payment to an indorsee when the

[1] 95 N. E. 631 (Ohio, 1911).

[2] Mead v. Young, 4 T. R. 28 (1790); 1 Ames' Cases on Bills and Notes 433.

[3] U. S. v. National Exchange Bank, 214 U. S. 302 (1909).

name of the payee has been forged is a breach of the contract between the depositor and the drawee bank, entitling the depositor to maintain an action against the bank.[4]

The signing of his name by a man who knows that another person of the same name was intended will sustain an indictment for forgery.[5]

Where commercial paper is involved, the test as to whether or not the signing is a forgery seems to be whether or not the man indorsing the paper is the one who was intended to indorse it, even though he may have been expected to act under an assumed name.[6]

Obviously in the principal case, the Max Roth in Cleveland was not the one intended. His act was a forgery and under the principles above stated, clearly the plaintiff was entitled to recover. The precise question has seldom been raised, but in cases where such a forgery as that in this case has been done, a *bona fide* indorsee has been denied recovery against the drawee bank,[7] and where the money has already been paid to a *bona fide* indorsee, the drawee bank has been allowed to recover it.[8] The real payee, securing possession of the check after it has been paid and cancelled is still in a position to sue on it.[9]

It is well argued that a bank is guilty of no negligence in paying to a person of the name designated on the instrument; that it cannot be expected that financial institutions shall inquire into the relations of their depositors so intimately as to ascertain whether or not the particular payee named is the one with whom their depositor would be likely to carry on business.[10] This view is not altogether unsupported by authority,[11] and in other branches of the law such a rule has been recognized,[12] but to adopt it is merely to abrogate another of the settled principles of the law merchant.

In England, by statute, recovery would be denied the plaintiff;[13] but section 9 of the Bills of Exchange Act has not been re-enacted in the N. I. L. and the common law in this particular is therefore unchanged. Taken at its best, there is some question as to whether or not the decision in the principal case is in complete harmony with Section 23 of the Negotiable Instruments Law. *C. A. S.*

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[4] McNeely Company v. Bank of North America, 221 Pa. 588 (1908).

[5] People v. Peacock, 6 Cow. (N. Y.) 71 (1826); Barfield v. State, 29 Ga. 127 (1859); U. S. v. Long, 30 Fed. 678 (1887).

[6] Robertson v. Coleman, 141 Mass. 231 (1886); Emporia Bank v. Shotwell, 35 Kan. 360 (1886).

[7] Beattie v. National Bank of Illinois, 174 Ill. 571 (1898).

[8] Cochran v. Atchison, 27 Kan. 728 (1882).

[9] Indiana National Bank v. Holtsclaw, 98 Ind. 85 (1884).

[10] 2 Morse on Banks and Banking, Sec. 474.

[11] Dissent of L. Kenyon in Mead v. Young, 4 T. R. 28 (1790).

[12] Wilson v. Express Co., 27 Mo. App. 360 (1887); Samuel v. Cheney, 135 Mass. 278 (1883).

[13] 16-17 Vict., c. 59, sec. XIX; B. E. A., 45-46 Vict., c. 61, sec. LX.

GROUND RENTS—CONSTRUCTION OF THE PENNSYLVANIA STATUTE OF LIMITATIONS.—The Superior Court of Pennsylvania has recently decided[1] that the period of twenty-one years referred to in the Act of 1855,[2] as limiting the right to recover on a ground rent, is the period of twenty-one years next preceding the suit. In the case before the court a conveyance of certain land in Philadelphia, out of which a ground rent was reserved, had been made in 1849. The ground rent was not recorded until 1900, nor was any payment made upon it prior to that time. In 1900 the ground rent was sold to the plaintiff, and payments were made for five years. The land was then conveyed to a person who had knowledge of the incumbrance. The defendant held title through him and set up the Statute of 1855 as a defense to an action on the rent.

