ABSTRACTS OF RECENT DECISIONS

APPEAL AND ERROR—AMOUNT OF RECOVERY—CALCULATION OF PARTIAL PAYMENTS.

Where a purchaser did not avail herself of the contract privilege of naming the number of notes and times of payment, she will not be heard to complain, on appeal in a suit for specific performance, that the decree ordered her to execute one note, and ask the appellate court to enter into a calculation to ascertain whether she would be compelled to pay a trifle more on one note than on several she might have made, since the court should not be called upon to solve problems in partial payments based upon supposititious premises. *Wilson v. Beaty*, 211 S. W. (Tex.) 524.

BANKRUPTCY—ADJUDICATION.

Adjudication in bankruptcy, while establishing as against the world, for the purpose of administering the debtor's property, his status as a bankrupt, is, like other adjudications in rem, not res judicata as to the facts or the subsidiary questions of law on which it is based, except as between the parties to the proceeding or privies thereto, and so not as to the facts found, that the debtor had been insolvent for a certain time, and while insolvent had made certain preferences. *Gratiot County State Bank v. Johnson.* 39 Sup. Ct. Rep. 263.

CARRIERS—FARES—REGULATION—FRANCHISE.

The franchise of the Des Moines City Railway Company, being definite as to rates for fares without any provision as to change thereof, though providing for payment by company, from fares collected, of cost of operation, taxes, 5 per cent. on bonded indebtedness, and 6 per cent. on other indebtedness, and the setting aside of a depreciation fund, and also providing for "first-class" service, with persons, and, in case of their disagreement, arbitration, to determine the service to be rendered, there can, in case of insufficient income, be no increase of fares, but class of service must yield. *North American Const. Co. v. Des Moines City Railway Co.* 256 Fed. 107.

CARRIERS OF PASSENGERS—CONDITIONS ON TICKETS.

In case of full-fare ticket, passenger is not bound by conditions thereon limiting common-law or contractural liability of carrier, unless

such conditions are called to attention of passenger and assented to by him. *Thurston v. Northern Nav. Co.* 171 N. W. (Mich.) 423.

CARRIERS—RATES OF FARE—FRANCHISE—INCREASED OPERATING EXPENSES.

Under the laws of Ohio, the ordinance of Columbus granting street railway franchise for a fixed term of years, which were accepted by the grantees, constitute a binding contract, the obligation of which the company cannot avoid on the ground that the increased operating expenses, due to the war and the higher wages fixed by the War Labor Board, make it unprofitable, especially in the absence of a showing that further operation under the contract was impossible, or even that operation thereunder for the entire term of the franchise would be unremunerative. *Columbus Ry. Power & Light Co. v. City of Columbus, Ohio.* 39 Sup. Ct. Rep. 349.

CERTIORARI—COURT OF APPEALS—CONFLICT OF DECISION.

On certiorari to review decision of Court of Appeals on the ground that it conflicts with decisions of the Supreme Court, the Supreme Court will not go beyond the opinion to ascertain the facts, nor will the Supreme Court accept the facts stated in the motion for rehearing as true, inasmuch as the truth of such facts can only be proven by the record, which the court will not examine. *State ex rel. McNulty v. Ellison,* 210 S. W. (Mo.) 881.

CHARITIES—HOSPITAL-LIABILITY FOR INJURIES TO SERVANT.

A religious corporation organized to operate a hospital is liable for injuries to a servant through its negligence, though money received by it was expended in maintaining institution for poor, to pay off a mortgage, and to support its mother institution in another state. *Hotel Dieu v. Armendarez,* 210 S. W. (Tex.) 518.

CHATTEL MORTGAGES—LANDLORD'S LIEN—PRIORITY.

Where a tenant purchased a soda fountain and executed a chattel mortgage thereon, and, being unable to pay for it, redelivered it to the vendor, who then made a sale to another person, who executed to the vendor a chattel mortgage on the fountain, leaving it at the store of the landlord, and at a later date the tenant moved from the premises, the purchaser of the fountain then becoming the tenant, and the mortgagee having paid rent to the landlord up to such date, the mortgage

lien was prior to any lien of the landlord on account of subsequent rent. *B. M. Burgher & Co. v. Barry*, 211 S. W. (Tex.) 457.

