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Abstracts of Recent Decisions

ABSTRACTS OF RECENT DECISIONS.

BAILMENT—INJURY TO HIRED TEAM—LIABILITY—One hiring a team by the day, which is to remain in charge of the owner's driver is not liable for injury to one of the animals by falling into a hole in the pavement due to the driver's negligence. *Foy-Proctor Co. v. Marshall,* 169 Ky. 377.

BANKRUPTCY—SUPERSEDING STATE LAW—INVOLUNTARY PROCEEDINGS AGAINST FARMERS—The provisions of the Federal Bankruptcy Act, allowing voluntary proceedings to be instituted in case of the insolvency of farmers and denying the right to bring involuntary proceedings against such persons, do not annul state statutes providing for such involuntary proceedings. *Pitcher v. Standish,* 98 Atlantic 93, L. R. A., 1917 A. 105.

BANKS AND BANKING—DEPOSITS—APPLICATION TOWARD DEBT DUE BANK—A bank is ordinarily entitled to apply the balance of an account due the depositor to the satisfaction of a debt due from him to the bank. *Laighton v. Brookline Trust Co.,* 114 N. E. (Mass.) 671.

BILLS AND NOTES—BONA FIDE HOLDER—ACTION AGAINST DRAWER OR INDORSER OF INCOMPLETED BILL OF EXCHANGE—A bona fide holder for value of an instrument purporting to be a bill of exchange, which does not on its face show to whom it is payable, may maintain an action thereon against the persons who executed or indorsed such instrument in its incomplete form. *Hubbard v. First State Bank of Bourbon,* 114 N. E. (Ind.) 642.

BILLS AND NOTES—INDORSEMENT WITH RUBBER STAMP—BEARER PAPER—Acting under orders from the President a clerk of the N. Co. made out a note payable to the N. Co., using the same rubber stamp in making the name of the payee, maker and indorser. The note thus made out was given by the clerk to the president of the company for signature, he writing " By A President" on the face of the note at bottom, but leaving the indorsement merely in rubber stamp. In this shape the note was delivered to a broker for sale, with the understanding that title was not to pass until payment was made to the N. Co., at which time the president would add his signature to the rubber stamp indorsement. The broker showed the note to one S., who refused to return it, and sold it to an innocent purchaser for value, who, at maturity, brought suit. *Held,* that the rubber stamp indorsement was good by adoption, and the conditions not binding on a holder in due course. (The contention of the defendant was that the note was bearer paper and hence a mere nullity until indorsed.) *Am. U. Tr. Co. v. N. B. Range Co.,* 190 S. W. (Mo. App.) 1045. On signatures other than written signatures see *H. v. T.,* 109 Mo. App. 563, *l. c.* 566, not called to the attention of the court in the principal case.

CARRIERS—PASSENGER—NEGLIGENCE—N. was a passenger on defendant's car, which went no farther than the car barn. While transferring from this car to another on the same line N. was struck and injured by defendant's car. *Held,* since N. was not on the railway premises, or at a station for the purposes of transferring passengers, but on a public highway where she could have chosen her own route, she was not, as a matter of law, a passenger, and though the carrier was guilty of negligence it would not be held to the high degree of care required of a carrier toward its passengers. *Niles v. Boston Elevated R. Co.,* 114 N. E. (Mass.) 730.

CARRIER—TRANSFER COMPANY—BREACH OF CONTRACT AS TO ROUTING—Where a transfer company agreed to ship goods of plaintiff over a certain route, and took from plaintiff a shipping order limiting its liability, and in breach of the contract shipped the goods over a different route, *held*, that the transfer company is liable for the full value of goods less the amount recovered by the plaintiff from the railroad company. *O. K. Transfer and Storage Co. v. Neill*, 159 Pac 272, L. R. A. 1917 A. 58.

CONSTITUTIONAL LAW—INJUNCTION—EQUAL PROTECTION OF THE LAWS—A state statute, forbidding the issuance of injunctions in case of threatened violation of labor contracts, is unconstitutional as being a denial of the equal protection of the laws to laborers. *Bogni v. Perotti*, 224 Mass. 152; 112 N. E. 853; L. R. A. 1916 F. 831.

CONSTITUTIONAL LAW—STATUTES—SEVERABLE PROVISION—The general rule which operates to exclude the parts of a statute which are unconstitutional so that the remainder will be constitutional may be applied to exclude parts of a statute which are not within the legislative intent. *Jael v. Burnett*, 115 N. E. (Ill.) 5.

CORPORATIONS—EMBEZZLEMENT—PAYMENT OF EXCESSIVE SALARY—Where directors of a corporation wrongfully convert its moneys to their own use, they are guilty of embezzlement and can not relieve themselves by calling such moneys "salaries." But the receiving of an exorbitant salary in good faith would not subject an officer to such criminal liability. *People v. Lay*, 160 N. W. (Mich.) 307. A minority stockholder in such a case can secure an injunction restraining the payment of such excessive salaries. *Wight v. Heublein*, 238 Fed. 321.

CRIMINAL LAW—REQUESTED INSTRUCTION—ADMISSION—In a prosecution for rape, defendant's requested instruction that if he had not been proved guilty beyond all reasonable doubt of the crime charged, he might be found guilty of an assault, was a concession that there was evidence justifying a verdict of simple assault. *People v. Moore*, 114 N. E. (Ill.) 906.

DOMICILE—A person does not acquire a new residence by merely going to another place with the intention of making it his domicile, but he must also have the intention of making it his home. Evidence *held* not to show intention to establish a residence in New York, though it did show intention to establish a legal domcile there, where a woman who had lived in a town thirty years hired a hotel room in New York by the year, registering from New York, changed the description of her residence in her will and changed the label on her trunk. *Kerby v. Charlestown*, 99 Atl. (N. H.) 834.

