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BANK CHECK—BILL OF EXCHANGE—CERTIFICATION.—EAKIN v. CITIZENS STATE BANK, 72 PAC. 874 (KAN.).—H. drew a check on bank; Bank promised, by a telegram, to pay it; E. became holder of check, but not on the strength of Bank's action, and sued on promise. *Held,* that a bank check is a bill of exchange, within the statutory provision that the holder of such a bill cannot sue the acceptor on his acceptance, unless said holder took the bill on the strength of the acceptance.

Though courts of eminence hold that a draft on a bank payable at a time certain in the future is a check; *In re Brown, 2* Story 502; *Champion v. Gordon,* 70 Pa. St. 475; still the weight of authority is to the contrary. *Woodruff v. Merchants' Bank,* 25 Wend. 673; 2 *Daniels, Neg. Insts.,* p. 1574. The essential element of a check is that it be payable on demand. *Harrison v. Nicollett Bank,* 41 Minn. 488; 1 *Morse, Banking,* sec. 369. It needs no acceptance. *Lester v. Given,* 8 Bush. 357. The facts of this case show a certification of a check, valid at common law. *Pope v. Bank of Albion,* 59 Barb. 226. Yet the conclusion that E., taking note on the strength of the Bank's action, cannot hold it liable, is still sound. *Carr v. National Security Bank,* 107 Mass. 48. And the classifying of a check as a bill is in line with the trend of statutory law. *Neg. Instr. Act,* sec. 187.

CARRIERS—REFUSAL TO PAY EXTRA FARE—ASSAULT ON PASSENGER.—MONNIER v. N. Y. C. & H. R. R. Co., 67 N. E. 569 (N. Y.).—A rule of the defendant company required that passengers without tickets should pay an extra charge. Plaintiff was unable to procure a ticket before boarding the train because of the absence of the ticket agent from his office. Plaintiff for that reason refused to pay extra charge and was therefore forcibly ejected from the car. *Held,* that neither the company nor the conductor is liable for assault and battery. Bartlett, Martin and Vann, JJ., *dissenting.*

This decision is based on the principle that the rule requiring an extra payment from those paying on the train is reasonable and that the conductor cannot decide from the statement of the passengers, what the facts are which may affect the operation of the rules, as this would require too much time and expose the company to fraud. In support of this proposition the court cites, *Bradshaw v. R. R.,* 135 Mass. 407; *Wiggins v. King,* 36 N. Y. Supp. 768. But those decisions were rendered in cases where the person by using ordinary diligence could have discovered and rectified the mistake in their tickets. The courts are at variance as to whether the railroad can demand more than the regular fare when the passenger's failure to provide himself with a ticket is due to the ticket office being closed. Some courts hold that not providing an opportunity is an implied revocation of the offer of reduced rates to one purchasing his ticket before boarding the train. *Crocker v. New London, etc., R. Co.,* 24 Conn. 249. *Contra, Du Laurans v. St. Paul, etc., R. Co.,* 15 Minn. 49. This discord would seem to have no application in the principal case as there was no desire to deprive the

passenger of his opportunity of buying a ticket. Taking the two propositions just stated into consideration, it would appear that the dissenting opinion, basing its decision on the absolute rights of the parties, is in accord with the weight of authority. 5 *Am. & Eng. Enc.* (2 ed.) 595.

COPYRIGHT—INFRINGEMENT—CITATIONS FROM LAW BOOKS.—EDW. THOMPSON CO. v. AM. LAW BOOK CO., 122 FED. 922.—*Held,* that where the author of a law book, in collecting all the citations of cases available, includes those found in a previously copyrighted work, and, after examining the reports, cites such as he considers applicable in the support of his own original text, the copyright of the earlier work is not infringed.

