recovered, vary with the usages and legal enactments of the different States. These laws, in various forms and in numerous cases, have been sanctioned by this court." And again: "For the purpose of revenue the Federal Government has taxed bills of exchange, foreign and domestic, and promissory notes, whether issued by individuals or banks. Now, the Federal Government can no more regulate the commerce of a State than a State can regulate the commerce of the Federal Government; and domestic bills or promissory notes are as necessary to the commerce of a State as foreign bills to the commerce of the Union. And if a tax on an exchange broker who deals in foreign bills be a regulation of foreign commerce, or commerce among the States, much more would a tax upon State paper, by Congress, be a tax on the commerce of a State."

If foreign bills of exchange may thus be the subject of State regulation, much more so may contracts of insurance against loss by fire.

We perceive nothing in the statute of Virginia which conflicts with the Constitution of the United States; and the judgment of the Supreme Court of Appeals of that State must, therefore, be affirmed. Ordered accordingly.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

SUPREME COURT OF NEW YORK.[3]

SUPREME COURT OF WISCONSIN.[4]

ADMIRALTY.

Collision.—Nautical rules require, that where a steamship and sailing-vessel are approaching from opposite directions, or on intersecting lines, the steamship, from the moment the sailing-vessel is seen, shall watch, with the highest diligence, her course

1 From J. Wm. Wallace, Esq.; to appear in vol. 8 of his reports.

2 From Hon. N. L. Freeman, Reporter; to appear in 47 Ills. Rep.

3 From Hon. O. L. Barbour; to appear in vol. 54 of his Reports.

4 From Hon. O. M. Conover, Reporter; to appear in 23 or 24 Wis. Rep.

and movements, so as to be able to adopt such timely measures of precaution as will necessarily prevent the two boats coming in contact: *The Carroll*, 8 Wall.

Porting the helm a point, when the light of a sailing-vessel is first observed, and then waiting until a collision is imminent, before doing anything further, does not satisfy the requirements of the law: *Id.*

Fault on the part of the sailing-vessel, at the moment preceding collision, does not absolve a steamer which has suffered herself and a sail-vessel to get into such dangerous proximity as to cause inevitable alarm and confusion, and collision as a consequence. The steamer, as having committed a far greater fault in allowing such proximity to be brought about, is chargeable with all the damages resulting from the collision: *Id.*

ASSUMPSIT.

Part Performance of Special Contract.—Where there has been only a part performance of a special contract for work at a specified price, the recovery on a *quantum meruit* (if any) cannot be at a higher rate than that stipulated; and defendant is entitled to offset his damages by reason of breach of contract on plaintiff's part: *Bishop* v. *Price*, 23 or 24 Wis.

ATTORNEY.

Not to be Surety.—Under Ch. 21, Laws of 1859, attorneys practicing in this State are disqualified from becoming sureties on any undertaking in an action: *Cothren* v. *Connaughten*, 23 or 24 Wis.

Courts do not take judicial notice of who are *practicing* attorneys, but an objection to a surety on that ground must be sustained by proof: *Id.*

Where a motion to dismiss an appeal because the surety on the appeal bond was a practicing attorney, was denied for lack of such proof, the validity of the bond could not be impeached on that ground at any later stage of the action, although the requisite proof was then supplied: *Id.*

Where plaintiff's attorney, by agreement with his client, is to be paid out of the prooeeds of the judgment, a settlement by stipulation between the parties to the suit will not be set aside as fraudulent without proof of a fraudulent intent *in the defendant*, although such intent on plaintiff's part is shown, and he is insolvent: *Courtney* v. *McGavock*, 23 or 24 Wis.

The attorney in such case should notify defendant of the agreement between himself and his client, after which such a settlement would be held fraudulent: *Id.*

Where the action is for unliquidated damages, the attorney has no lien for his services *before* judgment: nor (*it seems*) any lien on the judgment when rendered, without due notice to the defendant. Otherwise, where the action is on a written instrument in the attorney's possession: *Id.*

BAILMENT.

Loss of Article in Hands of Bailee.—A naked verbal promise to return, in good order and at a specified time, a thing hired does not, as matter of law, import a contract on the part of the hirer to insure it against loss occurring without his fault: *Field* v. *Brackett*, 56 Me.

BANKS.

