SUPREME COURT OPINIONS

Morganton Hardware Co. et al vs. Morganton Graded School et al

Public Schools, Property in Trustees, Statutory Lien, Materials Furnished, Absence of Legislative Intent.

A public school building, vested in trustees for public school purposes, is not subject to a statutory lien for materials furnished for its construction, in the absence, as here, of a statute indicating a legislative purpose to the contrary.

Action tried by Ferguson, J., who found the facts by consent, at December term, 1908, of Burke. Defendants appealed.

J. Z. Barker vs. J. L. and C. F. Denton

State's Lands, Enterer, Code, 2766, Time For Payment.

The end of the year an entry of the State's vacant and unappropriated lands, and not the day thereof, is the date from which the enterer may compute the time in which he must pay for the lands entered, under the Code, Sec. 2766, requiring that the land "shall, in every event, be paid for, on or before the 31st day of December, which shall happen in the second year thereafter," or the entry shall be null and void. Hence lands entered thereunder on November 16, 1904, and paid for December 31, 1906, meets the requirement of the statute.

Action from Graham, Spring term, 1909, heard by Ward, J., by consent, at Murphy. Defendants appealed.

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J. E. Snell et al vs. Paul Chatham.

1. Nuisance, Ponds, Public Health, Arbitration, Consent Order, Pleadings, Agreement, Scope of Action Enlarged.

In an action for injury from the maintenance of a pond and to enjoin the rebuilding of a dam, the parties may by a consent order of arbitration voluntarily enlarge the scope of the controversy to include the award a scheme of drainage proper to safeguard the public health, and when there is no evidence impeaching the award a judgment rendered in accordance therewith is valid and binding.

2. Nuisance, Ponds, Public Health, Arbitration, Consent, Order, Agreement, Drainage, Scope of Action Enlarged, Consideration.

When by consent of the parties to an action for damages and to enjoin the rebuilding of a dam alleged to be against the interest of the public health, an order of arbitration is made by the court under which the complaining party agreed to execute such plan or scheme as the majority of the arbitrators should award as "proper to safeguard the public health in the premises," an exception to the power of the court to enforce an award requiring the drainage of an area of land which was in its natural condition, cannot be sustained, the agreement of arbitration being a sufficient consideration.

Action for damages and injunction heard by Justice, J., at November term, 1908, of Mecklenburg.

Murchison National Bank vs. Dunn Oil Company

1. Negotiable Instruments, Restrictive Endorsements, "For Deposit or Collection," Intermediate Agents, Notice, Payment Arrested.

A draft or bill transferred to a bank by restrictive endorsement, as "for deposit" or "for collection," is taken and held by the bank as agent for the endorser and for the purpose indicated, and subject to the right of the endorser to arrest payment or divert the proceeds in the hands of any intermediate or subagent who has taken the paper for like purpose and affected by the restriction.

2. Negotiable Instruments, Restrictive Agreement, Debtors, Notice, Payment Arrested.

A drawer of a draft ordinarily standing towards subsequent parties as a general endorser may, by appropriate words appearing on the paper, or by agreement debtors the instrument as to persons affected with notice, retain the right to arrest payment.

3. Negotiable Instruments, Restrictive Agreement, Principal and Agent, Holder in Due Course, Drawee and Endorsee, Liability.

When an agent for collection or deposit of a negotiable instrument, a draft to this case, has acted within the apparent scope of his authority and exceeds his power so that a holder in due course acquires the paper for value and without notice of a restrictive agreement between the original parties, the drawer may be held responsible to such holder.

4. Negotiable Instruments, Holder in Due Course, Purchase, Consideration.

A bank which acquires a draft by purchase from another bank for an existing indebtedness is a holder for value, such indebtedness constituting value by express provision of statute, Revisal, 2172.

5. Negotiable Instruments, Restrictive Agreement, Notice, Evidence, Questions For Jury.

When a bank to which a draft appearing on its face to be negotiable, is forwarded by another bank, purchases it for value without notice of an agreement restricting its negotiation, the drawer may not stop payment of the draft as against the rights of the bank so holding the paper, and when there is conflicting evidence as to whether the purchasing bank acquired without notice the question is properly submitted to the jury.

State vs. Ed. Brown et al.

1. Police Justice, Jurisdiction, City Limits, Evidence, Judgment, Motion to Arrest.

When a police justice has jurisdiction of offences only when committed within the corporate limits of a city, a motion in arrest of judgment will be denied when it does not appear that the offence was committed in the limits prescribed.

2. Larceny From Person, Punishments, Jurisdiction, Superior Court.

Larceny from the person, regardless of the value of the property, is within the executive jurisdiction of the Superior Court. Revisal 3506.

