of a warehouse in the midst of the city could store in it quantities of gunpowder, he might save the expense of transportation and storage at a distant point. If a landlord could let his building for a small-pox hospital or a slaughter-house, he might obtain an increased rent. If a railroad company is permitted to run its cars through the streets of a city propelled by steam, it might be less expensive and more convenient than if the same were drawn by horses. But all these are restrained, not because the public have occasion to make the like use, or make any use of the property, or to take any benefit or profit to themselves for it, but because it would be a noxious use, contrary to the maxim, *Sic utere tuo ut alienum non lædas.* It is not an appropriation of the property to public use, but the restraint of an injurious private use by the owner, and is therefore not within the principle of property taken under the right of eminent domain. This distinction is manifest in principle, and is recognised by unquestioned authority: *Commonwealth* v. *Alger*, 7 Cush. 53; *Commonwealth* v. *Tewksley*, 11 Met. 55; *Baker* v. *Boston*, 12 Pick. 184; *Wadleigh* v. *Gillman*, 12 Me. 403; *Vanderbilt* v. *Adams*, 7 Cowen 349; *Cowles* v. *Mayor, &c., of New York*, 7 Cowen 585; 1 Dillon on Corporations, § 93, pp. 209, 210; 2 Id., § 565, and cases there cited.

I am of opinion, for the reasons given, that the ordinance complained of is within the scope and power of municipal authority; that this power has not been unreasonably or oppressively exercised; that the ordinance merely preventing the use of locomotives on the streets does not impair the obligation of any contract, nor violate the chartered rights or any essential franchise of the railroad company; and that it is therefore valid and of full force and effect.

The judgment of the Circuit Court should be affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF MICHIGAN.[2]
SUPREME COURT OF OHIO.[3]
SUPREME COURT OF WISCONSIN.[4]

ACTION.

Promise to pay Debt of Another—Estoppel.—In an action to recover a debt which the defendant agreed with a third party to pay the plaintiff, it is a good defence to show that before the plaintiff assented to, or acted

[1] From J. W. Wallace, Esq., Reporter; to appear in vol. 22 of his Reports.

[2] From Henry A. Chaney, Esq., and Hoyt Post, Esq., Reporter. Cases decided at October Term 1875. The volume in which they will be reported cannot yet be indicated.

[3] From E. L. De Witt, Esq., Reporter; to appear in 25 Ohio State Reports.

[4] From Hon. O. M. Conover, Reporter; to appear in 38 Wisconsin Reports.

on the promise made in his favor, the agreement had been rescinded: *Trimble* v. *Strother*, 25 Ohio.

In such case, where the plaintiff has not been induced to alter his position by relying, in good faith, on the promise made in his favor, the defendant is not estopped from setting up any defence which he could have set up against the enforcement of the contract by the other contracting party: *Id.*

ADMIRALTY. See *Lis Pendens.*

Maritime Lien—Jurisdiction of State Courts—Home Port.—A lien exists under the maritime law for supplies furnished to a vessel in the port of a state in which her owner does not reside: *Dowell & Bowman et al.* v. *Goode*, 25 Ohio.

A suit *in rem* against the vessel to enforce such lien, cannot be maintained in a state court, the exclusive jurisdiction in such case being vested in the courts of the United States: *Id.*

For the purpose of ascertaining whether such lien exists, the home port of the vessel is to be determined by the residence of the owner, and not by the place of her enrolment: *Id.*

Where a vessel was furnished with supplies at the port of Cincinnati, the place of her enrolment, no owner residing in this state, the right to assert a maritime lien against the vessel, for such supplies, is not affected by the fact that one of the owners of the vessel resided in the adjoining city of Covington, in the state of Kentucky: *Id.*

ASSUMPSIT.

An action of assumpsit against parties jointly, fails if there is no evidence of a joint liability or understanding on their part: *Mace* v. *Page*, S. C. Mich.

ATTACHMENT.