Set-off of Notes.—To an action in the name of an insolvent bank, prosecuted by direction of the receivers against an indorser of a promissory note, the defendants filed in set-off certain bills of the bank, some of which he held when the bank failed and passed into the hands of the receivers, and the others he purchased subsequently:—*Held*,

1. That the amount of such of the bills as he held when the bank became insolvent and passed into the hands of the receivers, should be allowed in set-off; but

2. That upon those purchased by him subsequently, the defendant must seek his remedy under R. S., c. 47, §§ 70, 71, 72, 73 and 74: *American Bank* v. *Wall*, 56 Me.

Care in payment of Money.—Officers of savings institutions are to be held to the exercise of reasonable care and diligence: *Sullivan* v. *Lewiston Ins. for Savings*, 56 Me.

In paying money upon the presentment of a deposit book, reasonable care and diligence do not necessarily require the disbursing officer of a savings institution to demand strict proof of the identity of the depositor: *Id.*

The plaintiff made a deposit in the defendant institution, received a book of deposit containing a copy of its by-laws, which, in accordance with their provisions, he thereupon "subscribed and thereby signified his assent to," and which provided that "all deposits shall be entered in a book to be given the depositor, which shall be his voucher and the evidence of his property in the institution," and that "the money of any depositor may be drawn either personally, or by witnessed order in writing of the depositor, but no money shall be paid to any person without the production of the original book, that such payment may be entered therein," and that "the institution will not be responsible for loss sustained when a depositor has not given notice of his book being stolen or lost, if such book be paid in whole or in part on presentment." Subsequently the depositor's book was stolen, presented, and paid by the disbursing officer of the institution in good faith. In an action by the depositor to recover the deposit:—*Held*, that if the disbursing officer, using reasonable care and diligence, but lacking present means of identifying the depositor, pay *bona fide* on presentation of the book by one apparently in the lawful possession of it as the owner thereof, the institution has the right to rely upon the contract of the depositor safely to keep the evidence of his claim, or make known its loss before it is presented for payment: *Id.*

CERTIORARI.

Power of Court Upon.—On a common law certiorari, the Supreme Court is not restricted to the inquiry whether the court below acted without its jurisdiction, but may go further, and examine whether any error in the proceeding has been committed: *The People ex rel., Martino et al.* v. *The Board of Commissioners of Pilots*, 54 Barb.

COLLISION. See *Admiralty.*

COMMON CARRIER. See *Insurance*

Connecting Routes.—Where the first of several railroad companies or other carriers, whose routes connect the point of shipment and destination of goods, guarantees the shipper that the whole cost of transportation shall not exceed a certain sum (without undertaking itself to carry the goods through), each of the others may charge for the transportation in accordance with its own rates, without regard to such guaranty: *Schneider* v. *Evans et al.*, 23 or 24 Wis.

While the *first* carrier may be entitled in fact to no more than the difference between the amount stipulated and the sum of the lawful charges made by the others, the *last* one may recover from the shipper or consignee *back charges* paid at the usual rates to the previous carriers, *including the first*, although the sum of all such charges exceeds the stipulated sum—at least where the successive carriers are not affected with notice of the stipulation between the shipper and the first: *Id.*

CONFEDERATE STATES.

Purchase of Products of States in Insurrection—Act of 1864.—The 8th section of the Act of July 2d, 1864, which enacts that it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, did not confer the power to license trading within the military lines of the enemy: *United States* v. *Lane*, 8 Wall.

In connection with the regulations of the Treasury Department, and an executive order of the President, issued in accordance with the act, it authorized the insurgents to bring their cotton within our lines, without seizure, and with a promise on our part to buy it from them, with liberty on theirs to go to the nearest treasury agent in an insurrectionary district to sell it, or, if they preferred, to leave it under the control of some one who could go to such agent and sell it for them; with leave, to them also, by the way of further inducement, to purchase such articles of merchandise as they needed, not contraband of war, to the extent of one-third of the aggregate value of the products sold by them, and to return with them under a safe conduct: *Id.*

By the regulations issued under the act, the purchasing agent could not act at all until the person desiring to sell the Southern products made application, in writing, stating that he owned or controlled them, stating also their kind, quality, and location; and

even then the power of the purchasing agent before the delivery of the products was limited to a stipulation (the form was prescribed) to purchase, and to the giving a certificate that such application was made, and to requesting safe conduct for the party and his property: *Id.*

A record of a judgment on the same subject-matter, referred to in finding, cannot be set up as an estoppel, when neither the record is set forth nor the finding shows on what ground the court puts its decision: whether for want of proof, insufficient allegations, or on the merits of the case: *Id.*

CONFLICT OF LAWS. See *Divorce.*

Insurance Company doing business in another State.—An insurance company, chartered by the Legislature of Rhode Island, appointed an agent in accordance with R. S., c. 49, § 39, to do business in Portland. Upon receipt of a letter from the plaintiff, residing in N. H., asking for a policy upon a hotel belonging to the plaintiff and his partner, situated in N. H., the agent issued and sent a policy dated at Portland, to the plaintiff as directed. In an action upon the policy. *Held,* that the place of the contract was in this State, and that the laws of this State must govern it: *Bailey* v. *Hope Ins. Co.*, 56 Me.