The question was, therefore, raised whether the period of twenty-one years of non-payment and non-claim is the twenty-one years next before the suit is brought, or whether any period of twenty-one consecutive years satisfies the statute. Upon this point there is no previous direct decision. Judge Morrison, after a detailed review of the cases applying the Act of 1855,[3] concluded that the twenty-one years must immediately precede the suit. In considering this conclusion, it is important to keep in mind that while these cases may tend to establish the construction noted, yet no case, even by way of *dictum*, had laid down the proposition in words. It is well to note also that in all the cases referred to, the period of non-payment *did* immediately precede the suit—a situation obviously covered by the statute,—so that it is not at all certain that the remarks of these courts, addressed to the facts before them, can be interpreted as restrictive of the statute to similar conditions. Without attempting to criticize in any way the interpretation given these cases, they do not seem conclusive of the question. Nor are the words of the statute standing alone of any assistance. The act merely states that "where * * * no payment * * * shall have been made upon any ground rent for twenty-one years * * * such ground rent shall not thereafter be recoverable." There is no reference in any way to this period as relating to a suit by the owner of the ground rent.

Without more, therefore, it would certainly be permissible to conclude that the legislature meant merely a period of twenty-one consecutive years, no matter when the suit should be brought. And the plain purpose of these statutes,—to unfetter real estate and make it freely alienable,[4]—would seem to weigh the balance in favor

[1] Murphy v. Green, 48 Pa. Sup. 1 (1911).

[2] Act of April 27, 1855, P. L. 369.

[3] The most important cases referred to are Korn v. Browne, 64 Pa. 55; Biddle v. Hoover, 120 Pa. 221; Wallace v. Pittsburgh Church, 152 Pa. 258; Heiss v. Banister, 176 Pa. 337; Clay v. Iseminger, 190 Pa. 580 (185 U. S. 55). In all these cases the period of non-payment extended directly back from the bringing of suit. The situation in our principal case apparently never occurred to the minds of these justices.

[4] See Dissent of Head, J., in Murphy v. Green, *supra*.

of a liberal construction.[5] In the face of these reasons for such legislation the conclusion of the court in the case under discussion presents this anomalous situation. The plaintiff, had he brought suit in 1899, would have been barred by the statutory limitation of his right of action; but by delaying for thirteen years longer, he finds all disabilities removed. Moreover, as Judge Head points out in his dissenting opinion, this conclusion practically allows the creation of an irredeemable ground rent, a thing utterly forbidden by the Act of 1885.[6]

In the course of their opinion the court states that ground rents are not real estate, arguing that this is shown by the enactment of separate statutes relating to ground rents, whereas had they been real estate the statutes of limitation[7] would have applied to them. Many Pennsylvania decisions have taken the view that ground rents are realty.[8] Yet the owners of ground rents and the owners of land do not hold estates of the same nature. On the contrary, they are separate and distinct estates,[9] one being a corporeal inheritance in fee and the other an incorporeal inheritance in fee.[10] This was, perhaps, sufficient to cause the legislature to distinguish between the two, though both may be regarded as real estate, legally speaking.

However, the decision is conclusive on the requirement that the period of limitation immediately precede the bringing of suit, a matter which it is well to have definitely settled in the law.

C. H. S., Jr.

INSURANCE—WHAT IS AN ACCIDENT?—Plaintiff, while washing clothes in a tub, was splashed in the eye. Thereupon her eye became inflamed and subsequently she lost the sight of it. Upon additional evidence submitted, the jury found that her sight was destroyed by the splashing of the water, it being laden with gonorrheal germs. The court allowed a recovery on an accident insurance policy. Upon appeal, it being assigned for error, *inter alia,* that the plaintiff's infection could not be properly classed as the effect of accident, the judgment of the lower court was affirmed.[1]

Although the courts have in many cases been called upon to decide whether injury from particular causes was or was not accidental, no generally satisfactory definition of an accident has yet been laid down. The United States Supreme Court has defined it

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[5] See the preamble to the Act of 1885, abolishing irredeemable ground rents: "Whereas, The policy of this Commonwealth has always been to encourage the free transmission of real estate and to remove restrictions on alienations," etc.