J. M. Thrash et al vs. Commissioners of Transylvania County

School District, County Board of Education, Special Tax Proceedings, Regularity Presumed, Burden of Proof, Instructions.

In an action to impeach the validity of a local election for the levy of a special tax, the presumption of law is in favor of the regularity of the conduct of the authorities with the burden on the objecting party to show the contrary, and when the regular filing of the petition and the order for the election by the county commissioners, and their confirmation of the election, are shown, no irregularity appearing, it is not error for the judge to charge the jury that if they believed the evidence, the plaintiffs had not made out a case.

Action for mandamus and injunction heard before Ward, J., and a jury, at November term, 1908, of Transylvania. Plaintiff appealed.

J. Dan Free vs. The Champion Fibre Company.

Master and Servant, Safe Appliances.

There being plenary evidence that plaintiff was free from blame, and was injured in the course of his employment by defendant's negligence in furnishing him with a defective equipment or appliance with which to work, the verdict awarding damages to plaintiff, under a correct charge, was a proper one. (Pressly vs. Yarn Mills, 138 N. C., 410, cited and approved).

The State Co. et al vs. A. A. Finley.

1. Deeds and Conveyances, Cities and Towns, Streets, Title Acquired, Subsequent Purchasers, Sleeping on Rights.

A land company acquired certain lands, laid them off into lots with streets, platted them and incorporated a town there with, sold a part thereof to defendant for a farm, conveying the title to the streets within the boundaries of his conveyance, and defendant obtained a quit claim deed from the town authorities to the streets thus conveyed. Held, (1) subsequent purchasers of lots in a different part of the town so laid off could not maintain an action to enjoin defendant from blocking up the streets thus acquired by him on his own land. (2) An action begun more than ten years after defendant had acquired the deed from the land company and the quitclaim deed from the town, would be barred by plaintiffs having slept on their rights, if any they had.

2. Deeds and Conveyances, Cities and Towns, Streets, Title Acquired, Equitable Rights, Parties in Interest, Parties to Conveyance, Estoppel.

When some of the plaintiffs claim as heirs at law of one who was an officer of defendant's grantor corporation and, as such, a party to his conveyance, and the other plaintiffs are two corporations, the majority stock of which was held by one also an officer of defendant's grantor, no equitable rights can be asserted by them.

Farmers and Merchants' Bank of Williamston vs. Germania Life Insurance Company

1. Principal and Agent, Negotiable Instruments, "Kiting" Checks, Purchaser, Lack of Authority, Notice Implied.

The "kiting" of checks from one bank to another, a method to sustain a false credit at the banks, or to temporarily raise funds, not be implied as being within the scope of the authority conferred by a life insurance company upon its general State agent, and a bank having actual or implied notice of such transactions will be presumed to have knowledge of the agent's lack of authority.

When it appears that a general State agent of a life insurance company has been "kiting" the company's checks between banks for his individual purposes, and that one of these checks, purchased by the plaintiff bank, was drawn by the cashier to the general agent of the insurance company, and by him as such endorsed for value, and when there is evidence that both the cashier and general agent had authority to draw checks and that the bank was a purchaser without notice, the question of notice is for the jury, and their finding the issue in the negative under correct instructions will not be disturbed on appeal, though the greater weight of the evidence may be to the contrary.

2. Principal and Agent, Negotiable Instruments, "Kiting" Checks, Authority of Agent, Evidence, Burden of Proof.

In an action to recover upon one of a series of "kiting" checks, alleged to have been made by the cashier or general State agent of an insurance company under authority conferred by his company, and to have been acquired for value by the plaintiff, the burden of proof is on plaintiff to show that the cashier of general agent had the authority alleged.

4. Verdict Set Aside, Trial Court, Discretion, Preponderance of Evidence, Exception to Verdict, Appeal and Error.

It is within the discretion of the trial judge to set a verdict aside as being against the preponderance of the evidence, and this question will not be considered on appeal upon exception to a verdict or judgment thereon, at least in the absence of gross abuse in the exercise of the discretion.

5. Issues, Sufficient, Issues Tendered.

When the issues submitted to the jury are sufficient to present all the controverted matters in the case, there is no error in refusing issues tendered.

Action tried before Biggs, J., and a jury, at June term, 1907, of Martin. Defendant appealed.

Reid and Beam vs. Southern Railroad Company

1. Railroads, Penalty Statutes, Carriers of Goods, Refusal to Accept Freight, Constitutional Law.

Sec. 2631, Revisal 1905 imposing a penalty on a railroad for refusing to accept freight tendered for shipment is a valid regulation in direct and reasonable enforcement of the duties incumbent on defendant company as a common carrier, and is not in conflict with the 14th amendment of the constitution of the United States.

