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ABSTRACTS OF RECENT DECISIONS

TROVER AND CONVERSION—ON ELECTION TO TAKE MONEY VERDICT—NONSUIT PROPER WITHOUT PROOF OF VALUE.

In an action of trover when the plaintiff elects to take a money verdict, a nonsuit is properly an order where there is no proof of the value of the property. Moots v. Farkas, 17 Ga. App. 778, 88 S. E. 685, and cases there cited. The defendant in such action, by the giving of a replevy bond, which is required by law to be in "double the amount sworn to" by the plaintiff as the value of the property in the latter's application for bail, does not thereby admit the value of the property, and such bond is not prima facie evidence of such value. Downs v. Berryman, 100 S. E. 226.

INSURANCE—ON FAILURE TO PAY NOTE FOR PREMIUM, POLICY FORFEITED.

Where a life insurance policy provides that "upon failure to pay a premium on or before the date when due or any *note* or other obligation given therefor, this policy shall thereupon cease without any action or notice by the company, except as herein provided, "the policy becomes forfeited by failure to pay upon maturity a note given in payment of a premium. Stephenson v. Empire Life Insurance Co., 139 Ga. 82, 76 S. E. 592; Carey v. Amicable Life Ins. Co., 100 S. E. 225.

GIFTS—ACTUAL MANUAL DELIVERY UNNECESSARY TO GIFT OF PERSONALTY.

While delivery is essential to a valid gift of personalty, actual manual delivery is not required. The mere fact that the donee of personalty allows possession of the property to remain with the donor will not necessarily defeat the gift. Accordingly, where the evidence shows that a grandfather whose grandchild lived in the house with him had stated that he had given to such grandchild a certain heifer, and the heifer continued to remain on the premises and in the lot of the donor where both the donor and donee resided, the donee and his wife working for the donor, such evidence is sufficient to authorize the inference that the subject matter of the alleged fight was delivered to the donee, and that the donor parted with his title and relinquished

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all dominion and ownership over the property, thereby constituting a valid gift. Whatley et al v. Mitchell, 100 S. E. 229.

BAIL—FORFEITURE—ESCAPE—CONVICTION OF OTHER OFFENSE.

Under the principle underlying the ruling in Cooper v. Brown, 10 Ga. App. 730, 73 S. E. 1101, where a defendant has been convicted of a criminal offense, and has filed a bill of exceptions and given bond for his appearance to abide the final judgment in the cause, and pending the hearing of the writ of error he is convicted of another criminal offense and sentenced to the chain gang, from which he escapes, the bond given in the first case becomes functres officio and the obligation of the sureties is annulled. It follows that defendant is a fugitive from justice not only in the latter case, but in the first one, and the bill of exceptions will be dismissed, unless the defendant gives himself up to the officers of the law within thirty days from the time the case was submitted to this court. Madden v. State, 70 Ga. 383; Osburn v. State, 70 Ga. 731; Gentry v. State, 91 Ga. 669, 17 S. E. 956; Munday State, 100 S. E. 15.

INTOXICATING LIQUOR—SALES—VEHICLES USED IN ILLEGAL TRANSPORTATION—RESERVATION OF TITLE RECORDATION OF CONTRACT—CONDEMNATION OF VEHICLES EVIDENCE—SUFFICIENCY.

In a statutory proceeding to condemn a vehicle illegally employed in the transportation of intoxicating liquors, where the owner of the vehicle had conditionally sold it to the party engaged in the illegal transaction but under the terms of the contract had reserved title in himself until full payment of the purchase price should be made, the mere fact that the contract had not been recorded would not defeat the seller's claim of title under his reservation. Moreover, in this case a careful examination of the record fails to disclose sufficient evidence to authorize the judgment rendered by the trial judge who by agreement heard the case without the intervention of a jury, since the proof failed to show that the automobile was at the time of seizure being used for the purpose and in the manner prohibited by the statute, as alleged in the petition to condemn. H. T. Armington & Sons v. State, 100 S. E. 15.

INTOXICATING LIQUORS—LICENSE TO SELL LIQUOR A VIOLATION OF WAR TIME PROHIBITION ACT AND PROHIBITION AMENDMENT.

