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## Abstracts of Recent Decisions

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## ABSTRACTS OF RECENT DECISIONS

### FORGERY—ACTUAL INJURY FROM FRAUD.

The crime of forgery is complete with the making of a false instrument, the subject of forgery, with intent to defraud; it being immaterial whether anyone was in fact defrauded. *People v. Meyer*, 124 N. E. 447 (Ill.).

### EXECUTORS AND ADMINISTRATORS—COLLATERAL ATTACK ON APPOINTMENT.

The action of the Probate Court in appointing an administrator of the estate of a deceased cannot be questioned collaterally in a proceeding under the Workmen's Compensation act by such administrator to obtain compensation for the death of the deceased. *Keystone Steel & Wire Co. v. Industrial Commission*, 124 N. E. 542 (Ill.).

### EXECUTORS AND ADMINISTRATORS—RECEIVER'S DEPOSIT PAYABLE ONLY ON CHECK OF PERSONAL REPRESENTATIVE.

A corporation having money on deposit, which is taken possession of by its receiver, who deposits the amount to his credit, is not, on death of the receiver, entitled to the deposit, but it is payable only on the check of his executor or administrator. *State ex rel. Elberta Peach and Land Co. v. Chicago Bonding and Surety Co.*, 215 S. W. 20 (Mo.).

### CARRIER—DUTY OF CARRIER TO COLLECT UNDERCHARGE.

Where the tariff of rate for transporting coal as filed with the Public Service Commission was 65 cents per ton, but the carrier through mistake collected only 60 cents, held that, as Burns' Ann. St. 1914, sec. 5540 et seq., provide for uniform freight rates, filing of schedules, etc., it was the carrier's right and duty to collect the difference between the amount collected and the rate filed. *Cleveland, C., C. & St. L. R. Co. v. Alexandria Paper Co.*, 124 N. E. 402 (Ind.).

### JUDGMENT—DECREE FOR WIFE IN PROCEEDINGS FOR SEPARATE SUPPORT AS BAR TO HUSBAND'S SUIT FOR DIVORCE.

Decree in Probate Court in favor of wife, on her petition for separate support alleging cruel and abusive treatment and desertion, held binding on the parties, in the husband's subsequent suit for divorce, in regard to the issues of cruelty and abuse and desertion, which

had been determined by the Probate Court. *Austin v. Austin*, 124 N. E. 421 (Mass.).

**FRAUDULENT CONVEYANCES—TIP CARTS, WAGONS AND HARNESS ARE "MERCHANDISE," WITHIN BULK SALES LAW.**

Five tip cars, one show wagon, and six sets of double harness, sold by one who kept a stable wherein he sold horses, wagons and harnesses, and did some transient livery business, held potentially within the term "merchandise," as used within the sales in bulk law, St. 1903, C. 415. *Tupper v. Barret*, 124 N. E. 427 (Mass.).

**MORTGAGES—RIGHT OF MORTGAGEE TO CHARGE BONUS AGAINST JUNIOR MORTGAGEES SEEKING REDEMPTION.**

Construction mortgagee, who rendered services to the mortgagors pursuant to agreement, held entitled to charge junior mortgagees, seeking an accounting to determine the amount required for redemption, with \$900 in bonuses agreed to be paid by the mortgagors on account of the services. *Kempton et al. v. Boyle et al.*, 124 N. E. 431 (Mass.).

**MASTER AND SERVANT—AGREEMENT FOR LUMP SETTLEMENT SET ASIDE ONLY FOR FRAUD OR MISTAKE.**

An agreement and order for a lump sum settlement made between parties to a workman's compensation case will not be set aside and vacated in the absence of a showing of fraud, mistake, or gross irregularity. *Hartsock et al. v. Long et al.*, 124 N. E. 509 (Ind.).

**EMINENT DOMAIN—APPROPRIATION OF LAND BY RAILROAD WHILE IN OCCUPATION AS TRESPASSER.**

A railroad cannot lawfully appropriate land for its switch track while occupying such land as a trespasser after expiration of a lease thereof. *Pittsburgh, C., C. & St. L. R. Co. v. Sedwick*, 142 N. E. 512 (Ind.).

