right in such municipalities to act independently of the state, and the local authorities cannot be permitted to determine for themselves whether they will contribute through taxation, to the support of the state government, or assist, when called upon to suppress insurrection, on such subjects the state may exercise compulsory authority. II. That though municipal authorities are made use of in state government, and as such are under complete state control, they are not created exclusively for that purpose, but have other objects and purposes purely local, and in which the state at large, except in conferring the power and regulating its exercise, is legally no more concerned than it is in the individual and private concerns of its several citizens. Applying these to the present case, the court say, that the constitutional principle that no person shall be deprived of his property without due process of law, has reference to municipal corporations in their local capacity, and there is no more constitutional power in the Legislature to dictate to the city of Detroit at what cost it shall purchase, and how it shall improve and embellish a park for the recreation and enjoyment of its citizens, than there is to dictate to an individual what he shall eat, and what he shall wear. And when a local convenience or need is to be supplied, in which the people of the State at large, or any portion thereof outside the city limits, are not concerned, the state can no more by a process of taxation, take from the individual citizens the money to purchase it, than it could, if it had already been procured, appropriate it to the state's use. And further, that though, when the city of Detroit accepted the Act of 1871, and appointed commissioners to act under it, such commissioners might possibly be said to represent the city, and in that capacity able to bind it by their acts, the same reason did not apply when in 1873, the powers of the Commissioners were greatly enlarged, and their actions were no longer to be submitted to the citizens for approval, in no just acceptation of the term could they then be said to be representatives of the city whose interests were to be affected, without its consent either express or implied.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF INDIANA.[1]

SUPREME JUDICIAL COURT OF MAINE.[2]

COURT OF APPEALS OF MARYLAND.[3]

SUPREME COURT OF NEW YORK.[4]

ACTION.

Money paid under Mistake of Law—Voluntary Payment—Necessity —Duress.—It is well settled by the current of authority, that where

[1] From James B. Black, Esq., Reporter; to appear in 41 Ind. Reports.

[2] From Edwin B. Smith, Esq., Reporter; to appear in 61 Me. Reports.

[3] From J. Shaaf Stockett, Esq., Reporter; to appear in 38 Md. Reports.

[4] From Hon. O. L. Barbour; to appear in vol. 65 of his Reports.

money is paid with a full knowledge of all the facts and circumstances upon which it is demanded, or with the means of such knowledge, it cannot be recovered back upon the ground that the party supposed he was bound in law to pay it, when in truth he was not. Nor can money voluntarily paid upon demand, though the demand be unjust, be recovered back where the party paying has full knowledge of all the facts. But if there be a controlling necessity in the case, arising from the peculiar circumstances under which the money is demanded, the rule does not apply. This controlling necessity may arise from duress as applied to the property, as well as to the person, and where one person is in possession of the goods or property of another, and refuses to deliver the same up to that other, unless the latter pays him a sum of money which he has no right to receive, and the latter, in order to obtain possession of his property, pays that sum, the money so paid is a payment by compulsion, and may be recovered back. So, if the property be not actually in the possession of a person, but he has such control over it as to give him an undue advantage over another, and money is therefore paid to remove such control, or if thereupon it is agreed between the parties that if the money is so paid, it shall not be regarded as a voluntary payment and may be recovered back if the party paying is otherwise entitled to recover, such recovery may be had: *Lafayette and Indianapolis Railroad Co.* v. *Pattison*, 41 Ind.

During the rebellion, A. had a contract to furnish the government with a certain number of beef cattle during two months, and for the purpose of filling such contract went to Chicago and made a contract with a railroad company to ship cattle to the city of Indianapolis at $65 per car; and leaving an agent to ship, he returned to Indianapolis to receive the cattle. The cattle of the first shipment of two car-loads were sent to the cattle yard of A., and after a few days a bill for $201.02 was sent to A., which he refused to pay, and informed the agent of the railroad company that he had a contract for the shipment at $65 per car; the agent denied knowledge of any such contract, and insisted that the bills must be paid as presented, and that he would not deliver any future car-loads of cattle until the freight was paid, as he made it up from the way-bills, and that the bill included other items besides freight, which he could itemize. It was agreed that A. should pay under protest, and also future freight, and the cattle should be delivered as they arrived, and A. should reserve the right to recover any sum so paid unjustly. In pursuance of this agreement, the agent delivered the cattle at the yard of A. as they arrived from time to time, and as soon as the bills were prepared they were paid by A. *Held*, that the payments were not voluntary, and that A. could recover all sums so paid in excess of his contract price: *Id.*

Appearance.