Matter, to be copyrighted, must be original; *Brightby v. Littleton,* 37 Fed. 103; or must be arranged in an original design. *Mutual Adv. Co. v. Refo,* 76 Fed. 961. Common materials cannot be so copyrighted as to preclude others from using them. *Simms v. Stanton,* 75 Fed. 6. Yet compilations of such matters in a copyrighted work cannot be copied off-hand into another work of a similar nature, either in this country; *Gray v. Russell,* 1 Story 11; 2 *Story, Eq. Jur.,* sec. 940; or in England; *Lewis v. Fullarton,* 2 Beav. 6; although use may be made of them to discover errors and omissions; *Jarrold v. Hoylston,* 3 Kay & J. 708; or as a means for reaching an original result. *Copinger, Copyright,* 91.

DURESS—THREATS TO PROPERTY.—SEARLE ET AL. v. GREGG, 72 PAC. 544 (KAN.).—*Held,* that a mortgage, procured by threats of mischief and injury to property, is to be regarded as having been made under duress.

The old common law rule was that, to constitute duress, threats must be of loss of life, loss of limit, mayhem, or imprisonment. *Bac. Abr., Title Duress, A.* The threat must have been, also, such as to overcome a will of ordinary firmness. *Co. Litt.,* 253. And this latter rule is upheld by modern decisions. *U. S. v. Huckabee,* 16 Wall. 414. But the better view is that, if the will of the party threatened is overcome, there is duress. *Foshay v. Ferguson,* 5 Hill 154; *Clark, Cont.,* 358. Hence in this country threats against property may constitute duress; *Spaids v. Barrett,* 57 Ill. 289; the English courts disagree. *Skeate v. Beale,* 11 Ad. & E. 983. The tendency seems to be to conform our law to the rule long a part of the Civil Law. *Domat, Civ. Law,* pt. I, bk. I, tit. 18, 82.

EXECUTORS AND ADMINISTRATORS—LIMITATIONS—DEBTS—NEW PROMISE.—FINDLEY v. CUNNINGHAM ET AL., 44 S. E. 472 (W. VA.).—*Held,* that an executor or administrator cannot make a new promise to pay a debt of his decedent either before or after the debt has been barred by the statute of limitations. McWhorter, P., and Dent, J., *dissenting.*

The reports show but few decisions on the point involved, and they are of an uncertain character. In *Forney v. Benedict,* 5 Penn. St. 226, it is held that a promise to pay by the executor, given before the debt is barred, must be supported by a sufficient consideration. The executor in the case above is held personally liable. Such a promise is considered in *Case v. Cushman,* 1 Barr. (Penn.) 246, but a *nudum pactum.* The determining factor in *Ricketts v. Ricketts,* 4 Lea (Tenn.) 163, is the special request of the executor for a definite time in which to collect the decedent's assets. Otherwise his promise to pay will not prevent the bar of the

statute. The test in *Johnson v. Ballard,* 11 S. C. 178, is the "willingness to pay" on the part of the executor. An expression of such willingness furnishes a new starting point for the running of the statute. The opinion in question relies quite as much on the weight of authority as on the construction of its own statute for the decision rendered. Prior to a law of 1849, this court held that it was competent for an executor, by his promise to pay a debt of the testator, to exempt the case from the operation of the statute of limitations, and that it was no *devastavit* in him to do so. *Bishop v. Harrison,* 2 Leigh (Vir.) 534. It may be well said that the main opinion has done much to clarify the law on this subject.

FERRY FRANCHISE—VOLUNTARY TRANSFER.—EVANS V. KROUTINGER ET AL., 72 PAC. 882 (IDAHO).—*Held,* that a ferry franchise may be voluntarily transferred.

In England the right to transfer a ferry franchise is apparently unquestioned. *Pim v. Currell,* 6 M. & W. 234. And the weight of authority in this country corresponds. *Dundy v. Chambers,* 23 Ill. 369. Such a franchise, however, grows out of a grant by the state. 3 *Kent, Com.* 458. It is a contract wherein the operator assumes certain duties to the public. *Dufour v. Stacey,* 90 Ky. 288. The law of contracts is that duties assumed in them cannot be assigned. *Clark, Cont.,* sec. 223. It is difficult to see why this does not apply to ferry franchises. *The Maverick,* 1 Sprague 23. Indeed some of our courts hold that it does. *Thomas v. Armstrong,* 7 Cal. 286; *Knott v. Frush,* 2 Or. 237. And even the English courts apply a like reasoning to render railroad franchises untransferable. *Winch v. Birkenhead Ry. Co.,* 13 Eng. L. & Eq., 506.

