

would not pass under section three of the will. Neither the note nor the uncashed check would pass under section three, but under section seven of the will. It is held that promissory notes are securities. *Jennings v. Davis*, 31 Conn. 134, 139; *Wagner v. Scherer*, 89 N. Y. App. Div. 202; *Bank of Commerce v. Hart*, 37 Neb. 197, 202. It has been decided in this state that "a bank check is substantially the same as an inland bill of exchange; and, in general, is governed by the law applicable to bills of exchange and promissory notes." *Barnet v. Smith*, 30 N. H. 256, 264.

The executor is advised to pay to the city of Dover \$3,000, the income of which is to be expended by said city for the indigent children in its public schools, for the purposes specified in section six of the testatrix's will; and that the note of Mrs. Isabella Anderton and the uncashed check on the Strafford National Bank pass under section seven of said will.

Case discharged.

All concurred.

Carroll, }
May 4, 1915. }

JOSEPHINE R. BROOKS v. WILLIAM E. BROOKS.

Section 2, chapter 104, Laws of 1911, does not empower the superior court to appoint a guardian of a minor upon an original petition, but prevents section 1 of the act being so construed as to take from any court of competent jurisdiction authority to appoint guardians of minors whose parents are living.

LIBEL FOR DIVORCE. Trial at the May term, 1914, of the superior court before *Sawyer*, J., who found that the plaintiff's charges were not sustained and dismissed the libel. Subsequently, a motion filed by the plaintiff in the superior court during the pendency of the libel, requesting the appointment of a guardian for her minor child, was dismissed by *Pike*, C. J. To the foregoing finding and rulings the plaintiff excepted.

Marion W. Cottle (by brief and orally), for the plaintiff.

Walter D. H. Hill, for the defendant.

YOUNG, J. The plaintiff failed to produce evidence to satisfy the court of the justness of her cause of action; and as it cannot be said

that the court erred in coming to this conclusion, she takes nothing by her first exception.

The plaintiff concedes that section 13, chapter 175, of the Public Statutes, has no application, but contends that section 2, chapter 104, Laws of 1911, authorizes the appointment of a guardian. Section 2 provides, in substance, that nothing contained in section 1 shall prevent any court of competent jurisdiction from appointing a guardian of the person of a minor. It is therefore the office of section 2 to prevent section 1 being so construed as to take from the court jurisdiction to appoint guardians of minors whose parents are living, and not to confer such jurisdiction. The probate court is specially authorized to appoint guardians of minors. P. S., c. 178, s. 1.

Exceptions overruled.

All concurred.

Merrimack, }
May 4, 1915. }

EMMA C. COLBY v. AMERICAN EXPRESS Co.

Where goods delivered to an express company for carriage to another state are lost in transit, the rights and liabilities of the parties are governed by federal law.

Under federal law, a regulation filed with the interstate commission by an express company, limiting its liability for goods consigned to a specified amount in the absence of a declaration of greater value by the shipper, is conclusively presumed to be a part of the contract of carriage and governs the company's liability.

Where a case has been transferred upon findings from evidence and an agreement of counsel as to certain facts, it may be amended, upon motion of one of the parties, by a finding of additional facts not included in the agreement nor contradictory thereto.

ASSUMPSIT, to recover \$166.25, the value of a package delivered to the defendants at Concord, New Hampshire, for transportation to Buffalo, New York, at which place it failed to arrive. Transferred from the April term, 1914, of the superior court by Branch, J., upon findings from evidence and an agreement of counsel as to certain facts.