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NOTES OF CASES.

POSSESSION adverse to the owner of minerals is held, in *Murray* v. *Allard* (Tenn.) 39 L. R. A. 249, not to be held by one who uses the land merely for agricultural purposes.

FAILURE to enter the yeas and nays for second and third readings of a bill upon the legislative journal is held, in *Stanly County* v. *Snuggs* (N. C.), 39 L. R. A. 439, to be fatal to the statute, under a constitutional provision expressly requiring such entry.

DEPOT GROUNDS or yard limits which need not be fenced are held, in *Rabidon* v. *Chicago & W. M. R. Co.* (Mich.), 39 L. R. A. 405, to extend to a switch about a mile from a depot to which a switch engine runs frequently at irregular intervals without receiving orders as against other trains.

A DECREASE in the value of bonds by the lessening or wearing away of premium on account of the bonds reaching maturity is held, in *McLouth* v. *Saxton* (N. Y.), 39 L. R. A. 230, to be a loss, as between life tenants and remaindermen, or persons having equivalent relations to each other, to be borne by the *corpus* of the estate, where the bonds were transmitted by will to trustees, with a direction that the life tenants shall receive the full income.

WIFE AS WITNESS FOR HUSBAND.—In *Clarke* v. *State* (Ala.), 23 South. 671, the defendant was indicted for the murder of his infant child, born alive, but dying as the result of violence inflicted by the defendant upon the mother (his wife) during pregnancy. The wife was offered as a witness by the accused husband, but the lower court rejected her as incompetent, on common law principles. On appeal, this was held error, on the ground that a constituent element of the offence charged being personal violence to the wife, she was competent to testify *against* her husband, and therefore *for* him.

Says Brickell, C. J.:

"The gravamen, an indispensable constituent of the offense charged in the indictment, is the unlawful beating of the mother while pregnant, causing the death of the child after birth. Though not alleged in the indictment, the fact was shown by the evidence that she was, at and prior to the beating, the wife of the defendant, and the next question for consideration is her competency as a witness for the defendant. In relation to the competency of husband and wife as witnesses for or against each other in criminal cases or proceedings, we have no statute which changes or modifies the common law. By the common law, in all cases of personal injuries committed by husband or wife against each other the injured party is an admissible witness against the other. 1 Greenl. Ev., sec. 343; 1 Bish. New Cr. Proc., secs. 1151–1155; Whart. Cr. Ev., sec. 393 *et seq.* This exception to the general rule excluding husband and wife as witnesses for or

against each other, it may be, originally grew out of a supposed necessity of the protection of the wife against personal violence, threatened or actual, by the husband. Whatever may have been the origin of the exception, it is now recognized as extending to all cases in which the element of personal violence to the wife is a necessary constituent of the offense. *State* v. *Dyer*, 59 Me. 303. The case cited was an indictment against the husband and another for using an instrument with intent to procure the miscarriage of the wife while pregnant, and is not, in reason or principle, distinguishable from the present case. Wherever the element of personal violence is a necessary constituent of the offense, every reason exists upon which the exception rested originally, and for the sake of public justice the wife should be admitted as a witnesss. And in all cases in which she is admissible against, she is admissible for, the husband. Whart. Cr. Ev., sec. 394 a; *Com.* v. *Murphy*, 4 Allen. 491; *State* v. *Neill*, 6 Ala. 685; *Tucker* v. *State*, 71 Ala. 342. The court below erred in the exclusion of the wife as a witness."

DEEDS TO TAKE EFFECT AT DEATH OF GRANTOR.—In *Pinkham* v. *Pinkham* (Neb.), 76 N. W. 410, it is held that a deed purporting to convey lands, but containing a provision that it is not to take effect until the grantor's death, is testamentary in its character, and is a will rather than a deed. Before marriage, the grantor conveyed certain lands to his grandson, by deed with warranty of title. The deed was delivered and recorded. It contained the provision that "this deed is to take effect and be in full force from and after my death." The grantor subsequently married. Upon his death his widow claimed dower in the lands mentioned in the deed, and his heirs the fee-simple.

It was held that the widow was entitled to dower, and that the remainder passed, not to the grantee, but to the grantor's heirs at law—the latter, presumably, on the ground that the marriage revoked the testamentary paper, or that it was not executed with the necessary formality to operate as a will. We say 'presumably,' since the court does not assign reasons for its ruling on this point.

"We are satisfied," says the court, "that the instrument was not effective as a deed. It did not purport to be effective as a conveyance until the death of Calvin Pinkham, so that the absolute legal title to the premises were in him at the time of his death. A deed must pass a present interest in the property, even though the right of possession and enjoyment may not accrue until some future period. A will passes no title until after the testator's death, and this marks the essential difference between a deed and a will. The great weight of authority sustains the proposition that an instrument, in the form of a deed, which takes effect and becomes operative alone upon the death of the maker, is testamentary in character, and is not a deed. Devl. Deeds, sec. 309; *Habergham* v. *Vincent*, 2 Ves. Jr. 204; *Bigley* v. *Souvey*, 45 Mich. 370, 8 N. W. 98; *Singleton* v. *Bremar*, 4 McCord, 12; *Conrad* v. *Bell* (Minn.) 61 N. W. 673; *Blackman* v. *Preston* (Ill. Sup.) 15 N. E. 42; *Donald* v. *Nesbitt* (Ga.) 15 S. E. 367; *White* v. *Hopkins* (Ga.) 4 S. E. 863; *Sperber* v. *Balster*, 66 Ga. 317; *Hazleton* v. *Reed* (Kan. Sup.) 26 Pac. 450; *Nichols* v. *Emery* (Cal.) 41 Pac 1089; *Hannig* v. *Hannig* (Tex. Civ. App.) 24 S. W. 695; *Leaver* v. *Gauss*, 62 Iowa, 314, 17 N. W. 522; *Turner* v. *Scott*, 51 Pa. St. 126.

"In the last case a father executed a warranty deed to his son, reserving the