

violent, and accidental means, and approved an instruction to the jury that:

"The term 'accidental' was used in the policy in its ordinary, popular sense, as meaning 'happening by chance; unexpectedly taking place; not according to the usual course of things; or not as expected'; that, if a result is such as follows from ordinary means, voluntarily employed, in a not unusual or unexpected way, it cannot be called a result effected by accidental means; but that if, in the act which precedes the injury, something unforeseen, unexpected, unusual occurs, which produces the injury, then the injury has resulted through accidental means."

We are unable to distinguish the case at bar from those to which we have referred, and the case last cited is of controlling authority in this court. The abrasion of the skin of the toe of the deceased was unexpectedly caused, without design on his part, by unforeseen, unusual, and unexpected friction in the act of wearing the shoe which preceded the injury. It was not the natural or probable consequence of that act, and it was, therefore, produced by accidental means. The judgment below must be affirmed, with costs; and it is so ordered.

---

STAPYLTON v. TEAGUE. SAME v. ANDERSON et al. SAME v. CARMICHAEL.

(Circuit Court of Appeals, Fifth Circuit. February 15, 1898.)

Nos. 602, 603, and 604.

**BILLS AND NOTES—ACCOMMODATION PAPER—NATIONAL BANK RECEIVER.**

A national bank receiver cannot recover upon notes made for the accommodation and sole benefit of the bank, without consideration.

In Error to the Circuit Court of the United States for the Southern District of Florida.

These were three suits brought by G. C. Stapylton, as receiver of the First National Bank of Ocala, upon notes made for the accommodation of the bank. Judgments were given for the defendants in the court below, and the plaintiff sued out these writs of error.

J. C. Cooper, for plaintiff in error.

R. H. Liggett, for R. L. Anderson and others.

Before PARDEE and McCORMICK, Circuit Judges, and SWAYNE, District Judge.

PARDEE, Circuit Judge. These three cases are alike in the controlling facts, and may be disposed of in one opinion. On the undisputed facts in the case, the notes sued on were given without consideration and for the accommodation and advantage of the First National Bank of Ocala. The bank had full notice of this, if it is possible to charge a bank with notice to and the knowledge of its managing officers. The bank was not an innocent holder, nor even a holder for value, and to allow a recovery in the interest of the bank would be the grossest injustice. The receiver bringing these suits stands in the shoes of the bank. The trial judge directed a verdict for the defendants; and, as in no aspect of the case do we think the

plaintiff can recover, it is wholly unnecessary to consider in detail the elaborate assignments of error. The judgments of the lower court were right, and they are affirmed.

---

**BADGETT v. JOHNSON-FIFE HAT CO.**

(Circuit Court of Appeals, Eighth Circuit. February 14, 1898.)

No. 939.

**1. TRIAL—INSTRUCTION—WAIVER OF ERROR.**

A party cannot object that the court predicated an instruction on a state of facts unsupported by the evidence, when he himself asked an instruction involving the same state of facts.

**2. ASSIGNMENT FOR BENEFIT OF CREDITORS—VALIDITY—EVIDENCE.**

The incorporation into a deed of assignment of a provision that the assignee should not take possession of the property until he had filed an inventory and bond, which is only what is required by the statute in every case of assignment, does not render inadmissible evidence aliunde to show that a secret agreement to the contrary existed between the parties.

**3. SAME—EVIDENCE.**

Upon an issue as to the existence of a secret agreement between an assignor and his assignee that the latter should take possession of the assigned property at once, in violation of the statute, evidence of acts of possession by the assignee, immediately following the execution of the deed, is admissible to be considered with other circumstances.

In Error to the United States Court of Appeals in the Indian Territory.

This is an action by attachment by the Johnson-Fife Hat Company against J. D. Blosser, in which W. R. Badgett interpleaded, claiming the property attached by virtue of a deed of general assignment made by Blosser to him prior to the attachment. A judgment against the interpleader was affirmed by the court of appeals for the Indian Territory, and he brings the case on error to this court.

William T. Hutchings, for plaintiff in error.

John B. Turner and James B. Burckhalter (George B. Denison and N. B. Maxey, on the brief), for defendant in error.

Before SANBORN and THAYER, Circuit Judges, and PHILIPS, District Judge.

PHILIPS, District Judge. On the 9th day of November, 1894, one J. D. Blosser, a merchant of Chelsea, Cherokee Nation, Indian Territory, executed and delivered a deed of assignment to the interpleader, W. R. Badgett, conveying to him, in trust, the goods and merchandise in question. The deed conveyed all the property of the said assignor for the benefit of creditors, with preferences, as was permissible under the statute regulating assignments applicable to that territory. This deed was delivered to the assignee perhaps the day following its execution, but the inventory and bond required by statute to be made out by the assignee were not filed with the clerk of the court until November 24, 1894. The deed of assignment contained the following provision: