a married woman, other than those regarding such property. This is well settled in all the cases that have come before the court since the passage of the Act of 1846, which was the first departure from the doctrine of the common law in the legislation of this state;—see authorities cited in defendant's brief. It seems wholly unnecessary to refer to the cases upon this subject in our reports. A single case will suffice;—see *Shannon* v. *Canney*, 44 N. H. 592, where it was held that "a married woman is not bound by a promissory note given during coverture, although at the time of her marriage she had, by inheritance, both real and personal estate, unless it be shown that such estate was held to her sole and separate use, and that the promise was made in respect to that estate."

There can be no pretence that the contract made by this defendant with the plaintiff had any reference to or connection with any property held by her in her own right. It follows, therefore, that this action cannot be maintained.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[2]
SUPREME COURT OF NEW JERSEY.[3]
SUPREME COURT OF OHIO.[4]
SUPREME COURT OF PENNSYLVANIA.[5]

ACTION.

Joinder of Parties—Not necessary where no Unity of Estate.—The plaintiffs were owners of the franchise of a ferry over the Delaware river from the town of C. to the opposite Pennsylvania shore, under a grant by the legislature of New Jersey. One D. was the owner of the landing on the Pennsylvania shore, and had a grant from the legislature of Pennsylvania of the exclusive right of ferriage from that shore. By arrangement between the owners of the two franchises, a ferry was run between the two landings for mutual benefit. The ferry was made valueless by the erection of the defendants' bridge over the river. In proceedings to recover compensation for the injury to the ferry, under defendants' charter, *held*, that the action was properly brought by the plaintiffs, without joining the owner of the Pennsylvania franchise.

[1] From J. W. Wallace, Esq., Reporter; to appear in vol. 22 of his Reports.
[2] From John M. Shirley, Esq., Reporter; to appear in 55 N. H. Reports.
[3] From G. D. W. Vroom, Esq.; to appear in vol. 9 of his Reports.
[4] From E. L. De Witt, Esq., Reporter; to appear in 25 Ohio State Reports.
[5] From P. Frazer Smith, Esq., Reporter; to appear in 77 Pa. State Reports.

There being no unity of estate in the several owners of the two franchises, the interest affected was several, and although the injury to each was due to a common cause, separate actions must be brought: *Columbia Bridge Co.* v. *Geisse*, 9 Vroom.

AGENT.

Tenant of Corporation, under Lease made by Agent, cannot dispute Agent's Authority—Ratification of Agent's Acts—Evidence of Authority.—If a tenant enters into possession of premises under a parol lease, made by the attorney of a corporation, the tenant will not be permitted to dispute the agent's authority if the company subsequently ratifies the agent's act: *Brahn* v. *Jersey City Forge Company*, 9 Vroom.

An agent who demands possession for his principal, must have authority to make the demand at the time of making it. A subsequent assent on the part of the landlord will not establish, by relation, a notice given in the first instance without authority: *Id.*

It is not necessary to prove an express authority to the agent; it may be inferred from circumstances which show the concurrence of the principal in his act: *Id.*

It is not necessary to show the tenant by proof at the time of the service that the agent had due authority; it is sufficient if such authority actually exists: *Id.*

Parol Proof of Agency.—Agency, as a question of fact, may be proved by the acts, declarations or conduct of the principal and agent, although the agent was appointed by power of attorney: *Columbia Bridge Co.* v. *Geisse*, 9 Vroom.

AMENDMENT.

Pleading—False Imprisonment.—In trespass for assault and battery, the declaration may be amended so as to include an allegation of unlawful detention or imprisonment: *Cahill* v. *Terrio*, 55 N. H.

ATTACHMENT.

Municipal Corporation subject to.—A municipal corporation is subject to garnishment under our attachment act: *Mayor, &c., of Jersey City* v. *Horton*, 9 Vroom.

ATTORNEY.

Authority to refer pending Cause.—An attorney of record, in an action which had been sent to a referee by order of court, signed an agreement in writing that the report of the referee should be final, and the agreement was entitled as of the term of the Circuit Court, to which the report was to be made. *Held*, that his client was bound by such agreement: *Brooks* v. *New Durham*, 55 N. H.

BANKRUPTCY.