A voluntary and general appearance in an action, not only gives jurisdiction of the parties, but cures any irregularity in the service of process: *Carpentier* v. *Minturn et al.*, 65 Barb.

Canal. See *Constitutional Law.*

Common Carrier.

When Liability Ceases—Forwarder.—Where a common carrier takes goods to forward and deliver, if within his route, if not, to deliver to the connecting express or a stage at the most convenient point, his liability as a common carrier ceases when the goods arrive at such convenient point of intersection. The common carrier then becomes a forwarder, and he ceases to be an insurer of the safety of the goods forwarded: *Inhabitants of Plantation No.* 4, v. *J. Hall et al.*, 61 Me.

In a suit against such forwarder for negligence, the burden of proof is on the plaintiff to establish the same: *Id.*

Constitutional Law.

Eminent Domain—Legislative Authority—Delegation of Power.—The right of eminent domain is inherent in the government. It is not conferred, but limited by the constitution, and the limit is not upon the amount of the estate to be taken, but it only requires just compensation. No property can be taken without legislative authority, and in the manner, and for the purposes, and to the extent authorized. Courts cannot extend or limit these. The necessity for such condemnation must be determined by the legislature, and cannot be questioned by the courts. If the legislature attempt under this power to take property confessedly not for public use, then the courts may prevent it. Where the state has taken a fee simple or authorized the taking thereof, and compensated the owner therefor, the subsequent abandonment of the use will not reinvest the owner with the title. If simply an easement is taken, the rule is otherwise. The right of determining the necessity of the work may be delegated, and courts and juries may be called upon to determine as to its necessity: *The Water Works Co.* v. *Burkhart*, 41 Ind.

Canals—Ice.—The legislature of this state authorized its public agents to appropriate a fee simple in the lands taken for the construction of its canals: *Id.*

The former owner had no right to take ice from the canal: *Id.*

Corporation.

Power to hold Real Estate—Will—Devise of Real Estate to County.—A devise of lands in these words: "I give and bequeath unto the board of commissioners of Kosciusko county, to be appropriated by the board of commissioners, and their successors in office, for the use of Kosciusko county for ever," &c., vested the absolute title in fee simple in the lands in the county of Kosciusko, to be managed by the board of commissioners or such other body or persons as the General Assembly has provided or may provide to take the place of the board of commissioners: *Hayward* v. *Davidson*, 41 Ind.

With reference to their power to take and hold real estate, corporations may be classified as follows:—

1st. Those whose charter, or law of creation, forbids that they should acquire and hold real estate. Such corporations cannot take and hold real estate, and a deed or devise to such a corporation can pass no title.

2d. Those whose charter, or law of creation, is silent as to whether they may or may not acquire and hold real estate. In such a case, if the objects for which the corporation is formed cannot be accomplished

without acquiring and holding real estate, the power so to do will be implied.

3d. Those whose charter, or law of creation, authorizes them, in some cases, and for some purposes, to take and hold the title to real estate.

4th. Those whose charter, or law of creation, confers upon them a general power to acquire and hold real estate. Corporations thus empowered may take and hold real estate, as freely, fully, and perfectly as natural persons may take and hold: *Id.*

Counties are *quasi* corporations, and fall within the third class above given, and in some cases, and for some purposes, are authorized to take and hold title to real estate. They are expressly empowered to acquire and hold title to real estate for a location for county buildings and for a poor-farm, and there may be other instances: *Id.*

Where a corporation is authorized to acquire and hold title to real estate for some purposes, it cannot be made a question by any party, except the state, whether or not real estate acquired by such corporation has been acquired for the authorized uses or not: *Id.*

COUNTY. See *Corporation.*

COVENANT.

Legal Tender Notes.—A covenant in a lease, by the lessee, to pay yearly to the lessor, his heirs and assigns for ever, the yearly rent of sixpence sterling for every acre of land "in current money of the state of New York, equal in value to money of Great Britain," is not one to pay rent in money generally, nor is it one that, by its terms, expressly binds the lessee, his heirs and assigns, to pay the rent in gold or silver coin; but is a covenant which is not performed by a tender of the same number of dollars, of the notes of the United States, which the rent amounts to in dollars, when reckoned at sixpence sterling for every acre of the leased premises: *Stranaghan* v. *Youmans*, 65 Barb.