INJUNCTION—LABOR STRIKERS—INTERFERENCES WITH INTERSTATE COMMERCE.—KUNDSEN ET AL. V. BENN ET AL., 123 FED. REP. 636.—*Held,* that employes who have left the service of an employer, because of strike, have no right to interfere with employer's business by persuading, or otherwise attempting to compel, other workmen to leave their work, and an injunction will lie to prevent such interference.

While the opinion of the court in this case is based on well settled principles, a further step has been taken in the enjoining of persuasion by strikers as a means to induce fellow workmen to leave their employment. Acts of violence and force, of course, have been repeatedly enjoined. *In re Debs,* 158 U. S. 725; *U. S. v. Amalgamated Council,* 54 Fed. 994; *Toledo R. R. v. Penn. Co.,* 54 Fed. 730. But all the previous cases have stopped short of declaring the acts of strikers unlawful when the boundary line between force and threats and mere persuasion has been reached. The right of federal courts to enjoin strikers on the ground of interference with interstate commerce has been most recently passed upon in the case of *Wabash R. R. v. Hannahan.* See 12 *Yale Law J.* 448.

MORTGAGE—SALE UNDER POWER—LIMITATIONS.—MENZEL ET AL. V. HINTON ET AL., 44 S. E. 385 (N. C.).—A mortgage was given containing a power of sale. *Held,* that the right of the mortgagee to foreclose by execution is not affected by Code 1883, sec. 152, prescribing a ten-year limitation for an action to foreclose a mortgage or deed of trust, but is unlimited as to time. Clark, C. J., and Douglas, J., *dissenting.*

Mortgage security in general is not deemed to come within any branch of the statute of limitations; *Union Bank of Louisiana v. Stafford,* 12 How. 340; *Heyer v. Pruyn,* 7 Paige (N. Y.) 465, overruling *Jackson v. Sackett,* 7 Wend. (N. Y.) 94, although this rule does not obtain in a few of the western States. *Lord v. Morris,* 18 Cal. 482. The power of sale granted the mortgagee does not affect the security principle involved. The condition must be satisfied. *Joy v. Adams,* 26 Maine 333. In *David v. Maynard,* 9 Mass. 242, and *Lockwood v. Sturdevant,* 6 Conn. 388, notes were barred by the statute while foreclosure on the mortgage securing them was allowed. But see *contra Hutaff v. Adrian,* 112 N. C. 259, on which the vigorous dissenting opinions are based.

PAYMENT—NOTE.—WEBB ET AL. V. NAT. BANK OF THE REPUBLIC, 72 PAC. 520 (KAN.).—*Held,* that the taking of a note from a debtor or a third person for a pre-existing debt is not payment, unless it is expressly agreed to accept such note as payment.

Certain courts dissent from the view. *Thacher v. Dinsmore,* 5 Mass. 299. They reason that it makes possible a twofold payment of the debt. *Smith v. Bettger,* 68 Ind. 254. But the weight of authority supports it. *Peter v. Beverly,* 10 Pet. 532. At the least it works a suspension of the creditor's remedy for the duration of the note. *Cox v. Keiser,* 15 Ill. App. 432. Under either view the rule states merely a rebuttable presumption. *Bunker v. Barron,* 79 Me. 62; *Story, Prom. Notes,* sec. 104. And in all jurisdictions the creditor may agree that the note shall constitute payment. *Seltzer v. Coleman,* 32 Pa. St. 493. In this case the original debt is extinguished. *Hoopes v. Strasburger,* 37 O. St. 390. It revives, however, if there is fraud in procuring the acceptance of the note; *Susquehanna Co. v. White Co.,* 66 Md. 444; or if it is worthless. *Fleig v. Sleete,* 43 O. St. 53.