Fraud—Adverse Proceedings under a Judgment by Default, not Fraudulent per se.—A creditor sued a debtor and obtained judgment by default, under which his goods were sold by the sheriff; within four months, proceedings in bankruptcy were commenced against the debtor, who was adjudged a bankrupt. These proceedings were not *per se* in fraud of the Bankrupt Law, although the creditor had reason to believe

that the debtor was insolvent at the time: *Loucheim Brothers* v. *Henszey*, 77 Pa.

In an action against the marshal for the sale of goods claimed to be the plaintiff's, although the uncontradicted evidence of plaintiff showed a clear case of fraud in fact, the question of fraud was for the jury: *Id.*

Actual collusion, or fraud in fact, is always for the jury: *Id.*

Renewal of Security within Four Months of Decree—Fraud.—Where a person owing money, principal and interest, for some time overdue, but secured by mortgage, accounts with his creditor and on computation a sum is found as due for the principal and interest added together, any new mortgage given for the whole and on the same property on which the former mortgage was given, is not, upon satisfaction being entered on the old mortgage, to be considered as a new security and so open to attack under the Bankrupt Law, if made within four months before a decree in bankruptcy against the debtor. If the old security was not a preference, neither will the new one be so. They are to be considered as being for the same debt: *Burnhisel* v. *Firman*, 22 Wall.

Captured and Abandoned Property.

Executed and Executory Contracts.—On the 31st of July 1863, during the late rebellion, E. and C., owning certain crops of cotton in Wilkinson county, Mississippi, executed a paper thus:

"We *have*, this 31st of July 1863, *sold* unto Mr. L. our crops of cotton, now lying in the county aforesaid, numbering about 2100 bales, at the price of ten cents per pound, currency, the said cotton to be delivered at the landing of Fort Adams, and to be paid for when weighed. Mr. L. agreeing to furnish, at his cost, the bagging, rope, and twine necessary to bale the cotton unginned, *and we do acknowledge to have received, in order to confirm this contract, the sum of thirty dollars.* This cotton will be received and shipped by the house of D. & Co., New Orleans, and *from this date is at the risk of Mr. L.* This cotton is said to have weighed an average of 500 pounds when baled."

At the time of making the contract, the cotton baled was stored under a covering of boards, and a small part of the cotton (about twenty bales) not baled, was in the gin-house on the Buffalo Bayou, about ten miles from the Mississippi river, at a place known as "The Rocks," or "Felter's Plantation," then without the Federal military lines; and C. and L. were together there. Immediately after the sale, L. employed a person, living near where the cotton was stored, to watch and take care of the same, and paid him therefor; and this person continued his care of it, till it was taken possession of in the name of the United States. *Held*, that, notwithstanding the words above italicized, the paper of the 31st of July 1863 was executory only and had not divested E. and C. of their property in the cotton; no money but the thirty dollars having been paid, and nothing else done in execution of the contract; and that in a suit for the proceeds of it under the Captured and Abandoned Property Act, which gives to the "owner" a right to recover, under certain circumstances, property captured or abandoned during the late civil war, they alone could sue: *The Elgee Cotton Cases*, 22 Wall.

The same E. and C. (or rather E. alone, who had now become sole owner of the cotton) subsequently to the above-quoted contract with L.,

made another contract with N. (he not having notice of the first contract), by which E. contracted for the sale to N. "for so much of the 2100 bales as N. should get out in safety to a market, for the price of 15*l.* per bale, to be paid at Liverpool. The risk of the cotton to be on the vendors." *Held*, equally, but as a matter even more plain than in the former case, that no property passed by the contract; no cotton ever having been got out. *Held*, further, that this was not altered by a letter in these words from the owners of the cotton:

"It having been agreed on between you and myself, that I sell to you all the cotton of E. and C. now baled and under shed, for the price of 15*l.* sterling, per bale, payable in Liverpool, you will cause the same to be placed to my credit with J. A. J. & Co., of Liverpool:" *Id.*

CHURCH. See *Taxation*.

Presbyterian Church Government—Acts of Synod ultra vires.—In the Reformed Presbyterian Church, the General Synod, its highest judicatory, is bound by its system of religious principles with the same force as individual members: *McAuley and others' Appeal*, 77 Pa.