Liquor license issued by the commissioners of Jersey City to sell spirituous, vinous, malt, and brewed liquors from June 30, 1919, to

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July 1, 1920, held illegal as a violation of the Federal Wartime Prohibition Act and the Prohibition Amendment to the Federal Constitution, so as to be set aside at the suit of a private citizen. Wilson v. Commissioners of Jersey City, 107 Atlantic Reporter 797.

DEEDS—PARTIES PARTICIPATING IN ABANDONMENT OF RESTRICTIVE COVENANTS CANNOT ENJOIN VIOLATORS.

Where a scheme of residential development was projected, and deeds containing restrictions against business buildings, etc., were made by the grantor, but the restrictive scheme for 50 years subsequently was abandoned by the grantor and its grantees, so that the character of the neighborhood changed from that contemplated, the holders of deeds, participants in the violation of the restrictions, cannot enjoin other landowners from erecting a silk mill. Odea et al v. Ugnon et al, 107 Atlantic 794.

WILLS—SON, THE TENANT FOR LIFE, NOT INCLUDED IN LEGAL HEIRS AND NEXT OF KIN OF TESTATRIX.

Where testatrix, after giving her residuary estate in trust for the benefit of her son for life, directed her executors to distribute the estate after her death "among my legal heirs and next of kin who shall be by law entitled to the same as though I died intestate," and the son died after his mother, leaving a widow, the nephews and nieces of testatrix took the corpus of the estate, to the exclusion of the son and his widow. Olison et al v. Somogyi, 107 Atlantic 798.

RAILROADS—OPERATION—INJURIES FROM OBSTRUCTING FIRE APPARATUS—QUESTIONS FOR JURY.

Where train crew who saw a fire on one side of the track allowed the train to continue on to a crossing, which it took about 15 minutes to pass, though it could have been cut in about two minutes to allow a hose cart to pass through, it was a question for the jury whether or not the railroad made such an unreasonable use of its rights as to entitle parties whose buildings were burning to damages caused by the 15 minutes' delay. Globe Malleable Iron & Steel Co. v. New York Cent. & H. R. R. R. Co., 124 N. E. 109.

TRIAL—CONDUCT OF COUNSEL—INSULTING WITNESS.

Where it did not appear that one of defendant's witnesses was trying to evade the question propounded on cross-examination by plaintiff's counsel, a remark, insulting the witness by a suggestion that he tell the truth, was improper, for counsel does not have the right

Washington University Open Scholarship

to insult a witness. Bishop v. Chicago Junction Ry. Co., 124 N. E. 312.

MORTGAGES—EFFECT OF PAYMENT.

A mortgage, when paid, may be kept alive for other purposes, when the rights of creditors and third persons have not intervened; and where, when a mortgage was paid, the mortgageor had the bond and mortgage assigned to a realty company of which he was practically the sole stockholder, which corporation assigned the bond and mortgage as collateral security for a loan, the original mortgageor was, in equity, estopped to assert that the bond and mortgage were paid. Salvine v. Myles Realty Co., 124 N. E. 94.

INJUNCTION—TRADE UNIONS—BOYCOTTING.

Trade unionists will be enjoined from boycotting plaintiff drayage concern because it would not insist upon its employes joining a teamsters' union. Auburn Draying Co. v. Wardell, 124 N. E. 97.

LANDLORD AND TENANT—CONSIDERATION FOR REPAIRS—SUFFICIENCY OF EVIDENCE.

In an action for injuries to a tenant's wife from the breaking of a veranda or balcony railing out of repair, the tenant alleging the landlord's undertaking to repair, evidence held sufficient to warrant finding that prior repairs to the railing were made by the landlord's son with his father's authority, and that the reason for making them was to induce the tenant to continue in occupancy, so that the case was not one of gratuitous repairs. Bergeron v. Forest, 124 N. E. 74.

HUSBAND AND WIFE—SEPARATION AGREEMENT—REVISION BY COURT.

A separation agreement providing for monthly payments from husband to wife which might be modified on application, to a court of competent jurisdiction, if the circumstances of either party materially changed, confers no jurisdiction on the Supreme Court to substitute a new separation allowance for that adopted by the parties. Stoddard v. Stoddard, 124 N. E. 91.