PRISON RECORDS—PHOTOGRAPHS—MEASUREMENT OF CRIMINALS—MANDAMUS.—IN RE MOLINEUX, 83 N. Y. SUPP. 943.—This was an application for mandamus to compel the State Superintendent of Prisons to surrender certain photographs and measurements taken of the relator while imprisoned as a State convict. The relator, upon a new trial, was acquitted. *Held,* that mandamus did not lie.

The opinion of the court was based on the rule that mandamus will only lie to compel a State official to perform a duty imposed on him by State laws, which did not cover this case, and also on the ground of public convenience. The same question has been considered before in the same state and a like conclusion reached. *People, ex rel. v. York,* 59 N. Y. Supp. 418; *Owen v. Partridge,* 82 N. Y. Supp. 248. The decision is in line with the previous tendency of the courts of New York and other States to restrict redress for invasion of the right of privacy. As the case of *Roberson v. Rochester Folding Box Co.,* 171 N. Y. 538, where the court of appeals denied an injunction to restrain the unauthorized use of photographs for advertising purposes. The violation of individual rights in such cases was, however, further prevented by an act passed at the last session of the State legislature and it would seem that such legislative interference should be extended to protect innocent persons whose likeness and measurements have been placed in the so-called "rogues' gallery" because of former conviction. See "Comment" in this issue.

RAILROADS—INJURY TO PERSON ON TRACK—CONTRIBUTORY NEGLIGENCE.—ATCHISON T. & S. F. RY. CO. v. SCHWINDT, 72 PAC. 573 (KAN.).—*Held,* that where a railroad company has its tracks in the streets, one who, without the excuse of necessity or convenience, walks on them and is injured by the negligence, but not wantonness, of the company is precluded from recovery.

Where a railroad owns its right of way, one who walks upon it is a trespasser, and can hold the company liable only for injuries due to its wantonness. *Johnson v. B. & M. R. R.,* 125 Mass. 75; *Wood, R. R's.,* sec. 320. But a railroad built in a highway has no exclusive control therein. *Middlesex R. Co. v. Wakefield,* 103 Mass. 261; *Elliott, Roads & Streets,* 591. The rights of the public are not impaired. *Railway Co. v. State,* 87 Tenn. 746. The company is liable for injuries due to its negligence; *Brooks v. Lincoln St. Ry. Co.,* 22 Nev. 816; unless contributory negligence intervenes. *McMahon v. No. Cent. Ry. Co.,* 39 Md. 438. The exception in the case of persons walking on the track rests on a presumption of contributory negligence. This presumption is usually held to be rebuttable; *Jones v. Union Ry. Co.,* 18 N. Y. App., Div. 267; *Byrne v. Boadle,* 2 H. & C. 722; and should be used with care. *Thomas,* Neg., 576.

TRADE—UNFAIR COMPETITION—DECEPTION OF PUBLIC.—HOPKINS AMUSEMENT CO. v. FROHMAN, 67 N. E. 391 (ILL.).—Frohman was plaintiff in court below and had contracted with the authors of the drama, "Sherlock Holmes," for the exclusive right of producing same. He had placed it before the public in the principal cities of the United States at large expense. Hopkins Amusement Co. advertised and threatened to produce a play known as "Sherlock Holmes, Detective." *Held,* injunction was justified on the ground of deception of the public.

The ultimate benefit of a trade name results to the originator of the name and equity provides a remedy to prevent his being deprived of it by unfair competition. *Drake Medicine Co. v. Glessner,* 67 N. E. (Ohio) 722; XII *Yale Law Jour.* 49. The court, however, in this instance granted an injunction for the purpose of preventing an imposition on the public irrespective of whether Frohman was entitled to a trade-mark in the name.