

ABSTRACTS FROM RECENT DECISIONS

FRAUDS, STATUTE OF—DOES NOT APPLY TO EXECUTED CONTRACTS;
MAY FURNISH MEASURE OF DAMAGES FOR PART PERFORMED.

The Statute of Frauds has no application to an executed contract; and when wholly or partially executed may furnish to the jury proper measure of damages for the part performed. *Davis v. Tidewater Coal & Coke Co.*, 103 S. E. (W. Va.) 450.

SALES—QUALIFIED DELIVERY DOES NOT DEFEAT SELLER'S LIEN FOR PRICE.

A seller of goods for cash has a lien for the price so long as he retains possession, and a qualified delivery does not defeat his lien. A contract for sale of timber entitled seller to lien for price until timber was loaded on cars. *Rine v. Ireland Lumber Co.*, 103 S. E. (W. Va.) 452.

INSURANCE—INSURER IS ESTOPPED TO DENY THAT CLAUSE OF POLICY DOES NOT MEAN WHAT ITS AGENT REPRESENTED IT TO MEAN.

Where a clause, attached to an insurance policy, is by any reasonable construction to any extent ambiguous, and the agent of the company represents to one applying for such insurance that the company construes such a clause to have a certain meaning, not inconsistent with the language used, and the party so solicited accepts such insurance, relying upon the interpretation placed upon the language by the agent being the one adopted by the company, the company will, after a loss has accrued under such policy, be estopped to deny that the clause does not mean what its agent represented it to mean. *Edwards v. Masonic Mutual Life Assn.*, 103 S. E. (W. Va.) 454.

USURY—REQUISITES STATED.

There are four requisites of a usurious transaction: There must be a loan, express or implied, an understanding between the parties that the money lent shall be returned, that for such a loan a greater rate of interest than is allowed by law shall be paid or agreed to be paid, and there must be a corrupt intent to take more than the legal rate for the use of the money loaned. *Ector v. Osborne*, 103 S. E. (N. C.) 388.

DIVORCE—DOMICILE NOT REQUIRED BY CONDITIONAL INTENTION TO REMAIN.

A husband, who went to a city in the commonwealth with the intention to remain if he found conditions favorable, but without definite and fixed intention to remain and become a resident of the city at all events, did not acquire a domicile in the commonwealth. *Field v. Field*, 128 N. E. (Mass.) 9.

TRADE-MARKS AND TRADE NAMES—ADOPTION OF A NAME BY COMPETING FIRM HELD UNFAIR COMPETITION. EQUITY WILL NOT PERMIT ONE TO ASSUME CHARACTERIZATION LIKELY TO MISLEAD THE PUBLIC.

While a court of equity will not interfere to protect one from harm arising from failure of purchasers to exercise ordinary attention to notice of the difference between two names or marks, it will not permit one to assume a trade characterization so closely like that of another as to be likely to mislead the public. *W. B. Mfg. Co. v. Rubenstein et al.*, 128 N. E. (Mass.) 21.

COMMERCE—ROUTE OF TRANSMISSION DETERMINES WHETHER TELEGRAM IS INTERSTATE.

The transmission of intelligence by wire, being commerce, is governed by the act of Congress regulating the same, where the route of such transmission lies in more than one state, though the point of destination are within the same state. *Western Union Tel. Co. v. Bushnell*, 128 N. E. (Ind.) 49.

CORPORATIONS—PAROL EVIDENCE IS COMPETENT TO SHOW THAT BILL OF SALE OF STOCK WAS IN FACT CHATTEL MORTGAGE OR PLEDGE.

Parol evidence is competent to show whether a contract was a sale of corporate stock, or a mortgage thereon or pledge thereof, though the written instrument was in form an absolute bill of sale. *Lyons v. Yielding*, 85 S. (Ala.) 21.

WITNESSES—EXTRAJUDICIAL STATEMENTS ADMISSABLE FOR IMPEACHMENT.

Generally, where a witness has made statements out of court in conflict with his testimony at the trial such statements may be shown to discredit his testimony. *State v. Wicker*, 220 S. W. (Mo.) 1014.

**JUDGMENT—ADEQUACY OF NOTICE TO SUSTAIN FOREIGN JUDGMENT
DEPENDS ON LAW OF THE FOREIGN STATE.**

In a partition suit, where the court gave effect to a judgment in partition in a foreign state, whether the proceedings to give notice in such foreign state to non-resident defendants were adequate for that purpose is controlled by the law of such state. *Jones v. Park*, 220 S. W. (Mo.) 1018.

**WITNESSES—CROSS-EXAMINATION TO IMPEACH DEFENDANT NOT
ERRONEOUS AS INTRODUCTION OF CONFESSED WITHOUT PROOF OF
VOLUNTARY CHARACTER.**

Where court did not permit any testimony in nature of a confession to go to the jury, there was no error on any theory state was permitted on cross-examination to introduce confession, without first proving it was voluntary; purpose of defendant's cross-examination as to statements made by him on examining trial being merely to lay foundation for impeachment. *Ellis v. State*, 222 S. W. (Ark.) 1058.