The lessor upon such a covenant, is bound to accept the notes of the United States in payment for the rent, for the reason that by the laws of Congress such notes are current-money of New York. But if the rent is paid in such notes, the lessee must pay enough to make the number of dollars paid equal in value to the same number of dollars in money of Great Britain, that being what the covenant binds him to do: *Id.*

Upon such a covenant, the rent may be paid dollar for dollar in gold and silver coin of the United States, because such coin is current-money of the state of New York: *Id*

CRIMINAL LAW.

Murder—Evidence—Experts.—Whenever the matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it; or when it so far partakes of the nature of a science or trade, as to require a previous habit or experience or study, in order to the attainment of a knowledge of it, the opinion of experts is admissible; but if the matter of inquiry be not such as to require any peculiar habits or study, in order to qualify a person to understand it, then such evidence is not admissible: *Davis* v. *The State*, 38 Md.

On a trial for murder, it was shown that the body of the murdered

man was discovered in the sink or bin of his mill, with several wounds on the head, one of which involved a fracture of the skull, and that a crowbar found in the mill fitted the depression in the skull, caused by the fracture. *Held*, That these facts were sufficient to lay the foundation for the admissibility of the evidence of medical experts, who from their knowledge and experience in regard to the nature of wounds, were better qualified than ordinary persons to form an opinion as to how and by what means the injuries thus found on the head of the deceased, were inflicted: *Id.*

DAMAGES. See *Husband and Wife.*

Wrongful Enlistment of Apprentice.—A negro apprentice, aged about seventeen years, was enlisted in the army of the United States for three years, by his master, as a substitute for his son who had been drafted. The substitute served in the army about fourteen months and was then discharged; sometime afterward he brought a suit against his former master to recover damages for loss and injury alleged to have been sustained by having been wrongfully enlisted. At the trial he gave no evidence to show that he had been injured either in body or mind by his service in the army, or that he had incurred any expense in consequence of his enlistment. The time of his service in the army was embraced within the term of his apprenticeship. But as reflecting upon the quantum of damages which the plaintiff supposed himself entitled to recover, he proved by a substitute broker what was the price usually paid for substitutes at the time he, the plaintiff, was enlisted. *Held*, That such evidence was inadmissible as furnishing no proper criterion for assessing damages for any loss sustained by the plaintiff in respect of either time or property for which he could claim to recover: *Gent* v. *Cole*, 38 Md.

DEBTOR AND CREDITOR. See *Husband and Wife; Payment.*

Appropriation of Payments.—Whenever a defendant is exonerated by the Statute of Frauds from liability upon his oral promise to pay for certain goods furnished by the plaintiff to a third person before a certain date and liable for those furnished afterwards, payments made by him on the orders of such third person, drawn, payable upon the account generally, without reference to the question of liability, may be applied by the creditor to the oldest item: *Murphy* v. *Webber*, 61 Me.

DEED. See *Equity.*

DOMICIL.

Change of Residence—Intention.—To constitute a change of domicil there must be a concurrence of the intention to make, and the fact of making, such change: *Parsons* v. *Bangor*, 61 Me.

On the 30th of March, a person, who had previously disposed of the greater portion of his furniture and his other personal property, paid his bill at the public-house in Bangor, at which he had been boarding with his wife for several years, left that city and upon the 1st day of April arrived at New York, engaged a boarding place and went into business there in pursuance of an agreement entered into some time before; it

being arranged that his wife should follow him as soon as a boarding place was obtained. *Held*, that such person was not liable to taxation in Bangor on the 1st day of April: *Id.*

The acts and intentions of the wife do not affect the domicil of the husband: *Id.*

DOWER.

Not barred by joining in Deed as against Attaching Creditor.—Where a wife joins in a deed with her husband for the purpose of releasing dower, she will not be barred thereby in a suit for dower, by her, against a third person who holds the lands by an attachment against the husband prior to said deed and a levy made afterwards, the tenant having no estate or claim under such deed: *French* v. *Crosby*, 61 Me.

DURESS. See *Action.*

EMINENT DOMAIN. See *Constitutional Law.*

EQUITY.