A congregation, organized and holding its property as a constituent part of any particular religious denomination, or in subordination to its government, which, without just cause, severs such connection or government, forfeits its rights and property to those who maintain the original status: *Id.*

If such severance be alleged, the burthen is upon those alleging to show that the others voluntarily, by their own act and without sufficient cause, renounced their connection with the general organization and invaded the chartered rights of their fellows to the church property: *Id.*

A Presbytery of the Reformed Presbyterian Church, deeming that acts of the Synod were in disregard of the constitutional rights and jurisdiction of the Presbytery, resolved to suspend its "relations to Synod until such action be revoked, or (it) obtain further light, and in the meantime remain in the Reformed Presbyterian Church," &c. If the allegations were correct, the Presbytery was justified: *Id.*

The resolution having been laid before Synod, it, without notice or trial, resolved that the officers and members of the Presbytery were out of the jurisdiction of the Synod; and such officers and members of the Fifth Congregation (and others) who might not identify themselves with the act of Presbytery, &c., be declared the Fifth Congregation, &c.: *Held*, that this action of Synod did not unchurch the Fifth Congregation, &c.: *Id.*

By the Presbyterian policy, officers and members of a church cannot be unchurched by an arbitrary decree of Synod without notice or trial, although the admitted act complained of be contumacious and worthy of censure: *Id.*

A Presbyterian congregation does not select its representatives to its higher courts; the pastor is a delegate by virtue of his office, and the lay representative is chosen by the Session; a congregation cannot be chargeable with the acts of its delegates: *Id.*

The excision of the Presbytery could not work the deposition of officers in the church previously called and ordained: *Id.*

Under its legislative powers Synod may dissolve a Presbytery and

assign its churches to some other Presbytery; under its judicial powers, it may, for proper cause and in due form, depose a presbyter, dissolve churches and reorganize them: *Id.*

A legislative act of Synod which forfeits the franchises and property of a congregation, is in the nature of a judicial sentence and inoperative; it is *ultra vires*: *Id.*

Synod has no more power to exscind a church than a state legislature to exscind a county; the forfeiture of its rights by the church must be made to appear by a regular judicial decree: *Id.*

The only constitutional method by which a congregation can express itself is by congregational meetings regularly called: *Id.*

The decree of excision of the Synod amounted at most but to a dissolution of the original compact of union, leaving the several churches free to seek their own connections or to arrange themselves as might seem meet, provided they did not radically depart from the faith or doctrines under which they were organized: *Id.*

Common Carrier.

Delivery—Goods marked C. O. D.—A bailee of goods, sending them by a carrier, may sue the carrier for the delivery of the same to the consignee without payment, when payment was imposed as a condition of delivery: *Murray* v. *Warner*, 55 N. H.

Confederate Notes.

Debtor and Creditor—Payment in Notes not Legal Currency in the United States.—After the late rebellion broke out, debtors in the rebellious states had no right to pay to the agents or trustees of their creditors in the loyal states, debts due to these last in any currency other than legal currency of the United States. Payment in Confederate notes or in Virginia bank notes (security for whose payment was Confederate bonds, and which notes like the bonds themselves never, after the rebellion broke out, were safe, and before it closed had become worthless), *held* to have been no payment, and the debtor charged *de novo*: *Fretz* v. *Stover*, 22 Wall.

Conflict of Laws. See *Execution.*

Constitutional Law. See *Ferry.*

Title of Act.—It is sufficient if the title of an act fairly give notice of its subject so as reasonably to lead to any inquiry into the body of the bill: *State Line and Juniata Railroad Co.'s Appeal*, 77 Pa.

An original act was, "To incorporate the State Line, &c., Railroad," another was "A supplement to an act to incorporate the State Line, &c., Railroad;" another, "A further supplement to an act to incorporate the State Line, &c., Railroad." All the provisions in both supplements related to the State Line, &c., road. The object of the supplements was sufficiently expressed in their titles, the object being germane to the original act: *Id.*

Contempt.

Res adjudicata—Setting up Title after Injunction and Final Decree.—In the original decree in the case of *Texas* v. *White & Chiles*, 7 Wall. 700, the defendants were perpetually enjoined from setting up

any claim or title to any of the bonds, or coupons attached to them, which were the subject-matter of the suit. The bill, answers, and proceedings in the case show that the purpose of the suit was to establish the title of the state to these bonds, and to free it from the embarrassment of the claim of defendants: *In re Chiles*, 22 Wall.