**QUIETING TITLE—PLAINTIFF MUST BE IN POSSESSION UNLESS TITLE
BE MERELY EQUITABLE.**

The equity jurisdiction to quiet title independent of statute can only be invoked by a plaintiff in possession, unless his title be merely an equitable one, since where the title is legal and someone else is in possession, the remedy at law is plain, adequate and complete. *Pearman v. Pearman*, 222 S. W. (Ark.) 1064.

**SCHOOLS AND SCHOOL DISTRICTS—CONTRACT BY TWO MEMBERS OF
BOARD OF EDUCATION WITHOUT NOTICE TO THE THIRD NOT
ENFORCEABLE; "OFFICIAL ACT."**

An agreement made between two members of a board of education and a third party, at a meeting at which the third member of said board is not present and of which he has no notice, is not an "official act" and is unenforceable against such board. *Daugherty v. Board of Education of Philadelphia*, 103 S. E. (W. Va.) 406.

**HUSBAND AND WIFE—HUSBAND'S AGENCY FOR WIFE, AS TO SEPARATE
PROPERTY, NOT PRESUMED.**

Whether or not the husband is the agent of the wife in dealing with her separate estate is a question of fact, to be determined as other like questions, and will not be presumed from the marital relations alone. *Walker v. Burch et al*, 178 N. W. (Neb.) 209.

CARRIERS—BILL OF LADING NOT NEGOTIABLE.

A bill of lading is evidence of ownership in the hands of the holder, but it is not a negotiable instrument, and does not preclude inquiry into the circumstances under which it is transferred or surrendered. *Omaha Elevator Co. v. Chicago, B. & Q. R. Co. et al.*, 178 N. W. (Neb.) 211.

JUDGMENT—PERSONAL JUDGMENT AGAINST NON-RESIDENT INVALID WITHOUT SERVICE OR APPEARANCE.

A court cannot acquire jurisdiction to render a personal judgment upon a money demand against a non-resident of the state without personal service within the state or appearance in the action. *Carpenter v. Carpenter et al.*, 178 N. W. (Neb.) 217.

EVIDENCE—JUDICIAL NOTICE CANNOT BE TAKEN OF CHARACTER OF ROAD MERELY BECAUSE OF KNOWLEDGE THEREOF BY COURT AS AN INDIVIDUAL.

The trial court's knowledge, as an individual, of facts as to a road being a county or state rather than a town highway, is not the kind of knowledge that is included in the broad field of subjects of general knowledge, of which a court, as such, will take judicial knowledge. *Kuder v. Waukesha County*, 178 N. W. (Wis.) 249.

APPEAL AND ERROR—WHERE RECORD IS LOST, CAUSE WILL BE REMANDED TO SUPPLY PLEADINGS, AND FOR A TRIAL DE NOVO.

Where the record is lost, and a complete transcript cannot be made for that reason, the case will be remanded, so that the pleadings may be supplied in accordance with law and case tried de novo. *Smith & Sons et al. v. Succession of Jenkins*, 85 S. (La.) 68.

ALTERATION OF INSTRUMENTS—UNAUTHORIZED ALTERATION BY STRANGER DOES NOT INVALIDATE NOTE.

A promissory note is not invalidated because of the unauthorized alteration thereof by a stranger thereto. *Coulson v. Stevens*, 85 S. (Miss.) 83.

DEEDS—DEED FOR SUPPORT OF GRANTOR NOT CANCELLED FOR BREACH OF AGREEMENT TO SUPPORT.

Where a deed is given in consideration of an agreement to support grantor, but containing no provision for forfeiture for failure to perform agreement, and reserving no lien in the deed to secure per-

formance of consideration, it will not be cancelled in equity for failure to furnish support. *Wynn et al. v. Kendall*, 85 S. (Miss.) 85.

DAMAGES—PUNITIVE DAMAGES LIMITED TO REAL WRONGDOER.

Liability to respond in punitive damages is ordinarily limited to the real wrongdoer, and those who are only consequentially responsible for the wrongdoer's act on account of his relation to him are excluded from such liability, unless they participate in the wrongful act expressly or impliedly by conduct approving it, either before or after it was committed. *Ketchum v. Amsterdam Apartments Co.*, 110 A. (N. J.) 590.

CHARITIES—CITY MAY ACCEPT BEQUEST OF TRUST FUND FOR PUBLIC CHARITABLE USE.

A Kansas municipality has power to accept a bequest of a trust fund and to administer it in perpetuity if the purpose of the trust created by such bequest is for a public, charitable use. *Treadwell v. Beebe*, 190 P. (Kans.) 768.



What Does It Avail You to Know Law—
if You Never Use Your Knowledge?

The answer is: "It avails me nothing."

And what does it avail you to know the
Law of Business Success—if you never Save
any portion of your earnings?

And again the answer is: "It avails me
nothing."

Because the Law of Business Success is
this: "He has money who saves money."
And, until you actually practice that law, you
can never be financially independent, even
though your annual fees run into the tens of
thousands of dollars.

We invite your checking and savings ac-
counts, whatever the amount. You'll like this
big, cordial bank—and you'll find us eager to
co-operate with you in every possible way.

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