CONSTITUTIONAL LAW—MEAT INSPECTION ACT—REGULATIONS.

Whether the term "sausage," when applied to a product containing cereals and water, is false and deceptive, is a question of fact, the decision of which by the Secretary of Agriculture is conclusive under Meat Inspection Act, June 30, 1906, where it is fairly arrived at, with substantial evidence to support it. *Houston et al. v. St. Louis Independent Packing Co.*, 39 Sup. Ct. Rep. 332.

CONTRACTS—CONSOLIDATION.

Under the rule that the doing of something that one is not legally bound to do is sufficient consideration, payment on purchase price in advance of time that it is due is sufficient consideration for contract reducing the price. *Johnson v. Broughton*, 210 S. W. (Ky.) 455.

CONTRACTS—EJUSDEM GENERIS.

Rule that where, in a contract, words of general description are followed by a specific and minute description, the latter limit the former to the property particularly described, is not conclusive, if the real intention of the parties can be ascertained from the instrument, or from their interpretation and construction. *Barnett v. Logan*, 210 S. W. (Mo.) 440.

CONTRACTS—POSSIBLE PERFORMANCE.

If one makes a contract which is in itself possible, he will be liable for a breach, notwithstanding it is beyond his power to perform, but where it is apparent that parties contracted on basis of substance to which contract related, a condition is implied that if performance becomes impossible because that substance does not exist, this will excuse performance. *Virginia Iron, Coal & Coke Co. v. Graham*, 98 S. E. (Va.) 659.

CORPORATIONS—MINORITY STOCKHOLDERS—DISTRIBUTION OF ASSETS.

A court of equity has power at a suit of the minority stockholders of a corporation to order a division of its assets, where safety of interest of minority stockholders requires it. *Dill v. Johnson*, 179 Pac. (Okla.) 608.

FRAUDULENT CONVEYANCES—GARNISHMENT—WHEN AVAILABLE.

The rule that the liability of a garnishee to the creditor of the

principal is conditioned upon his liability to the defendant himself is subject to the exception that, where a garnishee has money, credits, or effects of defendant which came into his possession through a transfer fraudulent as to defendant's creditors, the same may be reached by garnishment. *Brown Shoe Co. v. Sacks,* 211 S. W. (Mo.) 133.

GIFTS—CAUSA MORTIS.

Where an owner of jewelry delivered it to a trust company, to be by it given to specified donees in case a certain operation she was about to undergo should result in death, but the operation was never performed, and death ultimately ensued from the malady to cure which the operation was intended, the donor did not die of the peril she contemplated, so as to make the gift a valid gift causa mortis. *Brind v. International Trust Co.,* 179 Pac. (Col.) 148.

HUSBAND AND WIFE—ANTENUPTIAL AGREEMENT.

An oral agreement, entered into and reduced to writing before marriage and signed after marriage, settling on intended wife a lot owned by intended husband and such personal property as he might possess at his death, if she was then living as his wife and survived, in lieu of all rights, was in effect an antenuptial contract. *Haraldson v. Knutson,* 171 N. W. (Minn.) 201.

INSURANCE—ASSESSMENTS—FORFEITURE—FOREIGN JUDGMENT.

Where demand of a fraternal insurance company for an assessment included an illegal demand for a state tax and an overcharge of ten cents as a collection fee for the payment of a former assessment to a bank, a refusal to pay the aggregate amount was not a ground for forfeiture of the insurance, although a court of another state had decreed that such assessment was in itself proper. *Young v. Hartford Life Ins. Co.,* 211 S. W. (Mo.) 1.

INSURANCE—FRATERNAL BENEFIT INSURANCE—CHANGE IN BY-LAWS.

Where fraternal policy was issued when by-laws provided that in case of suicide within five years all assessments paid should be repaid the beneficiary, a subsequently adopted by-law that beneficiary in such case should receive only amount equal to twice amount contributed to life benefit fund by member during his lifetime did not control rights of beneficiary, though policy provided member was to be bound by all by-laws in force and subsequently enacted. *Dessauer v. Supreme Tent, Knights of the Maccabees.* 210 S. W. (Mo.) 896.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT SUNSTROKE.