All parties to the suit were, therefore, bound by the decree as to that title, and because Chiles was the owner, or now asserts himself to be the owner, through a transaction not set up in his answer, he is not the less concluded and bound to obey the above injunction: *Id.*

Notwithstanding he now asserts a different title, or source of title, held by him when the suit was brought, from the one imputed to him in the suit and defended by him, he is in contempt of court in setting up and seeking to enforce his claim: *Id.*

Punishments for contempt of court have two aspects, namely: 1. To vindicate the dignity of the court from disrespect shown to it or its orders. 2. To compel the performance of some order or decree of the court which it is in the power of the party to perform and which he refuses to obey: *Id.*

In the present case there is no part of the original decree which Chiles can perform which remains unexecuted, and no additional order or decree can be made for him to perform in this proceeding for contempt. The court, therefore, sentences him to a fine of $250 and costs for his contempt in setting up a claim of title to seventy-six of the bonds mentioned in the decree: *Id.*

CORPORATION. See *Agent.*

Treasurer—Interference with by Directors.—The treasurer of a corporation is the proper officer charged by law with the custody of its funds, and responsible for their safe keeping. The directors cannot lawfully deprive the corporation of the benefit of this responsibility by depositing the funds with others for safe keeping, or causing such disposition of the funds to be made, and may be restrained by injunction from so doing at the suit of any stockholder, on a proper case being made: *Pearson* v. *Tower*, 55 N. H.

COVENANT. See *Deed.*

CRIMINAL LAW. See *Habeas Corpus; Intoxicating Liquors.*

Confessions—Motives of others jointly Indicted, but on Separate Trial—Declaration.—The burden of showing that a confession of guilt was obtained by improper inducements rests with the defendant: *Rufer* v. *The State*, 25 Ohio St.

Where, on a criminal trial, a witness is offered by the state to prove a confession made by the defendant, to the admission of which testimony the defendant objects, on the ground that the confession was not voluntary, it is the right of the defendant to inquire of the witness and prove his objection before the confession is given in evidence; and it is error for the court, in such case, to refuse him leave to make such examination until after the examination in chief has been concluded and the confession given to the jury: *Id.*

Where it is shown that two or more persons acted in concert in the commission of an alleged murder, it is competent for the state, by proper

testimony to show, upon the separate trial of one, the motives which actuated the others in the alleged homicide: *Id.*

But ill feeling toward the deceased, on the part of those not on trial, cannot be proved for the purpose of showing a conspiracy between them and the defendant to commit the homicide: *Id.*

Nor can the declarations of those not on trial be proved in such case, to show their motives or malice on their part toward the deceased, unless such declarations were made during the pendency of the conspiracy and in furtherance of the common design: *Id.*

Where an act or transaction is given in evidence for the purpose of showing the motive or state of mind which actuated the parties to it, it is proper, at least as a general rule, to permit the parties to be affected to show the immediate circumstances which led to the transaction, otherwise the real object of the inquiry may not be ascertained: *Id.*

DAMAGES. See *Eminent Domain.*

DEBTOR AND CREDITOR. See *Execution.*

Sale—Secret Trust—Reservation of use of Chattel by Vendor.—Upon the sale of a chattel, it was agreed as part of the bargain, that the vendor should still have the right to use the thing sold, in and about his business. *Held*, that such reservation, being inconsistent with an absolute sale, constituted a secret trust, from which fraud as to the creditors of the vendor was an inference of law; and that the actual intention of the parties would not be inquired into: *Lang* v. *Stockwell*, 55 N. H.

DEED. See *Easement.*

Use of Premises Conveyed—Covenant Binding on Grantee's Assigns.—A stipulation in a deed of conveyance, whereby the grantee, in part consideration for the conveyance, agrees for himself, his heirs, and assigns, that the premises conveyed shall not be used or occupied as a hotel, so long as certain other property, owned by the grantor, shall be used for that purpose, binds both the grantee and all claiming under him, and may, in equity, be enforced by injunction: *Stines* v. *Dorman*, 25 Ohio St.

EASEMENT.

Water—Aqueduct not having become a legal Easement, will not pass under the word Appurtenance in a Deed.—A. conveyed to S. a tract of land with buildings thereon, supplied with water from a spring on land of H., by an aqueduct. In describing the premises conveyed, no mention was made of the aqueduct, or of any easement in the land of H. Following the description was the *habendum* in these words: "To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging." *Held*, that the word "appurtenances" in the *habendum* would not be construed to convey an easement in the land of H., which, not having ripened into a legal right, had not become legally attached to the premises conveyed: *Spaulding* v. *Abbot*, 55 N. H.