[6] Act of June 24, 1885, P. L. 161.

[7] Act of March 26, 1785, 2 Sm. Laws, 299, sec. 2.

[8] Cadwalader on Ground Rents in Pa., sec. 190, and cases cited.

[9] McQuigg v. Morton, 39 Pa. 31.

[10] Cadwalader on Ground Rents, sec. 230.

[1] Sullivan v. Brotherhood, 133 N. W. 486 (Mich., 1911).

as anything "happening by chance; unexpectedly taking place; not according to the usual course of things. If a result is such as follows from ordinary means, voluntarily employed, in a not unusual or unexpected way, it cannot be called a result effected by accidental means. But if, in the act which precedes the injury, something unforeseen, unexpected, unusual occurs which produces the injury, then the injury has resulted through accidental means."[2] "The word is descriptive of means which produce effects which are not their natural or probable consequences. * * * 'An effect which is not the natural or probable consequence of the means which produced it, an effect which does not ordinarily follow and cannot be reasonably anticipated from the use of those means, an effect which the actor did not intend to produce, and which he cannot be charged (under the maxim that one is presumed to intend the natural and probable consequences of his act) with the design of producing, is produced by accidental means."[3]

The typical case, on which practically all jurisdictions are agreed, is where the act causing the injury is unintentional or involuntary on the part of the insured, or out of the usual course of things. Examples of this class of case are: Blood-poisoning, resulting from the lodging of a fish bone in the intestines;[4] a knife cut, self-inflicted while trimming a corn;[5] stumbling while running and falling against an engine;[6] blood-poisoning from an abrasion by a new shoe, of the skin of a toe;[7] death caused by a piece of steak passing into and lodging in the windpipe.[8]

The difficulty and confusion exists where the acts of the insured are purely voluntary and intentional, but the result is out of the usual course of things. Where a bicycle rider was injured by the action of a muscle rubbing against his appendix, no recovery was allowed, the court declaring that the insured planned for and deliberately entered upon the project; that it was carried out precisely as he intended; and that there was no evidence that he did anything other than what he fully intended to do; the result of such ride, while extraordinary, in no manner proves that it was accidental.[9] A like conclusion was reached in a case where the insured, in reaching over a chair to close a shutter, suffered a hemorrhage,[10] the court adding that the unfortunate circumstance was the natural and direct effect of acts intenionally done. On the same ground no recovery was allowed for rupturing a blood vessel in suddenly jumping and

[2] Accident Ass'n. v. Barry, 131 U. S. 100 (1888).
[3] Western Ass'n. v. Smith, 85 Fed. 401 (1898).
[4] Appel v. Ins. Co., 86 N. Y. App. 83 (1903).
[5] Nax v. Ins. Co., 130 Fed. 985 (1904).
[6] Ins. Co. v. Osborne, 90 Ala. 201 (1889).
[7] Western Assn. v. Smith, *supra.*
[8] Accident Co. v. Reigart, 94 Ky. 547 (1893).
[9] Appel v. Ins. Co., *supra.*
[10] Feder v. Ass'n., 107 Ia. 538 (1899).

running from a stationary train;[11] a hemorrhage resulting in an attempt to extricate one's arms entangled in a nightgown over his head.[12] But opposite conclusions were reached in analogous cases, as a result of common-sense reasoning on the part of the juries, with proper instructions from the courts. In swinging Indian clubs, the insured ruptured a blood vessel, and recovery on the policy was allowed,[13] the court charging: "that if the deceased used the clubs for exercise in the ordinary way, and without the interference of any unusual circumstances, the injury was not accidental; but if there occurred any unforeseen accident or involuntary movement of the body (such as a slight twitch or turn) which in connection with the use of the clubs brought about the injury, then such means were accidental, and within the terms of the policy." On the same principle, recovery was had for blood-poisoning caused by the insured intentionally giving himself a hypodermic injecton;[14] and for the rupturing of the tympanum, following a dive into a swimming pool.[15]