CONSTITUTIONAL LAW.

Taking Private Property.—Private property cannot be taken by the State, without the owner's consent, for the *private* use of another person, even if compensation be made: *Orton* v. *Hart*, 23 or 24 Wis.

Secs. 70 and 71 ch. 19, R. S., provides how a private road shall be laid out and the damages assessed, and that such road shall be *for the use of the applicant,* his heirs and assigns, and that the owner of the land through which it is laid shall not be permitted to use it as a road, unless he shall have signified his intention of doing so to the supervisors, before the damages were determined. *Held,* invalid: *Id.*

CRIMINAL LAW.

Forgery.—Several drafts, precisely alike, except as to the figures designating their numbers, were uttered at the same time by the same person. *Held,* that while the *uttering* was one indivisible act, the *forgery* of each draft was a separate offense: *Barton* v. *The State*, 23 or 24 Wis.

Defendant pleaded guilty to several indictments, each based on a different one of said drafts, and each containing four counts: first, for forging the draft (set forth in *haec verba*); second, for uttering it; third, for forging, and fourth, for uttering the endorsement thereon. Having been sentenced on one indictment, and judgment on the others being suspended, he was pardoned to become a witness, and being then taken into custody on the other indictment, moved for leave to withdraw his plea of guilty and to plead his former conviction. *Held,* that the motion was properly denied: *Id.*

DAMAGES.

False Imprisonment.—*Vindictive* damages for an illegal arrest and false imprisonment should be allowed against a peace-officer only where the arrest was made in bad faith, with a view to some other object than the administration of criminal justice: *Hamlin* v. *Spaulding*, 23 or 24 Wis.

DEED.

Acknowledgment.—Where persons acknowledging the execution of an instrument, although previously unknown to the officer, are introduced to him by a mutual acquaintance, this, if it satisfies the conscience of the officer, as to the clear identity of the parties, is sufficient to authorize him to take the acknowledgment and give the certificate: *Wood et al* v. *Bach et al.*, 54 Barb.

The right of the officer to take the acknowledgment does not depend upon the length of his acquaintance with the person, nor upon the manner in which his knowledge is acquired: *Id.*

DIVORCE.

For Causes Occurring in another State.—It is settled by judicial decisions in this State, that the courts thereof have jurisdiction to grant a divorce for acts of cruelty at the suit of one who has resided here one year, although the marriage and the alleged cruelty occurred in another State, where defendant still resides, and the summons has been by publication only, without actual notice to him: *Shafer* v. *Bushnell*, 23 or 24 Wis.

FALSE IMPRISONMENT. See *Damages.*

INSURANCE. See *Removal of Causes.*

Abandonment.—Where insurers, to whom the owners have abandoned, take possession, at an intermediate place or port, of goods damaged during a voyage by the fault of the carrier, and there sell them, they cannot hold the carrier liable on his engagement to deliver at the end of the voyage in good order and condition: *Propeller Mohawk*, 8 Wall.

Facts stated which amount to such action on the part of the insurers: *Id.*

Insures, so accepting at the intermediate port, are liable for freight *pro rata itineris* on the goods accepted: *Id.*

The explosion of a boiler on a steam vessel is not a "peril of navigation" within the term as used in the exception in bills of lading: *Id.*

The court expresses its satisfaction that it could, in accordance with principles of law, decide against a party who had bought, and was prosecuting a claim, that the original party was not himself willing to prosecute; it characterizes such a purchaser suing as "a volunteer in a speculation:" *Id.*

JOINT STOCK ASSOCIATIONS.

Where a note made by one member of a Joint Stock Association and indorsed by another, for the purpose of raising money for the use of the association, is paid and taken up by a third, the latter cannot maintain an action against the member and first indorser to recover back the money advanced by him, until an account has been taken between the parties: *Crater* v. *Bininger*, 54 Barb.

JUDGMENT.