By the use of the word "appurtenances" in the *habendum* of a deed, an easement will not pass unless legally appurtenant to the land in the hands of the grantor: *Id.*

An easement will not pass when not legally appurtenant to the land,

unless the deed contain proper words describing it, and showing the intention of the grantor to pass it: *Id.*

Eminent Domain.

Land Damages—Property in Trees after Assessments.—After damages have been assessed, on a condemnation of land for a railroad, the trees which may be useful in the construction of the road, standing on the tract taken, become the property of the company: *Taylor* v. *New York & Long Branch Railroad Co.*, 9 Vroom.

Land Damages—Legal or Illegal Assessment.—Where a legal and illegal assessment for benefits are so blended that they cannot be separated, the whole assessment will be set aside; but application may be made for a re-assessment: *State, Randolph & Stelle, pros.*, v. *City of Plainfield*, 9 Vroom.

Land Damages—Notice to Owner.—Where the charter provides for constructive notice of improvements by publication, personal notice is not required: *State, Boice, pros*, v. *Plainfield*, 9 Vroom.

It is the right of a landowner especially affected by a public improvement, to be informed either by actual or constructive notice of the time and place appointed for the meeting of counsel to consider their proposed action: *Id.*

Error. See *Trial.*

Objection not made in Court below.—When a party excepts to the admission of testimony, he is bound to state his objection specifically, and on error he is confined to the objection so taken: *Columbia Bridge Co.* v. *Geisse*, 9 Vroom.

Evidence. See *Agent; Criminal Law; Error; Ferry.*

Execution.

Exemption from—Attachment by Creditor in another State—Injunction.—Under the provisions of the code of civil procedure which relate to attachment proceedings, and proceedings in aid of execution, the earnings of a debtor for the three months next preceding the levy of an attachment, or the issuing of an order for the examination of the debtor, are exempt from being applied to the payment of his debts, where the same are necessary for the support of his family: *Snook et al.* v. *Snetzer*, 25 Ohio St.

A citizen of this state may be enjoined from prosecuting an attachment in another state, against a citizen of this state, to subject to the payment of his claim the earnings of the debtor, which, by the laws of this state, are exempt from being applied to the payment of such claim: *Id.*

Fence. See *Railroad.*

Ferry.

Legislative Grant—Title of Grantee to Landing-Place—Damages for Destruction of Ferry.—The legislative grant of a ferry-franchise is valid, although the grantee has not title to the landing-places which are named as the termini of the ferry: *Columbia Bridge Co.* v. *Geisse*, 9 Vroom.

The grant by one state of a ferry-franchise over a river which is the boundary between it and another state is valid; and it is not necessary to the validity of such a grant that there be concurrent action by both states, nor that the grantee have the right of building beyond the state by which the grant is made. His franchise for that reason may be less valuable, but it is good so far as his own property-rights are concerned, or the jurisdiction of the state making the grant extends: *Id.*

In an action to recover damages for the injury suffered in the destruction of a ferry by the erection of a bridge, the income derived by the plaintiff from tolls received in preceding years, is competent evidence to show the value of the ferry: *Id.*

In such action, the rates of tolls fixed by the Board of Chosen Freeholders, under the act concerning ferries (Nix. Dig. 337), certified by the clerk of the board, are competent evidence, although such rates were fixed when the plaintiff worked it as such, before he had obtained a legislative grant of the franchise. The evidence was competent to show what the public authorities having power to establish the rates of ferriage considered as reasonable tolls for the ferry: *Id.*

FRAUD. See *Debtor and Creditor.*

HABEAS CORPUS.

Review of Criminal Proceedings by.—Habeas corpus is not the proper mode of redress, where the relator has been convicted of a criminal offence, and sentenced to imprisonment therefor by a court of competent jurisdiction; if errors or irregularities have occurred in the proceedings or sentence, a writ of error is the proper remedy: *Ex parte Van Hagan*, 25 Ohio St.

HUSBAND AND WIFE.

Mortgage by Wife—Equities between Wife and Husband where Property partly paid for by each.—Weyman, by parol, bought land from O'Hara, took possession, made improvements and paid part of the purchase-money. His wife borrowed the remainder of the purchase-money from Butterfield, paid it to O'Hara, who made the deed to her, and she mortgaged to Butterfield, the husband not joining. *Held*, that the husband owning the equitable title, could not compel a conveyance of her legal title without refunding the purchase-money she had paid: *Butterfield's Appeal*, 77 Pa.