**PRINCIPAL AND SURETY—CONTRACTS—MATERIAL CHANGE IN PLANS EXCUSES NON-PERFORMANCE OF CONTRACT.**

Material change in plans and specifications for work releases contractor and sureties on his bond from liability for non-performance of contract. *State ex rel. Davisson v. Hillis et al.*, 124 N. E. 515 (Ind.).

**EXECUTORS AND ADMINISTRATORS—WIDOW'S RIGHTS IN HOMESTEAD ESTATE.**

After a widow lost her homestead in the land of her deceased

husband by acquiring a new home, although retaining possession through her tenant, she had no estate in the land; but, if the premises exceeded \$1,000 in value, she had a mere right to her dower assigned in the excess over such value, which right she retained till her death. *Theiner v. Speckin*, 124 N. E. 826 (Ill.).

**MASTER AND SERVANT—PLEADING IN ACTION AT COMMON LAW MUST SHOW EXCEPTION TO WORKMEN'S COMPENSATION ACT.**

Where it is claimed that employment is casual, and therefore that the employe is not operating under the Workmen's Compensation, declaration in action at common law for his injury must affirmatively allege facts bringing him within the exception. *Bishop v. Chicago Rys. Co.*, 124 N. E. 837 (Ill.).

**MASTER AND SERVANT—INJURIES ARISING OUT OF AND IN COURSE OF EMPLOYMENT.**

Injuries received by a carpenter when he fell in attempt to descend from bin floor of an elevator by way of fire escape, used in going from his work to the timekeeper's office at the close of the day's work, held to have arisen out of and in the course of employment within the Workmen's Compensation Act. *Stephens Engineering Co. v. Industrial Commission et al.*, 124 N. E. 863 (Ill.).

**ASSAULT AND BATTERY—NECESSITY OF PLEADING FUTURE PAIN AND SUFFERING.**

Although a complaint in an action for damages for assault and battery contains no allegations of permanent injury nor as to future pain and suffering, compensation may be allowed for future suffering, either mental or physical; such damages being natural and direct. *Rust v. Schwiening*, 124 N. E. 878 (Ind.).

**EXECUTORS AND ADMINISTRATORS—SUIT ON BEHALF OF ESTATE—PARTIES.**

A suit in equity for an accounting for property wrongfully withheld from an estate cannot be maintained by a creditor alone, but the legal representative of the decedent is an indispensable party. *Ryan v. Kelsey*, 259 Fed. 945.

**REMOVAL OF CAUSES—SEPARABLE CONTROVERSY—PETITION.**

A servant's petition against his non-resident employer and employer's resident superintendent for personal injuries inflicted by a falling timber while he was working under the superintendent's direc-

tions, held to state a joint cause of action, precluding removal to a federal district court on ground that petition stated no cause of action against the resident superintendent, because charging him merely with nonfeasance. *Plunkett v. Gulf Refining Co. et. al.*, 259 Fed. 974.

#### HOMICIDE SELF-DEFENSE—PROVOCATION OF ATTACK.

If defendant, charged with homicide, was attacked in his own cabin by deceased, and forced back to his bunk, and thrown down upon it, and deceased choked him until he was "all in," or had reasonable ground to believe he was going to suffer great bodily harm, and that it was necessary to protect himself, he was justified in using all necessary means, even to the extent of killing deceased, though, he, defendant, was wrong in throwing deceased's blankets out of the cabin and ordering him to get out, which started the difficulty. *Huber v. United States*, 259 Fed. 766.

#### CRIMINAL LAW—EFFECT OF GRANTING NEW TRIAL TO CERTAIN DEFENDANTS.

Where several persons, tried together, have been convicted of a conspiracy, the granting of a new trial to certain of the defendants, against whom there was no evidence, and who were not shown to have said or done anything which could be prejudicial to their co-defendants, does not confer upon the others the right to a new trial. *Belfi v. United States*, 259 Fed. 822.