DESCENT AND DISTRIBUTION—PRESUMPTION AS TO EXISTENCE—DESCENDANTS.

Where one who was unmarried and 38 years old when committed to an insane asylum, from which he escaped, and he was not seen or heard of thereafter, it will, more than a decade later, be presumed

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that he dies without descendants. Hitt v. Campbell et al, 214 S. W. 785.

DESCENT AND DISTRIBUTION—GIFT TO CHILDREN IN FRAUD OF WIFE.

Where a husband makes a gift or voluntary conveyance of all or the great part of his property to his children by a former marriage, without knowledge of the wife, a prima facie case of fraud arises, and it rests upon beneficiaries to explain away the presumption. Rudd v. Rudd et al, 214 S. W. 721.

BANKS AND BANKING—INSOLVENCY—WITHDRAWAL OF STOCK—PAYMENTS OUT OF ASSETS.

Where stockholders knowing of bank's insolvency sell stock to cashier and are paid out of bank's assets, the effect is the withdrawal of stock on account of insolvency, in fraud of creditors, and such payments may be recovered by bank's receiver for the benefit of its creditors. Holyfield v. Davis et al, 214 S. W. 53.

ELECTIONS—WOMAN SUFFRAGE—VALIDITY.

Acts 1919, o. 139, authorizing women to vote for presidential and vice-presidential electors, is valid under const. art. 7, sec. 4, providing the election of all officers not otherwise provided for by the Constitution shall be made in such manner as Legislature may direct. 214 S. W 737. Vertrees et al v. State Board of Elections.

CARRIERS—CARRIER ISSUING BILL OF LADING TO S. ON CHANGING ROUTING AT S. NOT INSURER OF GOOD CONDITION AT P.

A carrier which never undertook to transport a carload of corn further than S., by changing the routing of corn, without notation on the bill of lading, did not become an insurer of its arrival in good condition at P. Chicago and G. W. Ry. Co. v. Plano Milling Co., 214 S. W. 833.

VENDOR AND PURCHASER—FALSE REPRESENTATION THAT LOTS WERE IN CITY LIMITS ADMISSIBLE IN SUIT TO RESCIND CONTRACT.

For rescission of contract of sale of lots because of vendor's false representation that they were within city limits, it should be shown that they were less valuable than they would have been if within such limits. Landfried et ux. v. Milam et al, 214 S. W. 847.

GARNISHMENT—UNLIQUIDATED DEMAND.

Where the contractor and the owner had settled by letters the

Washington University Open Scholarship

amount due on the construction of an irrigation plant when the owner was made garnishee in an action against the contractor, the objection that the demand was unliquidated and not subject to garnishment must fail. Hall v. Nunn Electric Co., 214 S. W. 452.

REVIEW—MATTERS NOT PASSED ON BELOW.

Questions raised in the pleadings, but which the trial court in refusing a temporary injunction refused to consider, so that the record is not in such condition as to allow an intelligent passing thereon, and which are not necessary to a proper disposition of the appeal, will not be considered. Ward County Water Improvement Dist. No. 2 v. Ward County Irr. Dist., No. 1, 214 S. W. 490.

CONSTITUTIONAL LAW—JUDICIAL POWER—FIXING RATES—NATURE OF POWER.

An order of the public service commission fixing railroad rates to be charged in the future is not a judicial act, but was properly delegated to the commission as an administrative body. Missouri Southern R. Co. v. Public Service Commission, 214 S. W. 379.

MASTER AND SERVANT—CONTRIBUTORY NEGLIGENCE—PRECAUTIONS AGAINST DAMAGES—MACHINERY.

An employe held guilty of contributory negligence as a matter of law in attempting to screw down an oil cup on a rapidly revolving wheel, when it would have taken but a few minutes to stop the wheel or slow it down to a normal rate of speed. Williams v. St. Joseph Artesian Ice and Cold Storage Co., 214 S. W. 385.

BILLS AND NOTES—INDORSEMENT WITHOUT RECOURSE—FORGED SIGNATURE.