Power of Court to reform Deed of Real Estate.—Where the complainant bargained one parcel of land, and, by a mistake of both parties, conveyed another parcel to the respondent, the equitable jurisdiction of this court will authorize it to reform such deed according to the intention of the parties, and, by decree, to protect the interests of such persons as may legally claim to hold the correct premises through and under the respondent: *Burr* v. *Hutchinson*, 61 Me.

FORMER RECOVERY.

Judgment, when it bars another Suit—Contribution, Right to compel.—A verdict and judgment rendered in a suit upon a joint and several note in favor of one surety will not be a bar to another suit against another surety upon such note, unless it is shown that the first verdict was rendered upon a defence which would be an extinguishment of the cause of action; or unless the grounds of defence set up in both cases are shown to be identical: *Hill* v. *Morse*, 61 Me.

A surety who has been discharged from his primary liability upon a note, may be held to contribute to reimburse a proportional part thereof to a co-surety who has been subsequently compelled to pay it: *Id.*

FRAUDULENT CONVEYANCE. See *Husband and Wife.*

HIGHWAYS.

Dedication and Acceptance—Dedication and acceptance by the public authorities, create a highway, without regard to the length of time it may have been used: *Chapman* v. *Swan*, 65 Barb.

Estoppel.—Neither recognition nor acquiescence can operate by way of estoppel, until the expiration of twenty years from the commencement of the user. When the twenty years have run, the right of the public is perfect, without regard to the mode in which the acquiescence of the owner of the land has been manifested: *Id.*

Obstructions.—Although *towns* are not obliged to keep the whole of a highway, from one boundary to the other, free from obstructions and fit for the use of travellers, the principle cannot apply to the streets of a *village*: *Wright* v. *Saunders*, 65 Barb.

No person, whether he be owner or not, has the right to obstruct a highway, either by placing obstructions, or making excavations therein. Such obstructions are public nuisances, and may be abated by any person injured thereby. And the person making such obstructions is liable to the injured party for such damages as may be sustained by reason thereof: *Id.*

Digging post-holes in a street is a public nuisance, although it be done in a part of the street not used, nor susceptible of use by the public, by reason of natural obstructions therein: *Id.*

Liability for obstructing.—When the act done is a nuisance, the liability of the party causing it, for the consequences, follows as a matter of course, provided the person injured by such act is himself free from negligence: *Id.*

HUSBAND AND WIFE. See *Domicil; Dower.*

When Deed from the Wife to the Husband is invalid—When Purchaser at a Trustee's Sale will be relieved from the Purchase.—A deed from a married woman of her separate estate, directly to her husband, is a nullity; and upon the death of the husband, he having survived his wife, the property will descend to her heirs at law: *Preston, Trustee,* v. *Fryer*, 38 Md.

Where a trustee sells property under a decree in equity, representing the title to be indisputable, and the purchaser afterwards discovers that the title is defective, the court will, even after the final ratification of the sale, on his petition, the purchase-money not having been distributed, annul the sale, and require the trustee to refund the purchase-money: *Id.*

Alienation of Real Estate—Fraudulent Conveyance.—A conveyance of real estate may be made by a husband to his wife without the intervention of trustees, and such conveyance will be upheld unless the rights of creditors are injuriously affected thereby: *Brookbank et ux.* v. *Kennard*, 41 Ind.

A husband may convey to his wife a reasonable amount of property, leaving ample in his hands for the payment of his debts, and such conveyance will be valid, at least as against future creditors: *Id.*

That a conveyance, executed by a husband directly to his wife, has not been recorded for a year, and until after the contraction of debts by the husband, cannot, of itself, render it void: *Id.*

Measure of Damages in Trespass de bonis asportatis—Right of a Married Woman to sue by her Next Friend.—Where goods belonging to a married woman in her individual right, being the stock in trade of a retail tobacco and cigar store carried on by her, are seized and taken away under an execution against her husband, and her business is thereby destroyed, she is entitled, in an action of trespass *de bonis asportatis* against the creditor of her husband, and the constable who levied the execution and took possession of the goods, to recover in damages for such injury as she sustained because of the taking of the goods and the breaking up of her business, and the jury may give punitive damages if they find the defendants acted after notice, and wantonly: *Strasburger* v. *Barber*, 38 Md.