Pendency of Attachment in another State.—In an action to recover money due on contract, it is a sufficient defence to show that the money sought to be recovered has been attached by process of garnishment duly issued by a court of a sister state, in an action there prosecuted against the plaintiff by his creditors, although it appear that the plaintiff and such creditors are all residents of this state: *Baltimore and Ohio Railroad Co.* v. *May*, 25 Ohio.

ATTORNEY.

The mayor or councilman of a municipality is not bound by his official position to give to the latter his professional services as a lawyer without charge: *Mayor of Niles* v. *Muzzy*, S. C. Mich.

BAILMENT.

Denial of Bailor's Title.—One who receives property as bailee or agent cannot at law deny that his bailor or principal had title to the property at the time of its delivery to him: *Nudd* v. *Montanye*, 38 Wis.

Defendants claim to have purchased certain chattels, here in dispute, from the assignee in bankruptcy of one E., as a part of E.'s estate. Plaintiffs testify that they purchased said property of E. before he was adjudged a bankrupt; that some months afterwards they loaned it to

defendants, to be used and taken care of, and possession to be restored to plaintiffs when they should request it; and that defendants' alleged purchase was made while they were holding the property under such bailment. *Held*, that if the facts are so found, defendants cannot claim title under their said purchase, as against the plaintiffs: *Id.*

BANKRUPTCY.

The withdrawal of opposition to bankruptcy proceedings already begun, is a valid consideration for an agreement between petitioning creditors and the defendants in bankruptcy: *Sanford* v. *Huxford*, S. C. Mich.

BILLS AND NOTES. See *Partnership.*

Parol Agreement not to Negotiate—Consideration—Estoppel of Maker as against Holder.—In an action on a promissory note, evidence is inadmissible to show a parol agreement, made when the note was given, that it should not be negotiated by the payee: *Knox* v. *Clifford*, 38 Wis.

Where a note was given for an amount due the payee from the maker on a certain contract, this was a sufficient consideration, although the payee may have owed the maker at the time more than the face of the note, on other contracts: *Id.*

One who purchases negotiable paper, before maturity, without notice, in absolute payment of a pre-existing debt, surrendering his previous security, is protected by the law merchant against all equities of the maker as against the payee: *Id.*

One who makes and puts in circulation a negotiable note, bearing date on a secular day, is estopped, as against an innocent holder, from showing that it was executed on Sunday: *Id.*

Action by Drawee to recover back from Payee the amount paid by him.—After accepting and paying a bill, the drawee cannot recover back the amount of it from the payee on the ground that he had paid it under a mistake as to the reliability of the drawer's security, which had proved to be fictitious: *National Bank* v. *Burkham*, S. C. Mich.

CONSTITUTIONAL LAW. See *Hawkers and Pedlers.*

Delegation of Legislative Power—Conditional Enactments.—Sect. 8 of ch. 67, Laws of 1871, provides that the owner or keeper of any dog which shall have worried, maimed or killed any cattle, horses, sheep or lambs, or injured any person, shall be liable to the owner or legal possessor of such cattle, &c., or to the person injured, "without proving notice to such owner or keeper, or knowledge by him, that the dog was mischievous or disposed to kill or worry sheep." *Held*, that this section was inserted in the act in furtherance of its general objects ("to protect and encourage the raising of sheep and discourage the raising of dogs"); and the power given in terms by sect. 9 of the act to county boards of supervisors, to exempt their respective counties from the act, was intended to apply to said sect. 8, in the same manner as to the other provisions of the act: *Slinger* v. *Hennsman*, 38 Wis.

The legislative power, vested by the Constitution in the Senate and Assembly, cannot be delegated to any other body; although, *in matters purely local and municipal*, the legislature may enact conditional laws,

and permit the people or proper municipal authorities to decide whether such laws shall have force in their respective municipalities: *Id.*

Sect. 8 of the act of 1871, above recited, does not relate to municipal affairs; and the provisions of sect. 9 which in terms empower county boards to exempt their respective counties from its operation, are *void*: *Id.*

It appearing probable from the history of the legislation of this state upon the subject, that the legislature would not have enacted sect. 8 unconditionally (or without some such provision as that found in sect. 9), that section cannot be upheld as valid, after sect. 9 has been adjudged void: *Id.*

Military Courts for Trial of Civil Issues during the War.—The Constitution did not prohibit the creation by military authority of courts for the trial of civil causes during the civil war in conquered portions of the insurgent states. The establishment of such courts was the exercise of the ordinary rights of conquest: *Mechanics' and Traders' Bank* v. *Union Bank*, 22 Wall.