An indorser, "without recourse in any way," is liable to bona fide holder of note executed by husband and wife, and taken on strength of wife's signature which was a forgery, the indorser warranting the genuineness of her signature. Miller v. Steward, 214 S. W. 565.

RAILROADS—SOLDIER GUARDING BRIDGE NOT GUILTY OF CONTRIBUTORY NEGLIGENCE.

A soldier appointed to guard a railroad bridge cannot be held guilty of contributory negligence as a matter of law, if his acts charged as negligence were done in obedience to general orders of his superior officer, and defendant railroad knew or could have ascertained what such orders were. Kelly v. Pennsylvania R. Co., 107 Atl. 780.

https://openscholarship.wustl.edu/law_lawreview/vol4/iss4/6

MASTER AND SERVANT—WORKMAN'S COMPENSATION ACT.

The workman's compensation act was not intended to confine hiring contracts to express contracts, to the exclusion of that class of contracts which arise by implication of law, where circumstances appear which according to the ordinary course of human dealings show a mutual intention to contract. Reitmeyer v. Coke Bros. & Co., 107 Atl. 739.

INJUNCTION VIOLATION—CONTEMPT.

After the issuance of an injunction under the statute enjoining a corporation, its directors and officers, from exercising any of its privileges and franchises, directors who meet and pass a resolution authorizing the filing of a voluntary petition in bankruptcy and officers who execute such a petition are guilty of contempt. Cavagnaro et al v. Indian Tire & Rubber Co., 107 Atl. 643.

MORTGAGES—RESALE—VACATION—GROUNDS.

Owner of a second mortgage, purchasing the property at sheriff's sale on foreclosure of first mortgage and prevented by rule of fuel administrator as to operation of elevators from reaching sheriff's office with attorney at hour when purchase money was to be paid, on showing that he had the money with him, was 86 years of age, and entered into bond with sheriff to bid over the bid at the resale, was entitled to a vacation of the resale. Iron and Glass Dollar Saving Bank of Birmingham v. Wigman, 107 Atl. 661.

HOMICIDE—STATEMENT OF ACCUSED AT CORONER'S INQUEST ADMISSIBLE.

In homicide prosecution, defendant's statement at Coroner's inquest was admisible, though inquest was held during afternoon, and defendant had been given no breakfast or dinner, where he had prior thereto voluntarily told policeman his connection with the case, and where there was no evidence that he had complained of not having had food, or that lack thereof had influence on him in making statemen. State v. Simmons, 100 S. E. 149.

HOMESTEAD—SEPARATION OF HUSBAND AND WIFE DOES NOT AFFECT HIS HOMESTEAD RIGHT.

Husband who has been separated from his wife for fourteen years, and who during such time has not supported wife, is nevertheless "head of a family," and entitled to a homestead, the separation

Washington University Open Scholarship

not having absolved him from supporting wife. Martin v. Martin, 100 S. E. 156.

TRUSTS—RESULTING TRUST—PURCHASE OF LAND BY GUARDIAN—USE OF TRUST FUND.

Where one was guardian for his children and had funds belonging to them, if he used such funds to purchase lands, though he took a deed conveying the land to himself, equity would impress the property with a trust character in favor of the children in a suit brought by them for the purpose of having a trust declared.

But if the guardian bought the land with funds which he had procured by effecting a loan from a third person, or in any other way independently of the trust funds, and with the money thus borrowed purchased the land, though he might subsequently have used the funds which he held as guardian for his children to repay the loan, this would not fasten a trust upon the property, unless the borrowing of the money was done with the intent to subsequently repay it with the trust funds in his hands, so as to give effect to a scheme whereby the title to the property might be vested in the guardian individually, free from the trust character which would have impressed upon it, had he directly in the first instance purchased the land and paid for it with trust funds. Hardy v. Hardy, 100 S. E. 101.

JURY—RIGHT TO JURY TRIAL—ACCOUNTING.

Where the complaint to recover the balance due to a life insurance agent, under a contract, which intrusted him with collection of money for the principal so as to create a fiduciary relationship, and the itemized statement embraced 134 items relating to numerous transactions, either party was entitled to equitable accounting, and plaintiff could not demand a jury trial as a matter of right. Smith v. Union Cent. Life Ins. Co., 99 S. E. 830.