Where the goods of a married woman being her separate estate, and her stock in trade as proprietor of a retail tobacco and cigar store, are taken under an execution against her husband, the creditor having

probable cause to believe, and believing that they were the property of the husband, and having caused the officer to take the same under a *bonâ fide* claim of title and right under the law, and without any malicious motive or purpose to harass or injure the wife, and the goods are restored within a short time after their seizure and removal, the measure of damages in an action of trespass *de bonis asportatis* against the creditor and officer, by the wife, for such seizure and removal, should be restricted to the injury resulting to the plaintiff from the taking, carrying away and detention of the goods, and the profits which might have been made by their sale, and any depreciation in the value thereof in the interval between the actual levy and removal and their subsequent restoration to the plaintiff: *Id.*

Under article 45, section 4, of the code of public general laws, a married woman may, by her next friend, and without her husband joining in the action, sue in trespass *de bonis asportatis* to recover damages for the taking and carrying away of her goods and chattels, under an execution against her husband: *Id.*

Witness not competent under the Acts of 1864, *ch.* 109, *and* 1868, *ch.* 116—*Legal Presumption of Marriage—When the Validity of a Foreign Marriage is recognized in this State—Particular Marriage when asserted, to be proved affirmatively, &c.*—A woman claiming the right as the widow of a deceased person to administer upon his estate, is not competent under the Act of 1864, ch. 109, as modified by the Act of 1868, ch. 116, to testify as to the *factum* of her marriage with the intestate: *Redgrave* v. *Redgrave*, 38 Md.

When parties live together ostensibly as man and wife, demeaning themselves toward each other as such, and are received into society, and treated by their friends and relations as having and being entitled to that status, the law will, in favor of morality and decency, presume that they have been legally married: *Id.*

Where proof is offered from which a marriage may be inferred, the presumption is that it was duly and legally contracted according to the law of the place or country in which it occurred; and when contracted in a foreign state or country, the validity of such marriage is recognized in this state, although it may not have been attended with the same formal ceremonies as are required for the celebration of a valid marriage by the law of Maryland: *Id.*

Where, upon a question of marriage, a person assumes to prove that a valid marriage was celebrated on a particular occasion as testified to by a party to the transaction, it is incumbent upon the person asserting such marriage, to show affirmatively that it was in all respects in conformity to law; and failing in this, he will not be permitted to rely upon other facts and circumstances of the case as the ground of a presumption, that a marriage may have taken place between the parties on some other and different occasion from that spoken of by the witness: *Id.*

INSURANCE.

Agent—Who is—Insurance upon open Policy—When effected.—When an insurance company issues to a person an open policy, with blanks therein for the endorsement of risks agreed upon by him and blank certificates for the description of the risks thus agreed upon to be

signed by him, with authority to take the premiums, he is to be deemed an agent of the company: *Wass* v. *Maine Mutual Marine Insurance Co.*, 61 Me.

When an open policy is issued "on property on board vessel or vessels, at and from port or ports in the United States and foreign countries, with such other risks as may be agreed on, as per endorsement hereon, accepted by the company," and the risk is agreed upon, the premium paid, and the endorsement thereof made by the agent, the insurance is effected: *Id.*

Life Insurance—Construction of the Statutes relating to the disposition of Moneys arising therefrom.—One who dies insolvent can make no testamentary disposition of the fund accruing from an insurance policy upon his life if he leaves neither widow nor child; in such event, the insurance-money becomes assets for the payment of debts: *Hathaway* v. *Sherman*, 61 Me.

A person having an insurance upon his life, dying insolvent, leaving a widow and children, may bequeath the insurance-money among them as he pleases; but he cannot bestow it by will upon any other persons. The power to dispose of such fund by will, conferred by R. S., c. 75, § 10, is limited, in case of insolvency, to a disposition among the widow and children of the deceased: *Id.*

An intention on the part of a testator, by his will, to dispose of the fund arising from an insurance policy upon his life, will not be inferred from the fact that his bequests were ultimately found to exceed the whole amount of his estate exclusive of this fund; nor from the fact that he designated a person as the legatee of the residue of his property of every description whatsoever. "The testator's intention to change the direction which the law gives to this very peculiar species of property is not to be inferred from general provisions in his will, the fulfilment of which might require the use of such money, but must be explicitly declared:" *Id.*

Interest.