DRUGLESS PRACTITIONERS—EXAMINATION REQUIREMENT—A statute requiring drugless practictioners to complete a prescribed course and pass an examination before being licensed to practice, but making an exception in favor of those who treat the sick by prayer, does not deny the equal protection of the laws to one who does not employ prayer in his treatment of disease, but does use faith, hope, and the processes of mental suggestion and mental adaptation. *Crane v. Johnson*, 37 Sup. Ct. Rep. 176.

EMINENT DOMAIN—FIXTURE—TRESPASS—Where a railroad company made a wilful and violent trespass upon land, previous to condemnation proceedings, and placed permanent improvements thereon, it was held that such improvements were not to be regarded as fixtures. *T. and S. F. R. Co. v. Richter*, 20 N. M. 278, 148 Pac. 478, L. R. A. 1916 F. 969.

EVIDENCE—OBJECTION TO ADMISSIBILITY—An objection to evidence, on the ground that it is immaterial or irrelevant presents no question for review. *Michigan City v. Werner,* 114 N. E. (Ind.) 636.

INSURANCE—AGE OF BENEFICIARY—Where a health and accident policy, providing that should there be only one person, over eighteen and under sixty years of age, named as beneficiary, the policy should insure such person, was renewed after the beneficiary reached the age of sixty; *held,* that the provision as to the age of the beneficiary was waived. *Cook v. National Fidelity & Casualty Co.,* 160 N. W. (Neb.) 957.

INTERSTATE COMMERCE—SHIPMENT OF LIQUOR—That provision of the Webb-Kenyon Act, March 1, 1913, prohibiting the interstate shipment of liquor intended to be used, received or sold in violation of any law of the state into which it is transported, is within the powers of Congress under the commerce clause of the Constitution. *James Clark Distilling Co. v. Western Maryland R. Co.,* 37 S. Ct. Rep., 180.

MASTER AND SERVANT—DISCHARGE—AMOUNT OF RECOVERY—An employee working on a salary and commission basis, and wrongfully discharged, may recover damages based upon the commissions he probably would have earned for the unexpired portion of the contract term. *Barry v. New York Holding and Construction Co.,* 114 N. E. (Mass.) 953.

MASTER AND SERVANT—INJURY TO FELLOW-SERVANT—MASTER'S LIABILITY—Where a brakeman took charge of a freight engine, in the absence of the engineer, without the master's knowledge and in direct violation of the known rules of the company, and in using said engine in switching cars in the master's yard, injured a fellow-servant, the master was held not liable. (The decision is placed squarely on the ground that the master has been guilty of no negligence.) *Fredericks v. C. and N. W. R. Co.,* 96 Neb. 27, 146 N. W. 1011, L. R. A. 1916 F. 869.

MORTGAGES—CONSTRUCTION—NATURE OF INSTRUMENT—Before a deed can be held to be in the nature of a mortgage, there must be an existing debt or obligation, which the grantee in the conveyance can enforce by foreclosure proceedings. *Friend v. Beach,* 114 N. E. (Ill.) 911.

MUNICIPAL CORPORATIONS—CIVIL SERVICE COMMISSIONS—CONCLUSIVENESS OF JUDGMENT—Where the jurisdiction of a municipal civil service commission is properly invoked by the temporary suspension of an officer by the mayor, and the filing by the mayor with the commission of any of the charges named in the statute, which charges, if true, would authorize a dismissal from service, the judgment of the civil service commission is final. *State ex rel. Chapman v. Lesser,* 115 N. E. (Ohio) 33.

NEGLIGENCE—LAST CLEAR CHANCE—The last clear chance doctrine has no place in the law except as it bears upon and affects the law on the subject of contributory negligence. *Michigan City v. Werner,* 114 N. E. (Ind.) 636.

NEGLIGENCE—MANUFACTURER—INJURY TO ONE PURCHASING FROM RETAILER—Where the manufacturer of an automobile purchased the wheels thereof from a reputable maker, and the car was later sold by a retailer to the purchaser, who was injured by a collapse of a wheel because of defects which would have been discovered by reasonable inspection, the manufatcurer of the automobile was held liable. *Macpherson v. Buick Motor Co.,* 217 N. Y. 382, 111 N. E. 1050, L. R. A. 1916 F. 696.

PLEADING—JOINING MASTER AND SERVANT IN ONE COUNT IN AN ACTION FOR INJURIES RESULTING FROM THE WILFUL CONDUCT OF THE LATTER—Under the Code in Alabama, in an action for injury by the wilful act of a servant, a single count, based on the act of the servant and the liability of the master as principal, sufficiently states a cause of action. A vigorous dissenting opinion maintains that there should be separate counts. *Louisville & N. R. Co. v. Abernathy,* 73 So. (Ala.) 103.

TELEPHONES—DISCRIMINATIONS—RATES—Where a telephone company gave free residence service to subscribers of business telephones, it was held that this constituted an unlawful discrimination as against resident subscribers only. *Keenan v. Northwestern Telephone Exchange Co.,* P. U. R. 1916 F. 193.

WATER AND WATER COURSES—ESSENTIALS OF WATER COURSE—A stream or water course must have a substantial existence, but it need not flow continuously throughout the year, to be classified as such; the requirement being that it possess a bed and banks, and that there be evidence of a permanent stream of running water. *Evansville, Mt. C. and N. Ry. Co. v. Scott,* 114 N. E. (Ind.) 649.