Butterfield recovered judgment against the wife on his mortgage; the land was sold by the sheriff on a municipal claim against both husband and wife. *Held*, that this divested the title of both, and in the distribution of the proceeds, Butterfield was entitled on his *judgment* to recover the amount of the wife's interest in the fund, being the purchase-money which she had paid: *Id.*

If the controversy had been between the husband and wife, the fund would be divided between them in accordance with their respective rights and equities; the wife's being the sum paid by her with interest to the sheriff's sale; and the husband's the remainder of the fund: *Id.*

Although the mortgage by the wife were void, the judgment conclusively established its execution; the mortgage was merged in the judgment, which could not be collaterally impeached, except for fraud: *Id.*

INJUNCTION. See *Contempt.*

INTEREST.

Special Rate continues after time agreed upon has expired.—Under the Act of March 14th 1850, allowing parties to contract for any rate of interest, not exceeding ten per cent., a note calling for interest at a rate higher than six per cent. carries the agreed rate after due, and until paid, as well as during the time it is made to run: *Monnett* v. *Sturges*, 25 Ohio St.

An agreement to pay interest semi-annually, at the rate of ten per cent. per annum, is not usurious within the meaning of said act: *Id.*

Special Agreement not carried out—Excess above Legal Rate.—Where a party agrees, by note, to pay a certain sum at the expiration of a year, with interest on it at a rate named, the rate being higher than the customary one of the state or territory where he lives, and does not pay the note at the expiration of the year, it bears interest not at the old rate but at the customary or statute rate: *Burnhisel* v. *Firman, Assignee*, 22 Wall.

If, however, the parties calculate interest and make a settlement upon the basis of the old rate, and the debtor gives new notes and a mortgage for the whole on that basis, the notes and mortgage are, independently of the Bankrupt Act, and of any statute making such securities void *in toto* as usurious, valid securities for the amount which would be due on a calculation properly made. They are bad only for the excess above proper interest: *Id.*

INTOXICATING LIQUORS.

Charter of Municipal Corporation—Power to License—Complaint for violating Ordinance.—When the charter of a municipal corporation gives the common council power to license inns and taverns, and also power to license wholesale liquor dealers, liquor cannot be sold by the quart without license, in violation of a city ordinance: *Roberson* v. *Lambertville*, 9 Vroom.

A complaint which charges that the complainant had just cause to suspect, and does suspect, that the defendant is guilty of violating the city ordinance, without averring that he is guilty, is not made with such reasonable certainty as to be the ground of a judicial determination, conviction and sentence. It differs from a proceeding to obtain a warrant to arrest an offender to answer to a more formal complaint by indictment in another court: *Id.*

The complaint is fatally defective in failing to state to whom the liquor was sold, without showing that it was sold to a person unknown. The only allegation is that it was sold to "each of various and divers persons:" *Id.*

The ordinance under which the prosecution was instituted prohibits the sale of liquor without license, "except such as shall be compounded and intended to be used as medicine." The complaint must negative this exception: *Id.*

JUDGMENT.

Assignment of Single Bill—Subsequent Assignment of Judgment.—Pratt entered into a note as surety for Strickland, who at the same time

assigned to Pratt, as security, and delivered to him, a bill single with warrant, on which judgment had been entered in favor of Strickland; the judgment was not marked to Pratt's use on the record; Pratt paid the note. Strickland being indebted to Christman, afterwards offered to confess judgment for this debt or assign the first judgment as collateral. Christman, after examining the record, took the assignment, Pratt still holding the bill with warrant; the judgment was marked to Christman's use: *Held*, he was not a purchaser for value and was postponed to Pratt: *Pratt's Appeal*, 77 Pa.

The non-delivery to Christman of the note on which the judgment was entered, was not notice of the prior assignment: *Id.*

LANDLORD AND TENANT. See *Agent.*

MORTGAGE.

Recording Assignments—Notice to Subsequent Assignees.—Under Act of April 9th 1849, sect. 14, recording the assignment of a mortgage is notice to a subsequent assignee: *Pepper's Appeal*, 77 Pa.

Where recording an instrument under the Acts of Assembly is discretionary, and the instrument is recorded, all the incidents and force of a public record attach to the record: *Id.*

A mortgage was assigned by an attorney in fact of the mortgagee; the assignment was recorded; the assignee permitted the papers to remain with the attorney, who afterwards assigned the mortgage to another who had no *actual* notice of the prior assignment. *Held*, that the first assignee was entitled to the proceeds of the mortgage: *Id.*

MUNICIPAL CORPORATION. See *Attachment.*

NEGLIGENCE.