A court established by proclamation of the commanding general in New Orleans, on the 1st of May 1862, on the occupation of the city by the government forces, though in the order establishing it called a Provost Court, and which tried civil cases, must be presumed to have been established by the general establishing it with jurisdiction to try such cases; and in the absence of proof to the contrary it will be presumed that he acted by the consent and authorization of the President: *Id.*

Whether such court acted within its jurisdiction in a case where one bank of the state of Louisiana was claiming from another bank of the same state a large sum of money, is not a question for this court to determine, but a question exclusively for the state tribunals.

Contract.

Executory—Judgment—What amounts to a collection in Equity.—In 1859 A. lent to B., who was largely interested in an embarrassed railroad, $5000 to buy certain judgments against the road, and B. having bought, in 1859 and the early part of 1860, judgments to the amount of $31,000, assigned the whole of them to A. absolutely. Subsequently, that is to say in August, 1860, A. made a transfer (so called) of them to B., "upon B.'s payment of $5000, with interest from this date;" and gave to B. a power of attorney of the same date, authorizing him "for me and in my name" to dispose of them as he might see proper. *Held*, 1st. That the so-called transfer was executory, amounting only to an offer that if B. would pay the $5000, B. should become owner of the judgments; and that B. having, in May, 1861, gone south and joined the rebels there, and not come back till 1865, could not in 1868 file a bill, and on an allegation that A. had collected the judgments, claim the proceeds, less the $5000 and interest: *French* v. *Hay*, 22 Wall.

2. That a bill making such an allegation and such a claim was demurrable; the bill not being one of discovery, and the complainant having complete remedy at law: *Id.*

3. That the road having been sold under a mortgage existing prior to the judgments and bought by A., who, under the laws of the state where it was, organized a new company and issued new stock, and having

got, as an allotment to him, a quantity of such stock which he sold for more than enough to pay the judgments—on which satisfaction was then entered—such satisfaction was not in any sense a collection of the judgments: *Id.*

4. That if it could be so considered, yet that the sale to A. having been judicially declared void, and set aside, and the old company thus brought again into existence, and B. so reinstated in his old ownership of his stock in it, unimpaired by the sale, he could claim no proceeds of the judgments from A., because, if they were ever his (B.'s) by virtue of the transfer and power of attorney, they remained his still, since no one but the owner could enter satisfaction on them.

COURTS. See *Removal of Causes; United States Courts.*

CRIMINAL LAW.

Verdict without Plea—Amendment.—The rule that a verdict in a criminal case, where there has been neither arraignment nor plea, is a nullity, and no judgment can be rendered upon it: *Douglass* v. *The State*, 3 Wis. 820, applies to a criminal prosecution for an assault and battery: *Davis* v. *The State*, 38 Wis.

After a verdict in a criminal case, the court cannot order a plea of "not guilty" to be entered for the defendant, without his consent, and then render judgment against him upon the verdict: *Id.*

DOG.

Liability of Owner.—At the common law the owner of a dog is not liable for damages resulting from the vicious or mischievous act of the animal, unless he had knowledge of its mischievous or vicious propensities: *Slinger* v. *Hennsman*, 38 Wis.

EASEMENTS.

By necessity—Adverse Exclusion by one Party gives option to other to treat a Common Way as extinguished.—In every deed of a *part* of the grantor's land, without express provision on the subject, there is an implied grant, or reservation, of easements of necessity for the enjoyment of the part conveyed, or of the part retained: *Dillman* v. *Hoffman*, 38 Wis.