Lien of Judgment over Unrecorded Mortgage.—Where a judgment lien attaches to premises upon which there is a mortgage, but the latter is not recorded, the judgment takes priority over the mortgage, unless the judgment creditor is otherwise chargeable with notice of such mortgage prior to the rendition of his judgment: *Guiteau* v. *Wisely*, 47 Ills.

The rights of third parties, acquired under an erroneous judgment, cannot be divested by a subsequent reversal: *Id.*

So, a vendee at an execution sale, being neither a party to the judgment nor chargeable with notice of error, cannot be affected by a reversal: *Id.*

Nor can an innocent assignee of the certificate of purchase, though the assignor was a party to the judgment, be affected by a subsequent reversal of the judgment: *Id.*

Discharge of.—The holder of a judgment cannot legally bind himself by any species of executory agreement, to accept a less sum than is actually due thereon and discharge the judgment; *it seems*: *Garvey* v. *Jarvis, et al.*, 54 Barb.

A judgment, or any matter of record like a speciality, cannot be discharged even by what would be considered a good accord and satisfaction in other cases: *Id.*

JURISDICTION.

Grant of, by Implication.—Though an unfounded assumption by the legislature that a particular jurisdiction existed, might not alone be sufficient to create it, yet when the jurisdiction is assumed to exist, and *explicit provision made as to the mode of its exercise*, this carries with it, by implication, jurisdiction of the proceedings so regulated: *State* v. *Miller*, 23 or 24 Wis.

MILITARY SERVICE.

Arresting Deserter—Seizure of Private Property.—The authority to arrest a person in the military service of the government, as a deserter, does not imply the authority to seize and carry away the private property of the person arrested; and if the person making the arrest does seize and carry away the property of the person so arrested, he must respond to him in an appropriate action therefor: *Clark* v. *Cumins*, 47 Ills.

Mills and Dams.

Priority of Right on Same Stream.—As between proprietors of dams on the same stream, he has the better right who was first in point of time: *Lincoln* v. *Chardbourne*, 56 Me.

In the trial of an action of trespass on the case, brought by the owner of the middle one of three dams on the same stream, against the owner of the lowest, subsequently erected, for damages caused by flowing the wheels of the former—it is not competent for the defendant, except so far as it might affect the question of abandonment, to prove that the plaintiff's dam caused the water to flow back and injure the oldest and uppermost dam and the mills thereon; and that the proprietor of the last-mentioned dam abated the plaintiff's dam as a nuisance, at the time the defendant erected his dam: *Id.*

Unless the plaintiff abandoned his site, the temporary destruction of his dam would not enable the defendant to acquire, as against the plaintiff, the right of a prior occupant: *Id.*

Mortgage.

Subsequent successive conveyances by the Mortgagor.—It was laid down in the case of *Iglehart* v. *Crane & Wesson*, 42 Ill. 261, that where mortgaged premises were conveyed in parcels at successive periods, the several parcels were subject to the mortgage in the inverse order of their alienation: *Briscoe et al* v. *Power*, 47 Ills.

But this doctrine has no application where the deed of alienation expressly subjects each tract to the incumbrance. In such a case the parcels are subject to their *pro rata* share of the incumbrance: *Id.*

Foreclosure.—A decree of strict foreclosure, which does not find the amount due, which allows no time for the payment of the debt and the redemption of the estate, and which is final and conclusive in the first instance, cannot, in the absence of some special law authorizing it, be sustained: *Clark* v. *Reyburn*, 8 Wall.

No such special law exists in Kansas: *Id.*

Where, after a mortgage of it, real property has been conveyed in trust for the benefit of children, both those in being and those to be born; all children *in esse* at the time of filing the bill of foreclosure should be made parties. Otherwise the decree of foreclosure does not take away their right to redeem. A decree against the trustee alone does not bind the *cestuis que trustent*: *Id.*

Municipal Corporations.

Power to Contract.—A municipal corporation, like any other, may enter into any contract within the object for which the corporation was created, except where it is restrained by some legal enactment, and except so far as its contracts may be subject nevertheless to the future exercise of its legislative authority: *Pullman* v. *The Mayor, &c., of the City of New York*, 54 Barb.

An injunction will not be issued to restrain a city corporation from entering into a contract, where there is no valid statute preventing the making of such contract, and the case presents no facts justifying the interference of the court on the ground of fraud: *Id.*

Water Drainage.—The owner of land on which there is a pond or reservoir of surface water, cannot lawfully discharge it through an artificial channel directly upon the land of another, greatly to his injury: *Pettigrew* v. *Village of Evansville, et al.*, 23 or 24 Wis.