Bailment for Hire—Degree of Care.—C. bailed to B. a horse, for hire, to convey him from D. to S. B., upon arriving at S., put up the horse in a proper place, and the next morning properly watered, fed, and cared for her, and left her, intending to return, and in fact returning, within a suitable time to care for her, but having reason to apprehend that A., sixteen years of age, would attempt to water the horse during his absence. A. turned the horse loose to water her, and the horse, in consequence thereof, became lamed. *Held*, by the court sitting for trial without a jury, that these facts showed no evidence of lack of ordinary care and prudence on the part of B., and that he was not liable to C. for the damages: *Chase* v. *Boody*, 55 N. H.

Action for Death caused by—Who may maintain—Damages.—Under the act requiring "compensation for causing death by wrongful act, neglect or default," etc., persons who had no legal claim for support upon the deceased may, as next of kin, have an action maintained for their benefit, to recover the compensation allowed by the statute: *Grotenkemper et al.* v. *Harris, Adm'r*, 25 Ohio St.

In such cases, in determining the pecuniary injury resulting from the death, the reasonable expectation of what the next of kin might have received from the deceased, had he lived, is a proper subject for the consideration of the jury: *Id.*

PLEADING.

Traverse de Injuria.—The replication *de injuria*, is only allowed where the plea is in excuse, and not in denial of the cause of action: *Ruckman* ads. *Ridgefield Park Railroad Co.*, 9 Vroom.

It may be used in our practice in actions *ex contractu*, wherever a special plea in excuse of the alleged breach of contract can be pleaded as a general traverse to put in issue every material allegation in the plea: *Id.*

When the defendant pleads that the power to cancel a subscription for stock is derived from the original agreement between the parties, and has been exercised, the plaintiff cannot reply by the general traverse *de injuria*: *Id.*

RAILROAD.

Fences—Liability to Trespassers.—A railroad corporation is not liable for damages done to cattle unlawfully in a pasture adjoining, and escaping thence upon its roads through defective fences which the railroad is bound to keep in repair: *Giles* v. *Boston & Maine Railroad*, 55 N. H.

REPLEVIN.

Bond in—Liability of Surety where Judgment is for a return of the Goods.—In a suit on a replevin bond given to the sheriff, where the question whether the proper party to sue is the sheriff or the party for whose benefit the bond was given, depends upon the code of practice of Montana Territory, this court will not reverse the decision of the Supreme Court of that territory on the question; that being a question on the construction of their own code: *Sweeney et al.* v. *Lomme*, 22 Wall.

In a suit on a replevin bond the defendants cannot avail themselves of the failure of the court to render in the replevin suit the alternative judgment for the return of the property or for its value; even if that were an error for which that judgment might be reversed: *Id.*

If a return be awarded in the replevin suit, the surety is liable on the condition of the bond to return, and this without execution or other demand for its return. The judgment establishes the liability: *Id.*

Nor is this liability to be measured in this action by the value of the interest in the property of the attachment debtor, for whose debt it was seized by the sheriff. The value of the property at the time it was replevied, limited by the debt still due on the attaching creditor's judgment and the penalty of the replevin bond, are the elements of ascertaining the damages in the suit on that bond: *Id.*

SALE. See *Debtor and Creditor.*

SHERIFF'S SALE.

Re-sale after Default of Purchaser—Change of Conditions.—Land was sold by the sheriff on the condition that $50 of the bid should be paid when it was struck down, and the remainder in ten days; if not then paid, it might be sold again, and the bidder should pay any deficiency. The bidder failed to comply; the land was exposed under an alias execution, with the condition that $500 was to be paid when struck down; it was sold for a smaller sum than the first bid: *Held*, there was a change of conditions, and the first bidder was not liable for deficiency: *Freeman, Assignee*, v. *Husband*, 77 Pa.

In an action against a purchaser at sheriff's sale refusing to comply with the conditions, for a difference of bid at a second sale, the suit must be in the name of the sheriff: *Id.*

STATUTE.

Construction—Apparent Contradictory Provisions.—Where a legislative act contains two sets of provisions, one giving specific and precise directions to do a particular thing, and the other in general terms prohibiting certain acts which would, in the general sense of the words used, include the particular act before authorized, then the general clause does not control or affect the specific enactment: *State, Bartlet, pros.*, v. *City of Trenton*, 9 Vroom.