#### CONTEMPT—PRESENTATION OF INCONSISTENT AFFIDAVITS.

One who, in order to secure the action of the court in his own interests, presents at one time an affidavit setting up a certain state of facts, and thereafter in his own interests, in order to secure the action of the court, presents another affidavit setting up a different state of facts is guilty of contempt. *Sachs v. High Clothing Co.*, 108 Atl. 58 (N. J.).

#### RELIGIOUS SOCIETIES—DECISION OF ECCLESIASTICAL TRIBUNALS BINDING UNLESS IN VIOLATION OF LAW.

Where a church has appropriate tribunals to decide what are the scope and effect of its laws, their decisions duly made are binding on the members unless in violation of the laws of the land. *Furmanski et al. v. Iwanowski et al.*, 108 Atl. 27 (Pa.).

#### JUDGMENT—VALID WITHOUT SIGNATURE BY JUDGE.

The requirement that a judgment be signed by the judge is only

directory, and a judgment passed in open court and filed with the papers as a part of the judgment roll is valid, though not signed. *McDonald et al. v. Howe et al.*, 100 S. E. 427 (No. Car.).

#### MORTGAGES—UNACCEPTED TENDER DOES NOT DISCHARGE LIEN.

An unaccepted tender of amount due on a debt secured by a mortgage does not discharge the lien of the mortgage, unless the tender be kept good and the money be paid into court. *Debnam v. Watkins et ux.*, 100 S. E. 336 (No. Car.).

#### BANKS AND BANKING—WHERE BANK ON WHICH CHECK DRAWN DEPOSITS IT TO CREDIT OF HOLDER, IT IS PAYMENT.

Where the holder of a check demands that the bank on which it is drawn deposit the same to his credit, and the bank credits him with the amount of the check, and the holder is not guilty of any want of good faith, the act of crediting is equivalent to a payment in money, and the bank cannot recall or repudiate the payment because, on an examination of the accounts of the drawer, it is ascertained that he was without funds to meet the check. *Woodward v. Savings & Trust Co.*, 100 S. E. 304 (No. Car.).

#### IMPROVEMENTS—WILLFUL TRESPASSER

One who, with full knowledge of the facts which make his claim of title to land invalid, enters thereon and commits acts of trespass, is a willful trespasser within the meaning of the law, even though he may honestly believe that under such known facts the law confers upon him good title. *Pittsburgh & West Virginia Gas Co. et al. v. Pentress Gas Co., et al.*, 100 S. E. 296 (W. Va.)

#### JUDGMENT—DEFAULT JUDGMENT ON FAILURE TO ANSWER.

Where a regularly verified complaint alleged an express promise to pay a definite sum of money, it was not irregular to enter a judgment in favor of plaintiff by default final upon failure to answer. *Montague et al. v. Lumpkin & Perry*, 100 S. E. 417. (No. Car.).

#### TRUSTS—BENEFICIARIES IN RESULTING TRUSTS AS TENANTS IN COMMON.

When A and B jointly buy land, each paying one-half of the purchase money, and the title is taken in the name of a third party or parties, a trust in favor of A and B will be implied; and when B subsequently goes into possession of the land to the exclusion of A,, a

court of equity will decree A to be a tenant in common with B to the extent of a onehalf undivided interest. Civ. Code, 1910, Paragraph 3739. *Jenkins et al. v. Georgia Inv. Co. et al.*, 100 S. E. 635 (Ga.).

HUSBAND AND WIFE—LIABILITY OF WIFE FOR GOODS PURCHASED BY HUSBAND.

The mere fact that a wife may be the owner of one or more cows, which feed upon provender furnished solely upon the credit of her husband, will not render her liable for the value of such foodstuff, nor authorize a judgment against her for the same, on the theory that she was the concealed principal of her husband, when there is no evidence that he was in any way acting as her agent when the purchase was made. *Moore v. Sims*, 100 S. E. 642 (Ga.).