When the vendee, in a contract for the purchase and sale of real estate, takes possession of the property as owner, without having paid the purchase-money, he is bound to pay interest: *Parker* v. *Parker*, 65 Barb.

Judgment. See *Former Recovery. Set-Off.*

A judgment may be assailed collaterally for fraud, by persons not parties to it, or privies who are injured by it. Thus it is competent for a creditor to assail collaterally a judgment against his debtor for that cause: *Spicer et al.* v. *Waters*, 65 Barb.

Jurisdiction.

It is too late to raise an objection to the jurisdiction of the court, after an unqualified appearance in the action: *Carpentier et al.* v. *Minturn et al.*, 65 Barb.

Sufficient is shown to sustain the action when it appears that the court has general jurisdiction of the subject-matter, and the parties have voluntarily submitted to the jurisdiction of the court: *Id.*

Legal Tender Notes. See *Covenant.*

Marriage. See *Husband and Wife.*

MORTGAGE.

Sale by Mortgage—Inadequacy of Price—Mortgagee's Sale set aside—Duties of a Mortgagee selling the Mortgaged Property.—A sale in all other respects unobjectionable, will not be set aside for inadequacy of price, unless the sum reported be so grossly inadequate as to indicate a want of reasonable judgment and discretion in the trustee: *Horsey* v. *Hough*, 38 Md.

The duties of a mortgagee in selling the mortgaged property under a power contained in the mortgage, are analogous to those of a trustee under a decree; and the court will determine upon the propriety of the sale reported by the mortgagee, as in the case of an ordinary trustee, exercising towards the former, however, greater care and strictness; more especially when he has reported himself as the purchaser at a great depreciation: *Id.*

NEGLIGENCE.

Pleading—Railroad.—A complaint seeking a recovery from a railroad company on the ground of negligence in running a train of cars, whereby the plaintiff has been injured, must expressly allege that the injury occurred without the fault or negligence of the plaintiff, or it must clearly appear from the facts which are alleged that such must have been the case: *Maxfield* v. *C. I. & L. Railroad Co.*, 41 Ind.

OFFICER.

Permit—Rights of Assignee under—Delivery—Sale on Mesne Process—Notice of.—An assignment of a permit to cut timber transfers to the assignee the trees afterwards cut under it, so as to enable him to maintain an action of trespass against an officer attaching the lumber as the property of the assignor: *Sawyer* v. *Wilson*, 61 Me.

An officer who sells attached property upon mesne process, without giving the notice required by law, becomes a trespasser *ab initio*, and will not be permitted to show in defence of a suit against him that the conveyance of the attached property by the debtor named in such process to the party suing the officer was fraudulent and void as to creditors: *Id.*

A notice of a sale of goods taken and appraised on mesne process, defective for want of sufficient time, is not cured by a postponement of the sale on the day appointed therefor to one remote enough to answer the statute requirement. The officer cannot make a valid sale at the adjournment that would be invalid if made on the day originally designated: *Id.*

PAYMENT.

Agreement to extend Time.—To render an agreement to extend the time of payment of a note, or other demand valid, it must be supported by a good consideration: *Marcellus* v. *Countrymen*, 65 Barb.

Mistake or Ignorance of Facts—Rescinding Contract.—Where debtors give to their creditor, in full payment and discharge of the debt, the promissory note of third persons, who had previously failed and become insolvent, though that fact was unknown to the parties at the time of the transfer, the creditors may rescind the contract, unless it appears that he agreed to receive the note in payment whether the makers had failed or not: *Roberts* v. *Fisher*, 65 Barb.

There is no doubt of such a rule being well settled law in the case

of bank-bills, and the decision of the Court of Appeals in *Roberts* v. *Fisher*, (43 N. Y. 159,) must be regarded as applying the same rule to promissory notes: *Id.*

Where it appears from the whole evidence that both parties were acting in ignorance of the failure of the makers, this gives the creditors the right to rescind the contract on discovery of the mistake: *Id.*

PLEADING. See *Negligence; Set-Off.*

RECEIPT.

A receipt for government bonds, which describes them by their numbers and amounts, and in which it is stated: "These bonds we hold subject to the order of J. L. P., at ten days' notice, agreeing to collect the coupons for his account free of charge, and to allow him 2 per cent. per annum interest on the par value of said bonds." &c., makes it the duty of the signer to return the same bonds received by him on ten days' notice: *Palmer* v. *Hussey*, 65 Barb.