Whether, where the owner of a permanent building conveys part of the same, dependent, for access to its upper stories, on common stairs, passages and halls, the doctrine of easements in ways of necessity applies, or whether the conveyance of a part determines the common use of such stairs, passages and halls, is not here decided: *Id.*

If an easement exists in such a case, common stairs, passages and halls which are in part upon the estate of each party, constitute together one entirely *mutual* easement, and neither party can insist upon such an easement in the estate of the other, and at the same time obstruct the easement *in invitum* on his own estate: *Id*

In such a case, an adverse permanent exclusion of one party by the other upon the estate of the latter, will, at the election of the former, operate as an extinguishment of the mutual easement by the latter: *Id.*

A permanent business block, of several stories, in a city, was so built that the only access to the stories above the ground floor was by certain stairways and passages and a hall; and the north one-third and south two-thirds were afterwards conveyed to different grantees, and are now

held in severalty by the parties to this action, the line of division being within said hall and one of said stairways. Plaintiff's grantor, while seized of the north one-third, several years before this action was brought, built, without defendant's consent, a permanent partition, ever since maintained, enclosing within his own premises a great part of the common hall and passages in the upper stories upon his own estate, and removed a stairway between the second and third stories, part of the common way, from his own premises to those of defendants, leaving a common way, but not the same, nor one so advantageous to the defendant. The action being to restrain defendant from obstructing the stairways and hall by building a partition wall on the line of division between the two estates: *Held*, that the mutual easement, if there was one, has been extinguished by plaintiff's obstruction thereof, now ratified by defendant: *Id.*

EQUITY. See *Contract.*

Objection to Jurisdiction—Waiver of.—The objection that a case is one of legal instead of equitable cognisance, may be considered waived if not taker in the court of original jurisdiction: *Wallace* v. *Harris*, S. C. Mich.

Where there is apparently as good ground for assigning a case to the jurisdiction of a court of equity as to that of a court of law, it is held not to be a matter of great consequence in which branch it falls, especially in Michigan, where the same judge sits in both law and equity: *Id.*

ESTOPPEL. See *Action.*

FENCES.

Railroad—Sudden Destruction by Storm.—A railroad company, though required to maintain side-fencing, is not liable for the destruction of cattle suddenly let loose upon the track through a breach in the fencing caused by a storm, and not existing long enough to establish negligence of the company: *Robinson* v. *Grand Trunk Railway*, S. C. Mich.

FORMER ADJUDICATION.

Estoppel by—Distinct Controversies on the same matter.—In a lawsuit involving the title to land, the plaintiff is not estopped from contesting the validity of certain foreclosure proceedings under which the title has been obtained, by his failure to raise that question in a former suit brought by him in chancery to set aside the mortgage as invalid: *Bonker* v. *Charlesworth*, S. C. Mich.

One who fails to have a judgment set aside for fraud, is not debarred from contesting at law a void execution sale by not having put it in issue in his chancery suit: *Id.*

A complainant may, if he chooses, make distinct controversies on the same matter, the subjects of separate suits: *Id.*

HAWKERS AND PEDLERS.

License—Constitutional Law—Police Power of the State.—Sect. 7, ch. 72, Laws of 1870, in connection with sect. 1, must be construed as providing for the infliction of a penalty upon every person who shall be

found travelling "from place to place within this state for the purpose of carrying to sell or exposing to sale any goods," etc., without having obtained a license as hawker and pedler in the manner provided in the act: *Morrill* v. *The State*, 38 Wis.

It is as competent for the legislature to prohibit persons from travelling for the purpose of hawking and pedling without license, as to prohibit actual sales by hawkers and pedlers without license: *Id.*

K. & N., residents of this state, were general agents of the Singer Manufacturing Company (a corporation of another state), for the sale in this state of sewing machines manufactured by that company; and they received the machines from the company, in parts, at Milwaukee, and there fitted the parts together, and tested the machines, the work requiring a shop, with machinery and tools, and the employment of several men; but such parts were not manufactured in this state. *Held*, that the machines cannot be regarded as "manufactured within this state," so as to come within the exception of sect. 14 of the Act of 1870: *Id.*