2. Same, Interstate Commerce.

Nor is said section repugnant to or in contravention of Article 1, Sec. 8 of the constitution of the United States, conferring upon Congress the power to regulate commerce between the States, the penalty is in direct enforcement of the duties incumbent on defendant company as common carrier is imposed for a local default in not a burden on interstate commerce but in aid thereof and in the absence of inhibitive congressional legislation or of interfering action by the Interstate Commerce Commission the matter is a rightful subject of State legislation.

3. Railroads, Carriers of Goods, Schedules, Congress, Statutory Requirements, Presumptions, Interstate Commerce.

The law presumes that a railroad company has complied with the requirements of an act of Congress and the orders of the Interstate Commerce Commission made thereunder in publishing its rates and from stations on its road.

4. Railroads, Schedules, Publication, Congress, Statutory Requirements, Purpose, Penalty Statutes.

The purpose for which railroad companies are required to publish their schedule of rates by the act of Congress and the orders of the Interstate Commerce Commission made in pursuance thereof is entirely different from and inapplicable to that involved in an action for the penalty accruing from the refusal of the company to accept freight when tendered under Revisal, 2631.

5. Railroads, Penalty Statutes, Carriers of Goods, Refusal to Accept Freight, Due Process, Constitutional Law.

The defendant having been afforded full opportunity to make defense, and the evidence failing to disclose any substantial excuse or explanation for its default on the facts appearing in this case a recovery of the penalty imposed by the statute is not an interference with a burden on interstate commerce prohibited by the United States constitution or statutes or by regulations of the Interstate Commerce Commission made in pursuance thereof.

Mercantile National Bank vs. Mrs. L. J. Benbow et al

1. Husband and Wife, Wife's Separate Personalty, Wife's Note, Consent of Husband, Charge Specific by Intendment.

A note signed by a feme covert alone, but with the written consent of her husband, will not bind her separate personal property to its payment when it does not expressly or by clear intendment and against her property sought to be bound for its payment.

2. Husband and Wife, Wife's Separate Realty, Wife's Note, Consent of Husband, Charge Specific, Equity, Privy Examination.

For a feme covert to bind her real property to the payment of a note given by her, she must execute a formal conveyance or some paper writing which in equity may be a charge upon her separate estate, accompanied by the written assent of her husband and her privy examination.

J. H. Metz, Admr, vs. City of Asheville. Cities and Towns, Sewerage, Police Regulations, Governmental Powers, Torts, No Liability.

In establishing a free public sewer system for the benefit of its citizens, for the use of which no charge is made, a city is exercising a governmental function, and is not responsible therein for damages alleged to have been caused by fever communicated to plaintiff's intestate by reason of the condition of a branch in which one of the sewer pipes emptied. (Cases in which the city exercises a power conferred for private purposes, distinguished by Brown, J.).

R. M. Sheppard vs. Rockingham Power Co.

1. Corporations, Shares of Stock, Voting Trust or Pool, Public Policy, Rights of Individual Owner.

A stock agreement which takes away from the stockholders all right to vote for a period of three years after a certain future time and provides for a voting committee to decide upon facts or conditions to conclude and bind all parties in interest, is contrary to public policy and void, as each stockholder must be free to cast his vote for what he deems for the best interest of the corporation.

2. Corporations, Shares of Stock, Voting, Legal Title, Beneficial Owner, Illegal Trust, Public Policy.

An agreement which separates the beneficial ownership of stock in a corporation from the legal title is contrary to public policy and void.

3. Corporations, Shares of Stock, Voting Trust, Proxy, Period of Duration.

An agreement pooling stock in a corporation which creates a voting trust with absolute powers to decide upon matters arising for a period exceeding three years cannot be considered as a proxy authorized by Revisal, 1184, a proxy is only good for the period of three years.

4. Corporations, Shares of Stocks, Voting Trust, Proxy, Powers Revocable.

An agreement to pool shares of stock in a corporation for voting purposes, if considered as a proxy, Revisal, 1184, cannot be made irrevocable.

5. Corporations, Shares of Stock, Demand, Voting Trust, Lawful Intent, Answers Insufficient.

An answer of an illegal pool for the voting of corporation stock, to a demand for possession of his stock by a purchaser of the stock so held, that it would not vote such stock illegally, etc., is insufficient.

6. Corporations, Voting Trust, Shares of Stock, Rights of Purchaser, Injunction.

A purchaser of shares of corporation stock held by an illegal voting trust may enjoin the voting thereof by the trust or it carrying out a contemplated plan of reorganization and may vote the same in all stockholders' meetings.

