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## RECENT CASES

ACTION—RIGHTS ARISING AFTER COMMENCEMENT.—MARINNA & B. R. CO. v. MAUND, 56 So., 670 (FLA.).—*Held*, that a complainant cannot supply the want of a valid claim at the commencement of the action by the acquisition or accrual of one during the pendency of the action.

The preponderance of authority holds with the principal case that the want of a valid claim at the commencement of a suit cannot be supplied by the later accrual of one. *Dean v. Metropolitan El. R. Co.*, 119 N. Y., 540; *Turner v. Pierce*, 31 Wis., 342; *Wheatland v. Lovering*, 10 Gray (Mass.), 16; *Hovey v. Sebring*, 24 Mich., 232. It follows from this that a plaintiff cannot recover on a pending action which accrued after the institution of such action, even though such cause of action relate to the subject-matter of the pending action. *Stein v. Burden*, 24 Ala., 130; *Hamlin v. Race*, 78 Ill., 422; *Hudson v. Burk*, 48 Mo. App., 314; *Stanley v. Turner*, 68 Vt., 315. A few cases support a variation from the general rule in holding that the fact that a cause of action had not accrued when the original petition was filed is immaterial, where it has accrued when the amended petition was filed, *Burns v. True*, 5 Tex. Civ. App., 74; *Culbertson v. Cabeen*, 29 Tex., 247; *Cox v. Reinhardt*, 41 Tex., 591. It is also held, in a limited number of decisions, that if a suit is commenced before the entire obligations sued on are due, but some obligations become due before judgment, the court may, in its discretion, allow an amendment of the pleading so as to cover the whole demand. *Neilson v. Pool*, 17 La., 209; *Warfield v. Oliver*, 23 La. Ann., 612. Where a plaintiff did not have the right to sue on a portion of its claim at the time it commenced its first suit, it was held that it could not be required to introduce its cause of action thereon into such suit by amendment after the same accrued. *Clafin v. Mather Electric Co.*, 98 Fed., 699.

ADVERSE POSSESSION—ACTUAL POSSESSION.—MARIETTA FERTILIZER CO. v. BLAIR, 56 So., 131 (ALA.).—*Held*, that adverse possession of the whole of a tract, within the boundaries described by the color of title, by actual occupancy of a part thereof is, in legal contemplation, actual, and not constructive, possession, and may be restricted, as to the part not actually occupied, by the actual occupancy of another.

The general rule is that actual possession of a part of a tract of land, under color of title to the whole tract, is sufficient to acquire possession of all the lands embraced in the instrument under which the claim is made. *Donohue v. Whitney*, 133 N. Y., 178; *Baucum v. George*, 65 Ala., 259; *Heinemann v. Bennett*, 144 Mo., 113; *Libby v. Young*, 103 Iowa, 259. In accord with the minority rule the principal case characterizes the possession acquired by occupancy of part under color of title as "actual possession" to the extent of the boundaries contained in the writing. *Bell v. Longworth*, 6 Ind., 273; *Black v. Tenn. Coal Co.*, 93 Ala., 109. But in the

great majority of cases this possession is characterized as "constructive possession". *Bellfountaine Imp. Co. v. Niedringhaus*, 181 Ill., 426; *Goodwin v. McCabe*, 75 Cal., 584; *Porter v. Miller*, 84 Tex., 204. Where the true owner of a tract of land is in actual possession of a portion thereof, a person who enters into the actual possession of another portion will be deemed to be in possession only to the extent of his occupation. *Hunnicut v. Peyton*, 102 U. S., 333; *Bellis v. Bellis*, 122 Mass., 414. When neither claimant has a true title, the prior constructive possession must yield to the actual possession of the subsequent claimant. *N. Y. Cent. R. R. Co. v. Brennen*, 136 N. Y., 584; *Santee River Cypress Co. v. Jones*, 50 Fed., 360.

ADVERSE POSSESSION—COLOR OF TITLE—VOID TAX DEED.—HAMNER ET AL. V. YAZOO DELTA LUMBER CO., 56 So., 466 (Miss.).—*Held*, a tax deed, though void on its face, is good color of title on which to found a claim of title by adverse possession.

The authorities agree that a tax deed, regular on its face, is sufficient to support an adverse possession under color of title. *Pillow v. Roberts*, 54 U. S., 472; *Lewis v. Barnhart*, 43 Fed., 854; *Lennig v. White*, 20 S. E., 831; *Webber v. Clark*, 74 Cal., 11; *Phillip v. People*, 11 Ill. App., 340; *Taylor v. Hamilton*, 173 Ill., 392; *Morrison v. Norman*, 47 Ill., 477; *Wilson v. Taylor*, 119 Mo., 626. When the tax deed is void on its face there is a conflict of opinion as to whether or not it gives good color of title. The weight of authority holds with the principal case—that a tax deed, though void on its face, is still good color of title, and possession under it is adverse. *Edgerton v. Bird*, 6 Wis., 527; *Lindsay v. Fay*, 25 Wis., 640; *Wilson v. Atkinson*, 77 Cal., 485; *Stovall v. Fowler*, 72 Ala., 77; *Washburn v. Cutter*, 17 Minn., 361; *English v. Powell*, 119 Ind., 93; *Reusons v. Lawson*, 91 Va., 226. There is, however, a distinct line of decisions which hold that a tax deed, void on its face, is inadmissible as color of title in support of a claim of adverse possession. *Moore v. Brown*, 52 U. S., 472; *Redfield v. Parks*, 132 U. S., 239; *Keeffe v. Bramhall*, 3 Mackey, 551; *Webber v. Clark*, 74 Cal., 11; *Scott v. Delaney*, 87 Ill., 146; *Hoffman v. Harrington*, 28 Mich., 90; *Elliot v. Pierce*, 20 Ark., 508; *Shoat v. Walker*, 6 Kan., 65.

BANKS AND BANKING—CHECKS—CREDIT—LIABILITY.—J. M. ROBINSON & CO. V. BANK OF PIKEVILLE, 142 S. W., 1065 (KY.).—*Held*, that where a bank receives, not for collection, but as so much money, a check, and places the amount to the credit of a customer, it assumes liability for such amount to all persons to whom the customer may give checks.

The relationship between a bank and a general depositor is that of debtor and creditor. *Foley v. Hill*, 2 H. L. Cas., 27; *Marine Bank v. Chandler*, 27 Ill., 525; *Chapman v. White*, 6 N. Y., 412. When this relation is formed by a depositor placing money in the bank, the law implies a promise on the part of the bank to repay all moneys so deposited. *Wetherell v. O'Brien*, 140 Ill., 263; *Carr v. Nat'l Security Bank*, 107 Mass.,