A municipal corporation has no greater power than natural persons in this respect, except through an exercise of the right of eminent domain: *Id.*

NEGLIGENCE. See *Banks.*

OFFICER. See *Damages.*

Unlawful Detention of Money.—Lawful money cannot be held derelict in the hands of a deputy sheriff into whose possession it came by virtue of a search warrant: *Norton* v. *Nye*, 56 Me.

The refusal of the deputy to pay over money thus obtained, to one entitled to receive it, on demand, is a misfeasance for which the sheriff is liable: *Id.*

To an action of trespass against the sheriff for such a misfeasance, it is no defense that the plaintiff secreted the money in the house of another person, for the unlawful purpose of laying a foundation for a prosecution for larceny against him; that thereupon he made a complaint, under oath, to a trial justice, that the money was stolen from the plaintiff's possession by such person and concealed in the latter's dwelling-house; that, upon a search-warrant duly issued thereon, the defendant's deputy searched and found in such dwelling-house the money, which, together with such person, was returned before a trial justice, who, after examination, discharged the respondent, and declined to make any order concerning the money, but left the same in the hands of the deputy; and that the allegations in the complaint were false, and known to be false by the plaintiff when he signed and made oath to them: *Id.*

Whether if the deputy, after the discharge of the accused, had returned the money into the possession of him from whom it was taken, this suit could have been successfully defended; *quære: Id.*

Or whether, if the money had been thus returned, the plaintiff could, under the circumstances, recover it from the accused; *quære: Id.*

PATENT.

Reissue with Amended Specification.—Where a limitation of a claim, as found in a patent, has been caused by a mistake of the Commissioner of Patents in supposing that prior inventions would be covered, if the claim was made, as the applicant makes it, more broad, and an inventor has thus been made to take a patent with a claim narrower than his invention, it is the right, and, as it would seem, the duty of the Commissioner, upon being satisfied of his mistake as to the nature of the prior inventions, to grant a reissue with an amended specification and a broader claim: *Morey* v. *Lockwood*, 8 Wall.

Were the amended specifications and broader claim secure the

patentee only the same invention that he had originally described and claimed, the reissue is valid: *Id.*

The syringe known as the Richardson syringe is an infringement of the patent for a syringe granted March 31st, 1857, to C. & H. Davidson, and reissued April 25th, 1865, with an amended specification: *Id.*

The Davidsons were the original and first inventors of the syringe patented by the patent and reissue above referred to: *Id.*

Removal of Causes to Federal Courts.

Insurance Company doing business in another State.—The members of a corporation are legally presumed to be citizens of the State, by the laws of which it was created, and in which alone it has a legal existence: *Hobbs* v. *Manhattan Ins. Co.*, 56 Me.

A suit, in which the amount sued for exceeds five hundred dollars, brought by a citizen of this State against a foreign insurance company, all of whose members are citizens of another State, may on proper motion, seasonably filed, and good and sufficient surety offered, be removed for trial, from this court to the U. S. Circuit Court for the District of Maine, notwithstanding the defendant corporation has complied with the provisions of R. S., c 49, § 39, and service has been made upon the defendants, as therein provided: *Id.*

None of the provisions of R. S., c. 49, § 39, prohibit such removal, or infringe upon the jurisdiction of the courts of the United States: *Id.*

Replevin.

Return of the Writ—Designation of Property Replevied.—The return upon a replevin writ should state precisely what property is thereby replevied; if it does not, the sureties on the replevin bond are not liable to return what was not taken: *Miller* v. *Moses*, 56 Me.

A surety on a replevin bond is not estopped by the recitals therein to show how much of the property mentioned in the writ was actually replevied, when the officer's return is indefinite in this particular: *Id.*

Nor is he estopped by the return of the officer, as to the amount of property replevied, unless the return is definite, distinct and certain in this respect: *Id.*

Where, by the writ, the officer was commanded to replevy eleven different parcels of wood, situated in various towns mentioned, along the line of a railroad, with the number of cords in each parcel distinctly stated, and the officer returned thereon that he had "replevied all the wood at the various places within mentioned." *Held*, that the return was indefinite and uncertain as to the quantity of wood replevied: *Id.*

A judgment in replevin that "the said wood be returned and restored to the said" defendant, "irrepleviable, with costs," etc., refers only to the wood actually replevied: *Id.*