INJUNCTION—RELIEF—SCOPE.

Where a man has debauched a minor girl and induced her to abandon her parental abode and live with him in a state of adultery and fornication, and persists in a continuance of such conduct, equity will afford a remedy by injunction, to the end that, in a suit by the father, will enjoin the man from associating and communicating with the girl, either by writing, telegraphing, or telephoning, personally or through the aid or agency of any other person. Stark v. Hamilton, 99 S. E. 861.

https://openscholarship.wustl.edu/law_lawreview/vol4/iss4/6

CRIMINAL LAW VENUE—FAILURE TO SUPPORT WIFE AND CHILDREN.

In prosecution of husband, under Cr. Code, 1912, sec. 697, for failure to support wife and children, the county of husband's residence, and not that of residence of wife and children, was proper county for trial; the offense having been committed in such county. State v. Peeples, 99 S. E. 813.

APPEAL AND ERROR—HARMLESS ERROR—REMARKS OF JUDGE—COMMENT ON EVIDENCE.

Anything prejudicial in remarks of judge during introduction of evidence, "a man wouldn't make that kind of contract—peonage one—that would require him," etc., was cured; he immediately afterwards, when defendant's counsel said: "He made it and I have got the written contract in court," saying "Of course, if written, he is bound by it." Harry v. Barnett, 99 S. E. 822.

TRUSTS—TERMINATION — CONVEYANCE BY BENEFICIARY — DECREE CONFIRMING TITLE.

Where a husband conveyed land in trust for wife to be conveyed by trustee to person designated by wife in will, decree confirming title in wife's grantee was ineffectual to pass title, where neither trustee nor his heir or successor was a party to the proceeding. Dumas v. Carroll et al, 99 S. E. 801.

CORPORATIONS—LIABILITY OF OFFICERS—BREACH OF CONTRACT.

The managing officers of a corporation, who signed on its behalf a contract for the sale of plaintiff's fertilizer whereby it agreed to hold in trust and turn over to plaintiff the cash proceeds and notes received for such sales, but instead treated the proceeds as ordinary receipts of the corporation, are personally liable therefor to the plaintiff after the bankruptcy of the corporation. Peruvian Guano Corporation v. Thompson et al, 99 S. E. 808.

LOGS AND LOGGING—PLAINTIFF CANNOT RECOVER ON CONTRACT ON FAILURE TO PERFORM HIMSELF.

Where a contract giving plaintiff the right to log defendant's land provided that plaintiff should begin operations within a reasonable time, and move his mill to the land as soon as he finished his existing location, but plaintiff failed to do so, moving his mill to another's land, and did not offer to cut defendant's timber for 13 months, he cannot maintain action against defendant to recover damages for refusal to allow cutting. Hearne v. Perry, 100 S. E. 185.

Washington University Open Scholarship

MASTER AND SERVANT—MASTER NOT LIABLE FOR INJURY FROM AX HEAD SLIPPING FROM HANDLE.

The employer of a carpenter to demolish cars on a logging road, injured when the head from the ax his assistant was using to cut off bolts with a cold chisel, slipped off and hit his foot, was not liable for such injury, due to the ax head not having been tight on the handle nor for failure to furnish a hammer for striking. Winourne v. Interstate Cooperage Co., 100 S. E. 194.

APPEAL AND ERROR—FACTS REVIEWABLE IN SUIT BY BANKRUPTCY TRUSTEE TO ESTABLISH TRUST.

In an action by trustee in bankruptcy against bankrupt's former president and general manager to have property purchased with bankrupt's funds impressed with a trust in favor of the creditors of the bankrupt, court, on appeal, will review the facts, the action being in equity, and not an action at law. Sparks v. McCraw, 100 S. E. 161.

INFANTS—INFANT'S EXCEPTIONS TO MASTER'S REPORT MAY BE FILED AT HEARING.

In a proceeding to marshal assets and adjust equities among parties claiming portions of the land of an estate, where an infant defendant's guardian ad litem did not except to the master's report, it being the duty of the court to guard rights of infants, court could allow infant's exceptions to be filed, at any time, before or at hearing. McFaddin v. Lumpkin, 100 S. E. 168.

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