He is bound to protect the bonds and to return them on demand, and his refusal to do so is a conversion for which he is liable, and may be arrested: *Id.*

SALE. See *Vendor.*

Sale by Agent—Effect of.—When a commission merchant sells and delivers property, intrusted to him for sale, before notice of the revocation of his authority, he is not liable in trover for such sale: *Jones* v. *Hodgkins*, 61 Me.

The *bonâ fide* purchaser under such sale and delivery acquires thereby a good title as against a prior purchaser from the consignor without delivery: *Id.*

SET-OFF.

Judgments.—The fact that judgments are rendered in different courts does not prevent either party from having the one set off against the other: *Brooks* v. *Harris*, 41 Ind.

There must be mutuality in the claims, in order that they may be set off against each other; but where a judgment has been obtained on the relation of A. against B. and his sureties on a constable's bond, B. may have a judgment obtained by him against A. set off against the judgment on the bond: *Id.*

A judgment is not a written instrument within the meaning of the statute requiring copies of written instruments in pleading: *Id.*

Although an equitable title to the judgment has been acquired by a stranger before the motion is made by the judgment defendant to have it satisfied by being set off against another judgment, yet the legal title will control the equity and authorize the satisfaction: *Id.*

STATUTE.

Repeal by Implication.—The law does not favor the repeal of statutes by implication, and when courts hold that a statute or any provision thereof is repealed by implication, it is done in obedience to the legislative will as manifested in the act. It must appear that the subsequent statute revised the whole subject-matter of the former one, and was evidently intended as a substitute for it, or that it was repugnant to the old law: *Water Works Co.* v. *Burkhart*, 41 Ind.

TRESPASS. See *Husband and Wife.*

TROVER. See *Receipt; Sale.*

TRUSTEE. See *Husband and Wife; Mortgage.*

TRIAL.

Practice—A Party having objected to the Admissibility of Evidence will not be heard to object to its withdrawal from the Jury—Power of the Court as to its Instructions to the Jury—Appeal.—In the trial of a cause the defendant objected to the admissibility of certain evidence offered by the plaintiff; the court overruled the objection, and the plaintiff thereupon waived the testimony and proposed to withdraw it from the consideration of the jury, which the court allowed him to do. The defendant excepted. *Held*, That the defendant after objecting to the admissibility of the evidence could not be heard to object to its being voluntarily waived, and withdrawn from the consideration of the jury: *Sittig* v. *Birkestack*, 38 Md.

The court has the power at any time during the trial of a cause, to modify its instructions to the jury, or to revoke them entirely, if upon reflection, it is considered that they have been erroneously given: *Id.*

A party to a cause after excepting to an instruction as erroneous, will not be heard to complain because it was afterwards revoked and withdrawn from the jury: *Id.*

VENDOR AND PURCHASER. See *Sale.*

Bonâ fide Purchaser.—A *bonâ fide* purchaser is one who buys property of another without notice, that some third person has a right to, or interest in such property, and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of such other in the property: *Spicer et al.* v. *Waters*, 65 Barb.

To constitute one a *bonâ fide* purchaser, it is not enough to show a conveyance good in form, but payment of the consideration must be made out. It must be actually paid; not merely secured to be paid: *Id.*

If the title of a purchaser is void as against the creditors of his vendor, by reason of fraud, that defect attaches to the title of every subsequent purchaser who is not a *bonâ fide* purchaser without notice: *Id.*

Rights of subsequent Purchasers.—When the owner of personal property makes an unconditional delivery to his vendee, with the intent to transfer the title, a subsequent *bonâ fide* purchaser from such vendee acquires a valid title, although the owner was induced to sell by the fraud of his vendee; and it is only *after* actual delivery to the fraudulent vendee, that a *bonâ fide* purchaser could rely upon the apparent ownership which the possession of the fraudulent vendee indicates, and thereby get a good title from him: *Bernard et al.* v. *Campbell et al.*, 65 Barb.

It is only upon the principle that the rightful owner of property is estopped from asserting his right when his act of conferring upon his vendee the possession has led to the payment by an innocent purchaser, that a *bonâ fide* purchaser can be protected. The doctrine has never been extended so far as to protect a purchaser when advancing the consideration to some one who did not at the time hold the property, or the *indicia* of its title: *Id.*