The fair inference from the Pennsylvania cases is that the result determines whether the injury was accidental. "An accident is an event which takes place without one's foresight or expectation; an event which proceeds from an unknown cause, or is an unusual effect of a known cause, and, therefore, not expected."[16]

M. G.

NEGLIGENCE—THE "RULE OF THE ROAD."—A recent case[1] raised the question of the rights and liabilities of drivers of vehicles on public streets. A wagon was proceeding along the left-hand side of a street, twenty feet wide. On the same side of the street there was a high board fence. The plaintiff, a boy of eleven years, was coming up behind the wagon on a bicycle, and started to pass between it and the fence on the left. As he was even with the front of the wagon, the horses swerved towards him; and before the driver could get them back, they had thrown the boy against the fence. The driver had not known that the boy was back of him, or that he was attempting to pass. The court affirmed a judgment for the plaintiff, upholding the trial judge, who had allowed the jury to say whether or not the conduct of the driver was negligent.

There were two points decided in the case. In the first place, the court had to consider whether negligence can be imputed from a violation of the so-called "Rule of the Road." The question was answered in the negative. This, it will be seen, is representative of

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[11] Southard v. Ins. Co., 34 Conn. 574 (1868).

[12] Smouse v. Ass'n., 118 Ia. 436 (1902).

[13] Lovelace v. Ass'n., 126 Mo. 104 (1894).

[14] Bailey v. Casualty Co., 8 N. Y. App. 127 (1896).

[15] Rodey v. Ins. Co., 3 N. M. 316 (1886).

[16] Ins. Co. v. Burrough, 69 Pa. 43 (1871); Pollock v. Ass'n., 102 Pa. 230 (1883).

[1] Hackitt v. Alamito Sanitary Dairy Co., 133 N. W. 227 (Neb., 1911).

the weight of authority. The authorities in England are confined to about a half-dozen short cases in the early part of the last century.[2] The law as contained in them seems to be that a breach of the rule of the road is not *per se* negligence. Thus, it was held, in Pluckwell v. Wilson,[3] that a person is not bound to keep to the customary side of the road, but that if he does not, he is bound to use more care and diligence, and to keep a better lookout than would be requisite, were he on the proper side. Again, in Wayde v. Lady Carr,[4] the court said: "In the crowded streets of a metropolis * * * situations and circumstances might frequently arise where a deviation from what is called the law of the road would be not only justifiable, but absolutely necessary." Of course, under some circumstances a violation of the rule of the road may mean the pursuance of a negligent course of conduct;[5] but the mere fact of the violation is no negligence. In America, where the custom is to keep on the right, and to pass a team in front on the left, the majority of courts likewise hold that a breach of the rule of the road does not, in itself, spell negligence. So it has been decided that driving on the left-hand side of the road is not actionable negligence,[6] nor contributory negligence.[7] The same is true of passing a team in front on the right.[8]

This, of course, does not mean that an observance of the customs of travelling is unnecessary. That is one of the many circumstances which the jury are to take into account in determining the question of negligence. The simple question is whether the driver is exercising the care required of him; and his position, relative to the middle of the road may be all-important.[9]

The second point decided by the court was, that though a driver is not bound to keep to the proper side, if he does not do so he must use more care and keep a better lookout to avoid collision than would be necessary on the proper side. This is a harking back to the decision of Pluckwell v. Wilson.[10] It is significant, however, to note that in the latter case it does not appear whether the two vehicles were going in the same or in opposite directions. This, of course, is an essential fact, as the duty of a driver to one coming towards him

[2] 10 Mews' Eng. Case Law Dig., 46.

[3] 5 C. & P. 375 (1832).