Confused Ordinance—Aid to Construction from Map.—Where an ordinance is confused, yet if by careful reading, aided by a map, it is intelligible, it will not be avoided for uncertainty. Effect must be given, if possible, to all ordinances regularly passed, and within the powers conferred by the charter: *State, Boice, pros.*, v. *City of Plainfield*, 9 Vroom.

Where an ordinance is annulled for want of jurisdiction, by competent notice to the persons affected, the error is fundamental, and cannot be remedied by subsequent legislation: *Id.*

TAXATION.

Claim of Exemption from Taxation whether State, County or Municipal must be founded on clear Intention of Legislature—Negative Language not sufficient.—A claim of exemption from county and municipal taxation cannot be supported, any more than a claim from state taxation, except upon language so strong as that, fairly interpreted, no room is left for controversy. No presumption can be made in favor of the exemption: and if there be reasonable doubt, the doubt is to be solved in favor of the state: *Bailey* v. *Magwire, Collector*, 22 Wall.

The fact that in an act amending the charter of a railroad corporation special provision is made for ascertaining the taxes to become due by the corporation to the state (nothing being said about the manner of ascertaining other taxes), is not of itself enough to work an exemption of the property of the corporation from all taxation not levied for state purposes. Silence, in regard to such other taxes, cannot be construed as a waiver of the right of the state to levy them. There must be something said affirmatively, and which is explicit enough to show clearly that the legislature intended to relieve the corporation from this part of the burdens borne by other real and personal property, before such an act shall amount to a contract not to levy them: *Id.*

A provision in such an act, prescribing a mode for ascertaining the tax due the state, by which provision the president of the company is required to furnish to the auditor of the state a statement, under oath, of the actual cash value of the property to be taxed, on which the company is directed to pay the tax due the state, within a certain time, to the treasurer, under penalties, does not amount to a contract, that the state will not pass any law to assess the property of the company for taxation for state purposes in a different manner: *Id.*

But if a particular mode has been prescribed for assessing the property

of a particular company that mode should be followed, until, in some way, a different mode is prescribed: *Id.*

Whether or not an act prescribing such particular mode has been impliedly repealed by a general revenue act, not in terms repealing it, is a matter peculiarly within the province of the highest courts of the state, whose acts are the subjects of the question, to decide. And when such courts have decided the question, their decision is controlling: *Id.*

Exemption of Church Endowment.—Lands held by trustees for a church, do not constitute a part of the "endowment or fund" of a religious society, and are not exempt from taxation: *State, Nevin, et al. pros.*, v. *Krollman, Collector, &c.*, 9 Vroom.

TRESPASS. See *Amendment.*

TRIAL.

By Court without Jury—Review of Finding.—When a cause is tried by the court, without a jury, by the consent of parties, the court is substituted in the place of a jury, and its findings on questions of facts cannot be reviewed by writ of error: *Columbia Delaware Bridge Co.* v. *Geisse*, 9 Vroom.

VENDOR AND PURCHASER.

Mistake as to Encumbrance—Rescission—Equity.—Plaintiff bought a lot at a master's sale, defendant being present and bidding against him; it was announced at the sale that there was an unopened street over the lot, and the purchaser would be entitled to the damages; the plaintiff afterwards sold the lot to defendant, who also lived near the street, without informing him of the street. In an action for the purchase-money, the court charged that it was the duty of the plaintiff, when he sold to defendant, to inform him of the street, and not doing so was suppression of a material fact which entitled defendant to set-off the injury by opening the street. *Held*, to be error, as withdrawing the question from the jury: *Tenbrooke* v. *Jahke*, 77 Pa.

When there is a mutual mistake as to an encumbrance on land sold, equity relieves, not by allowing the vendee to keep the property and price, but by rescinding the contract and restoring the parties to their former position: *Id.*

Outstanding Title.—A vendee under articles may set up an outstanding title not in himself, but when he buys such title, he is trustee of his vendor, and is entitled only to what he paid to perfect the title: *Stephens et al.* v. *Black et al.*, 77 Pa.

VERDICT.

Special—A special verdict requires the jury to find all the material facts from which the law is to arise, including both disputed and undisputed facts: *Vansyckel* v. *Stewart*, 77 Pa.

Whatever is not found in a special verdict is to be considered as not existing; it cannot be aided by intendment or by extrinsic facts appearing on the record—it must be self-sustaining: *Id.*