Laws restricting the business of hawkers and pedlers, or providing for the licensing thereof, are an exercise of the police power of the state, and do not lose this character by requiring payment of the license fees into the state treasury: *Id.*

The Act of 1870 being an exercise of the police power, that provision of the state constitution which requires uniformity of taxation is inapplicable to it. Whether, if it were an exercise of the taxing power, it would violate the constitutional rule of uniformity by reason of the exceptions created by sect. 14, is not here determined: *Id.*

The legislature, under the police power, might prohibit entirely the business of hawking and pedling; and the power to prohibit (where the act or business is not *malum in se*) includes the power to license on such terms as the legislature may deem fit, however onerous and unequal in fact: *Id.*

There is nothing in said Act of 1870, considered as an exercise of the police power of the state, which is in violation of the Federal Constitution: *Id.*

Homestead.

Loss of Home and acquisition of new one—Presumptions.—Under the Homestead Exemption Law as amended in 1858 (Tay. Stats. 550, § 30), it is still only the actual home of the debtor which is exempt; and the removal or absence which will not destroy the exemption is one for a temporary purpose, with the certain and abiding intention of returning, and such as is not inconsistent with the fact that the premises still remain the residence of the owner: *Jarvis* v. *Moe*, 38 Wis.

A person cannot have two homes at the same time; and such a removal as gains a new home is an abandonment of the old: *Id.*

The presumption is that a person is at home where he is found living; but this presumption may be rebutted by showing his abode temporary, and his home elsewhere: *Id.*

The presumption that a person who removes with his family from one dwelling-house to another, owned by himself, does so *animo manendi*, may be rebutted by circumstances and conditions of the removal, or declarations accompanying it, manifesting a temporary purpose in such removal and an intention to return; but cannot be satisfactorily rebutted

by professions made only after intervening occurrences had made a return advantageous: *Id.*

The intention which is sufficient to rebut such presumption must be positive and certain, not conditional or indefinite: *Id.*

Plaintiff removed from his former home without manifesting any intention to return to it, renting it to other persons, and moving with his family into another building owned by him in the same city, for the purpose of keeping a hotel in such building. He now claims that he did this for the purpose of establishing the hotel and keeping it until he could rent or sell it, and of then returning to his former home. He remained in the hotel eighteen months, leaving it only when it became obvious that he could not maintain his title to it against encumbrances upon it; and his testimony tends to show that had his hotel keeping prospered, he would have continued it indefinitely, unless he could have sold or rented the property to his satisfaction. *Held*, that he must be regarded as having acquired a new residence, on his hotel property, abandoning his former homestead, and cannot now hold the latter premises exempt from the lien of a judgment recovered against him after his removal and before his return to them: *Id.*

Infant.

Voidable Contract—Acts amounting to Ratification.—Where the defences in foreclosure were, that there was no valid consideration for the notes and mortgages in suit, and that the mortgagors were infants when the instruments were made, it appeared that the mortgage was for purchase-money of the land, and that the mortgagors were in possession, and there was no offer by them to restore the land. *Held*, 1. That these facts were conclusive evidence of a valid consideration: 2. That, treating the conveyance of the land to defendants and their execution of the notes and mortgage for the purchase-money, as one transaction, it was *voidable* by them, but *not void;* and their electing to retain possession of the land after reaching their majority, was a *ratification* of the whole contract, which made it binding upon them: *Callis* v. *Day*, 38 Wis.

Judicial Sale.

Control of Court over.—Where a judicial sale has been made on void process, the court may, while the purchase-money remains in the hands of the sheriff, on the application of the purchaser, set aside the sale and order the purchase-money to be refunded: *Dowell* v. *Goode*, 25 Ohio.

License. See *Hawkers and Pedlers.*

Limitations, Statute of.

Partial Payment by one of several Debtors.—A partial payment on a joint and several promissory note, by one of several makers, will not prevent the running of the Statute of Limitations as to the other maker: *Hance, Executor*, v. *Hair et al.*, 25 Ohio.