[4] 2 Dow. & Ry. 255 (1822).

[5] An excellent example of this is the case of Leame v. Bray, 3 East 593 (1803). Here the sole evidence of the defendant's negligence was his driving on the wrong side of the road on a very dark night. Under these circumstances one who, while travelling in the opposite direction to the defendant, was run into by him, was allowed to recover.

[6] Rand v. Syms, 162 Mass. 163 (1894).

[7] Wood v. Boston Elevated Ry., 188 Mass. 161 (1905).

[8] Elenz v. Conrad, 123 Ia. 522 (1904); Foster v. Goddard, 40 Me. 54 (1855); Bolton v. Colder, 1 Watts 360 (Pa., 1832). Only these two instances of the rule of the road are dealt with here, as they are the only ones involved in the decision of the case.

[9] Meservey v. Lockett, 161 Mass. 332 (1894).

[10] *Supra.*

may not be the same as that owed to one coming behind him. It is but reasonable to demand of one driving on the left side of a street that he keep a very sharp lookout for vehicles coming towards him on the same side, and upon meeting them to turn out. But can it be expected that he keep an equally sharp lookout for vehicles coming up behind him? The additional care, suggested as incumbent on the driver on the left side, as to vehicles behind him, can consist of nothing but a constant turning around to see if another driver is about to, or desirous of, passing. Yet this might readily amount to negligence to drivers in front of him or at his side. Again, passing a team is, to a certain extent, a hazardous undertaking—certainly, at least, when the street is as narrow as it was in the principal case. It seems just, therefore, that he who undertakes such a manœuvre should act with the greatest care; and it is not evident that such passage has been rendered more dangerous by the front driver's being on the left rather than on the right side of the street In a practical question like this, the advisability of a rule of law should be measured by its efficiency; and it is difficult to see how travelling is made more safe by throwing the burden of additional prudence on the driver in front rather than on the one in the rear.

The court cites only one case in support of this rule, and that is a lower court decision.[11] The prevailing view throws the peril on the party passing, regardless of the position of the driver in front.[12] Of course, when the driver in front is aware of the desire and intention of the driver in the rear to pass, he owes him a duty to exercise reasonable care not to injure him.[13] It seems, therefore, that the only ground upon which the court could rule that there was such evidence of negligence in the principal case as to warrant its being sent to the jury, was that the duty of the driver toward the plaintiff was so great, because of his presence on the left side, that his allowing the horses to swerve towards the fence, was a breach of it. This is open to serious criticism.

P. V. R. M.

[11] Lonergan v. Martin, 4 Misc. Rep. 624 (N. Y., 1893).

[12] St. Louis Bridge Co. v. Schaub, 29 Ill. App. 549 (1888); Avenno v. Hart, 25 La. Ann. 235 (1873); Altenlairch v. National Biscuit Co., 127 App. Div. 307 (N. Y., 1908). In Bierbach v. Goodyear Rubber Co., 15 Fed. 490 (1883), it was said that the law does not impose upon the driver of a vehicle in a crowded city thoroughfare the duty of giving a signal to the vehicles behind him of his intention to turn; but it is the duty of the driver in the rear of such vehicle to be on the lookout for such a deviation from the course by the driver in the advance. Although both parties are bound to use ordinary prudence and care, yet ordinary care on the part of the driver of a team following another team in the streets of a city may mean, in the circumstances in which the parties are placed, a higher degree of care than would be expected from the driver of the team in advance. The case of Young v. Cowden, 98 Tenn. 577 (1896) goes to the extent of saying that it is the duty of the driver of the hindmost of two vehicles proceeding in the same direction, who desires to pass the other, which is occupying the portion of the roadway to which he is entitled, to stop and give warning to the driver of that vehicle, so as to avoid a collision, and, not to attempt to pass unless he can do so safely.

[13] Breman v. Richardson, 38 App. Div. 463 (N. Y., 1899).