Action from New Hanover, heard upon injunction by Lyon, J., at Chambers, December 5, 1908. Defendant appealed.

Richmond Pearson and Wife vs. C. C. Millard

1. Consideration, Option, Lease.

A lease is a sufficient consideration to support specific performance of an option of purchase therein granted.

2. Same, Unilateral Contract, Acceptance.

An option of purchase contained in a lease is a unilateral contract binding the lessors only when it is unconditionally accepted according to its terms.

3. Same, Notice Sufficient, Compliance.

When a lessee of lands with an option of purchase notifies the agent of the lessor of his acceptance of the option of purchase, in accordance with its terms, the notice is sufficient.

4. Same, Evidence, Principal and Agent, Harmless Error.

When it is shown that a lessee, holding a lease with an option of purchase has notified the agent of the lessor, the latter residing abroad with her husband, of his acceptance of the option according to its terms, who communicated the fact to the husband, and she made no reply, it is harmless error to admit in evidence, under her objection, a letter from the husband stating that the terms of the option had not been complied with upon a different ground than that contended for in the action, whether the husband was or was not the agent of the wife.

5. Deeds and Conveyances, Contracts, Specific Performance, Option, Notice of Acceptance, Deferred Payments, Tender of Deed, Mutual Obligations.

When a lessee of lands, with an option of purchase upon making a cash payment and securing with mortgage certain notes, given for balance of purchase price, accepts unconditionally the option according to its terms, and tenders the cash payment, it is the duty of the lessor to prepare and tender the deed, and upon his failure to do so the lessee is not required to tender the notes secured by the mortgage, in order to enforce specific performance of the contract.

6. Contracts, Specific Performance, When Enforced.

While specific performance of a contract is not a matter of absolute right, yet it will be granted when it is apparent, from a view of all the circumstances of the particular case, that it will subserve the ends of justice and work no hardship upon the parties to the contract.

7. Deeds and Conveyances, Contracts, Option, Acceptance, Specific Performance.

An assignment by one partner to another of an option of purchase of the lands described in their lease, is valid and enforceable by the assignee thereof upon an unconditional acceptance of and compliance with, the terms of the option.

8. Deeds and Conveyances, Options, Assignee of Option, Personal Transactions, Deferred Payments, Waiver, Equity.

Specific performance of an accepted option to convey lands in accordance with its terms, cannot be avoided on the ground that it was made to a partnership, the option assigned to one of them, and that the transaction, providing for deferred payments, was personal to both partners, when the assignee of the option waived any right to deferred payments and is ready, able and willing to pay cash in full; and a decree providing for the payment in full and the execution of the conveyance will not be disturbed on appeal.

Action tried before Peebles, J., and a jury, at May term, 1908, of Buncombe.

Charles Melvin, by his next friend, R. L. Melvin, vs. The Piedmont Mutual Life Insurance Company.

1. Insurance, Back Dues, Partial Payment, Terms of Reinstatement, Waiver.

Evidence that an insurance company received a partial payment for insurance of back dues, on a lapsed policy, is no evidence in itself of waiver, when, under the terms of the policy, the payment of "all back dues" was necessary to reinstate the policy.

2. Same, Waiver.

When under the terms of a contract of insurance a lapsed policy would only be reinstated sixty days from the payment of all back dues, and then on condition that the insured should be in good health when the dues were paid and for five weeks thereafter, the fact that the company received a part payment of back dues raised no question of waiver for the jury, when it was shown that the insured died two days after making the partial payment.

State vs. L. C. Jackson.

1. Evidence, Statements, Silence, Admissions.

The silence of a party as an admission of statements made in his presence is to be received in evidence with great caution, and, except under well recognized conditions, is altogether inadmissible.

2. Same, Judicial Investigation.

The silence of a person present at a judicial or quasi judicial investigation when statements are made by a witness, is no evidence of his admission of the truth of the statements, unless he was afforded fair opportunity to speak.

3. Same.

Defendant had sworn out a warrant before a justice of the peace against S. and gave testimony upon the trial that S. had unlawfully stolen a ballot pending a municipal election. Said S. was bound over to court but no true bill found by the grand jury. Upon trial of defendant for perjury by reason of the oath and testimony, a State's witness was permitted to testify, over defendant's objection, that defendant was present pending a hearing or investigation had before the county commissioners concerning this election, and said nothing at that time about S. having taken the ballot. Held, error.