Lis Pendens.

Suit in Admiralty is not.—Pendency of a suit in admiralty does not bar the institution of a suit at common law on the same subject, nor authorize a stay of proceedings therein. The principle of *Granger* v.

Wayne Circuit Judge, 27 Mich. 405, is re-asserted: *Murphy* v. *Granger*, S. C. Mich.

Malicious Prosecution.

Issue of Action for—Malice—Advice of Counsel.—The true inquiry in an action for malicious prosecution is not what the actual facts were, and whether they would authorize the arrest, but what the defendants had reason to believe and did believe were the facts: *Gallaway* v. *Burr*, S. C. Mich.

In a prosecution for obtaining goods under false pretences, the plaintiff need not have actual personal knowledge of the facts, but if he honestly believes them to be true, he may rely on such statements, received through the usual channels, as business men of ordinary prudence would act upon: *Id.*

The institution of a criminal prosecution for the recovery of a private claim is strong, if not conclusive evidence of malice; if this is the motive, the advice of counsel is no protection: *Id.*

Negligence.

Railroad—Injury to Passengers.—Stokes v. *Saltonstall*, 13 Peters 181, affirmed; and on a suit for injury to persons, against a railway company carrying passengers, the doctrine again declared to be that if the passenger is in the exercise of that degree of care which may reasonably be expected from a person in his situation, and injury occur to him, this is *primâ facie* evidence of the carrier's liability: *Railroad Company* v. *Pollard*, 22 Wall.

Whether a passenger in a rail-car, standing up in it, when getting into the station-house, at the close of the journey, but before an actual stoppage of a car, is guilty of negligence in the circumstances of the case, is a question of fact for the jury to decide under proper instructions: *Id.*

Partnership.

Set-off of Debt due one Partner.—In an action on a promissory note, made by defendants in their firm name and for a partnership debt, they cannot offset an account against plaintiff in favor of another firm, now owned by *one* of the defendants: *Wilson* v. *Runkel and another*, 38 Wis.

Railroad. See *Fences; Negligence.*

Removal of Causes.

Jurisdiction—Vacating Judgment of State Court after Removal.—A. filed a bill against B., a purchaser of property at a sale made by C., a trustee to sell, charging both B. and C. with collusion and fraud in the sale, and praying discovery from both parties, that the sale might be set aside, &c., and that B., who had taken possession of the property, might be charged with its rents, but not making such a prayer as to C. Both B. and C. appeared and answered. The court charged B. with rents, but did not charge C. B. appealed, and the decree charging him being affirmed, and a master having reported to the inferior court the amount of rents, a final decree was there made against B. for them. At the same time that this decree was made (B. being insolvent), the complainant asked and got leave to file an amended bill against the two parties; Mr.

D., an attorney of the court, appearing in court—but without any authority from C.—and consenting that such a bill should be filed. The amended bill was accordingly filed, alleging that B. was insolvent; that C. was chargeable for the rents as well as B., and that both were chargeable for use of certain furniture on the premises when B. entered them. Neither B. nor C. apparently had actual knowledge of the filing of this bill; and a decree was entered, *pro confesso*, against C., for both the value of the rents and the injury to the furniture. On C. getting knowledge of this decree, it was vacated, and, notwithstanding opposition by him, a decree for rents was entered, leaving the case open as to both parties in respect to the furniture. B. and C. then answered as to the whole case. Subsequently (being entitled as respected citizenship to do so) they removed the case into the Circuit Court of the United States, under the Act of March 2d 1867, which court set aside all the decrees in the state court, and ordering that the case should stand for hearing on bill, answer and pleadings, opened the entire suit as if nothing had been done anywhere else in any part of it. C. answered, denying all the material allegations of all the bills; and testimony being taken, no proof of their truth appeared as to him. The Circuit Court annulled the decrees *in toto* in the state court against both B. and C., and dismissed the whole bill. A. appealed to this court. *Held*,

1. That the decree against B. was wrongly vacated; that as to him the decree in the state court on the original bill for rents was *res judicata*; and that that decree stood as though no amended bill had been filed, and unimpeachable as to everything covered by it; while as to the other matter (the damage to the furniture), the Circuit Court of the United States should, by issue directed to a jury, or by reference to a master, have ascertained it and have decreed accordingly: *French, Trustee*, v. *Hay et al.*, 22 Wall.