Where town's employee, who worked in a gravel pit, suffered a sunstroke, the injury arose out of his employment, which exposed him to danger of sunstroke, an injury naturally connected and reasonably incident to employment, as distinguished from ordinary risk which general public is exposed to. *McCarthy's Case,* 123 N. E. (Mass.) 87.

MUNICIPAL CORPORATIONS—STREETS—PURPRESTURE—NUISANCE.

A city council is without power to pass an ordinance permitting a cold storage company to build a permanent elevated platform over the sidewalk in front of its premises 106 feet long and 13 feet wide, compelling pedestrians to climb four steps on one end and go down an incline 15 feet long on the other for the purpose of enabling the company to load and unload goods, since such ordinance is not for the benefit of the public generally. Such platform is a permanent and material obstruction to the sidewalk constituting a purpresture inconveniencing the public and is a nuisance. *People ex rel. v. Western Cold Storage Co.,* 123 N. E. (Ill.) 43.

PERPETUITIES—SUSPENSION OF OWNERSHIP—TRUST FUND.

Agreement between husband, wife, and trust company creating a trust fund for maintenance of family, the income to go to wife and daughters upon husband's death and one-half to each daughter upon death of husband and wife, with the principal upon her reaching the age of 35 years or to her issue upon death prior thereto, or if no issue to other party of her issue, or if no other party or issue to heirs of husband, is void as to support of daughters upon parent's death, being a suspension of the absolute ownership for more than two lives in being, in violation of Personal Property Law, Sec. 11; but such invalidity does not affect primary purpose of trust, that of maintaining family prior to parents' death. *Carrier v. Carrier,* 123 N. E. (N. Y.) 135.

RAILROADS—ACCIDENTS AT CROSSING—CONTRIBUTORY NEGLIGENCE.

A driver, who twice looked east from points at which he had a view for considerable distance, and thereafter confined his attention to the west, in which direction his view was limited, and to the flagman's shanty across the track, and who was struck by a light engine coming from the east, was not contributorily negligent as a matter of law. *Elias v. Lehigh Valley Railroad Co.,* 123 N. E. (N. Y.) 73.

SALES—CONDITIONAL SALES.

A conditional sale of an automobile in California, where it was not necessary to register the instrument, upon removal of the automobile to Texas by the purchaser, is void as against a bona fide purchaser for value in Texas, unless registered. *Chambers v. Consolidated Garage Co.*, 210 S. W. (Tex.) 565.

SALES—INSTALLMENTS.

Where the chattel is hired for a stipulated sum, part cash down, while remainder is to be paid in installments according to promissory notes given as collateral security, each of which is for amount of installment, but title is not to pass until payment of whole price, and on default in payment of any installment lessor has right to immediate possession, the transaction is a "conditional sale" and not a lease. *Russel v. Martin*, 122 N. E. (Mass.) 447.

TAXATION—MOVABLES.

The just valuation of movables of a foreign corporation habitually used and employed in a state, according to which the state may tax them, need not be limited to the mere worth of the articles considered separately, but may include, as well, the intangible value due to the organic relation of the property in the state to the corporation's whole system operating in many states. *Union Tank Line v. Wright*, 39 Sup. Ct. Rep. 276.

TRUSTS—PAROL TRUST—DEGREE OF PROOF—INSTRUCTION.

In an action to engraft a parol trust upon a deed absolute in form, an instruction that proof must be certain or indisputable, or beyond a reasonable doubt, or of the most convincing and positive character, would be erroneous. However, an instruction that plaintiff must "establish" the claimed trust by a preponderance of evidence to the satisfaction of the jury was held not open to the objection that it required certain and indisputable proof; the word "establish" being synonymous with the word "prove." *Carl v. Settegast*, 211 S. W. (Tex.) 506.

WILLS—"ISSUE."

The word "issue" is in its nature ambiguous, and may be a word of purchase or limitation, and its use alone will be insufficient to reduce an explicitly devised estate in fee simple to an estate tail. *Rhode Island Hospital Trust Co. v. Bridgham*, 106 Atl. (R. I.) 149.