4. Evidence, Statements, Silence, Admissions, Interests.

The silence of one in whose presence statements are made is no evidence of his admission of the truth of the statements, when they were made under such circumstances as would not naturally call for a reply, nor ordinarily when the person silent respecting them had no present interest specially involved.

W. G. Lassiter vs. S. A. L. Railway.

Railroads, Unloading Cars, Master and Servant, Accident, Damages.

When it appears that plaintiff was injured while unloading rails from a flat car, caused by a rail bounding back in an unusual and unexplained way and striking him, that the method employed for unloading was considered the safest way, that the car had been properly loaded with rails, and sufficient help furnished in unloading them; the injury was the accident and the plaintiff cannot recover for consequent damages.

Action tried before Webb, J., and a jury, at November term, 1908, of Chatham.

Elizabeth City vs. D. B. Banks et al

1. Cities and Towns, Franchises, Powers, General Statutes, Public Utilities.

The right or power of a municipal corporation "to grant, upon reasonable terms, franchises to public utilities," did not exist by general statute prior to the enactment of Sec. 2916, sub Sec. 6 of the Revisal, effective August 1, 1905.

2. Same, Use of Streets, Legislature.

The power to grant a franchise to a business corporation over the streets of a municipality rests in the Legislature, and cannot be granted by a municipal corporation when authority is not conferred by a general statute, or special act.

3. Same, Construction of Statutes.

A municipal corporation can exercise only such powers as are expressly granted, or necessarily and fairly implied in, or incident to, the exercise of the powers which are granted to courts, resolving any fair, reasonable doubt concerning the existence of the power against the corporation.

4. Cities and Towns, Use of Streets, Gas Plants, Public Utilities.

Whether a franchise granted to a business corporation to lay gas pipes in or over the streets of a municipality for the purpose of supplying gas to the citizens is one for a public utility, quaere.

5. Same, Compensation.

The title to either the fee in the soil, or an easement is vested in a municipality for the use of the people as and for a specific highway, which, without legislative authority, cannot be diverted from that use. As to whether the Legislature can grant a right to use the streets of a municipality, to a business corporation, without compensating the adjoining owners discussed by Conner, J.

6. Cities and Towns, Use of Streets, Gas Plants, Franchise Void, Legislative Powers.

A franchise to a business corporation by a municipality to lay gas pipes over or under its streets for the purpose of selling gas to its citizens for light, fuel and power, not exceeding a certain rate or price is void without an express grant of power from the Legislature, and the result is not changed by giving the municipality the right to purchase, after a certain period of time, at a price to be ascertained by arbitration; or by the authority given the business corporation to contract with the municipality for furnishing gas.

7. Cities and Towns, Use of Streets, Gas Plants, Franchise.

The right granted to a municipal corporation to place gas pipes and mains in the public streets of a city for the distribution of gas for public and private use, is a franchise, and not a license.

9. Cities and Towns, Franchise Void, Bond For Performance, Contracts Unenforceable.

A bond given to a municipal corporation for the performance of certain work to be done under an ultra vires and void franchise granted by it, is without consideration and unenforceable.

9. Cities and Towns, Franchise Void, Ratification, Pleadings, Proof.

When a franchise given by a municipal corporation is void for want of legislative authority to grant it, and the municipality sues the one to whom the franchise was granted on his bond given for the performance of work to be done thereunder it is necessary for the municipality to plead and prove acts of ratification under a general statute, when such is relied on, and show that substantial work had been done since the operative effect of the general statute.

Action tried before Guion, J., and a jury, at November term, 1908, of Pasquotank.

Bynum Spaugh et al vs. A. J. Hartman et al

1. Inheritance, Slaves, Legitimatizing Children, Heirs at Law.

The efficacy of the act of 1879 (Revisal, Sec. 1579) legitimatizing the children of colored parents, under certain conditions living together as husband and wife, and thus giving them the rights of inheritance, depends upon two essential facts, a cohabitation subsisting at the birth of the child and the paternity of the person from whom the property claimed is derived.

2. Same, Cohabitation.

In order to come within the provision of the act of 1879 (Revisal, Sec. 1556) legitimatizing the children of colored parents living together as man and wife, etc., and thus giving them the rights of inheritance, an exclusive cohabitation must be shown as signified by the expression "living together as man and wife," and not casual sexual intercourse.

3. Marriage, Slaves, Legitimatizing Children, Evidence, Acts and Declarations.

The quasi marriage relation necessary to legitimatize the children of colored parents under the provisions of the acts of 1879 (Revisal, Sec. 1556) may be shown in evidence by reputation, cohabitation, declaration and conduct, under the same general rule of evidence applicable to establish the fact of marriage. (Nelson vs. Hunter, 140 N. C., 599, cited and approved).

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