2. That the state court committed a gross error in entering a decree against C. for rents, on the amended bill, where the original bill had not prayed that he should be charged with them, and that his answer denying, as it did, all the material allegations of both bills against him, and those allegations being otherwise unsupported, the decree of the state court was, as to him, rightly vacated, and the bill, as to him, rightly dismissed: *Id.*

When a case has been removed from a state court, into the Circuit Court of the United States, under one of the Acts of Congress relating to such removal of cases (in this case the act was that of March 2d 1867), an objection that the act has not been complied with in respect of time and other important particulars, will not be listened to in this court, the point not having been made in the court below until three years after the removal made, and when the testimony was all taken and the case ready for hearing. Nor ought it under such circumstances to have been listened to in the Circuit Court. It came too late, and must be held to have been conclusively waived: *Id.*

Loss of Original Papers—Presumption as to Jurisdiction.—Where the Statutes of the United States authorizing a removal into the Circuit Court of the United States, of a cause brought originally in the courts of a state, require that the parties to the suit shall be citizens of different states, and where a cause has been removed from a state court to a circuit court, and all the papers in it have been afterwards destroyed by

fire, and the parties then, by writing filed in the Circuit Court, admit that the cause was brought to the Circuit Court by transfer from the state court, in accordance with the statutes in such case provided, and —being now anxious apparently only to get to trial—simply ask and get leave to file a declaration and plea as substitutes for the ones originally filed and now destroyed,—in such case this court will, in the absence of all proof to the contrary, presume that the citizenship requisite to give the Circuit Court jurisdiction was shown in some proper manner; though it be not apparent on the mere pleadings: *Railway Co.* v. *Ramsey*, 22 Wall.

Jurisdiction of Federal Courts over Collateral Suits.—When in a case which is properly removed from a state court, under one of the Acts of Congress relating to removals, into the Circuit Court of the United States, a complainant getting a decree in the State Court and sending a transcript of it into another state, sues the defendant on it there, the Circuit Court into which the case is removed may enjoin the complainant from proceedings in any such or other distant court until *it* hears the case; and if, after hearing, it annuls the decree in the state court, and dismisses, as wanting equity, the bill on which the decree was made, may make the injunction perpetual: *French, Trustee*, v. *Hay*, 22 Wall.

Statute.

Construction.—In construing a statute, the *punctuation* is entitled to small consideration: *Morrill* v. *The State*, 38 Wis.

United States Courts.

Jurisdiction by Consent.—Although consent of the parties to a suit cannot give jurisdiction to the courts of the United States, the parties may admit the existence of facts which show jurisdiction, and the courts may act judicially upon such an admission: *Railway Co.* v. *Ramsay*, 22 Wall.

Usury.

Stipulated Rate—Judgment.—Under the Act of May 4th 1869, parties may stipulate in a note for any rate of interest not exceeding 8 per cent. per annum, and such note, after maturity, without an express agreement to that effect, will continue to bear the stipulated rate until payment: *Marietta Iron Works et al.* v. *Lottimer*, 25 Ohio.

A judgment taken on such a note for the amount due, including unpaid interest, will bear the stipulated rate of interest only, without rests, until payment: *Id.*

Witness.

Party—Deposition.—In courts of the United States under section 858 of the Revised Statutes, which enact (with a proviso excepting to a certain extent, suits by or against executors, administrators or guardians) that in those courts, no witness shall be excluded in any civil action because he is a party to or interested in the issue tried, parties to a civil suit (the suit not being one of the sort excepted by or against executors or guardians), may testify by deposition as well as orally, there being, under the Act of Congress, no difference between them and other persons having no interest in the suit: *Railroad Co.* v. *Pollard*, 22 Wall.