can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognised in other countries. The fact that the bonds made in Canada were payable in New York is unimportant, except in determining by what law the parties intended their contract should be governed, and every citizen of a country, other than that in which the corporation is located, may protect himself against all unjust legislation of the foreign government by refusing to deal with its corporations.

On the whole we are satisfied that the scheme of arrangement bound the defendants in error, and that these actions cannot be maintained. The same result was reached by the Court of Queen's Bench in the Province of Ontario when passing on a similar statute in *Jones* v. *The Canada Central Railway Co., supra.*

The judgments are reversed and the causes remanded, with instructions to enter judgment on the facts found in favor of the railway company in each of the cases.

Mr. Justice FIELD, not being present at the argument of this case, took no part in the decision.

Mr. Justice HARLAN delivered a dissenting opinion.

ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS OF LAW AND EQUITY.[1]

SUPREME COURT OF THE UNITED STATES.[2]

SUPREME COURT OF MAINE.[3]

COURT OF ERRORS AND APPEALS OF MARYLAND.[4]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[5]

SUPREME COURT OF OHIO.[6]

AGENT. See *Former Recovery*.

ARBITRATION.

Award—Not Conclusive as to Claims not Considered.—On a submis-

[1] Selected from late numbers of the Law Reports.

[2] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1883. The cases will probably appear in 18 or 19 Otto Reports.

[3] From J. W. Spaulding, Esq., Reporter; to appear in 75 Me. Reports.

[4] From J. Shaaf Stockett, Esq., Reporter; to appear in 60 Md. Reports.

[5] From John Lathrop, Esq., Reporter; to appear in 134 Mass. Reports.

[6] From E. L. DeWitt, Esq., Reporter. The cases will probably appear in 39 or 40 Ohio State Reports.

sion of "all demands between the parties" thereto, the award is no bar to a claim not in fact submitted or considered by the arbitrators: *Inh. of Mt. Desert* v. *Inh. of Tremont*, 75 Me.

ATTACHMENT.

Payment before Attachment — Sending of Checks.—The alleged trustees on a December afternoon directed their book-keeper to send the defendant a check for an amount due him. The check was thereupon made. At eight o'clock in the evening the writ was served upon the trustees. They notified the book-keeper the next morning, and were informed by him that he had mailed the check by the mail which closed at fifteen minutes past seven that morning, having no knowledge of the trustee process. The check was duly presented and paid: *Held*, that the trustees were not chargeable for the amount thus paid: *Jordan* v. *Jordan*, 75 Me.

BAILMENT.

Livery-stable Keeper—Contract—Vicious Horse—Implied Warranty.—A livery-stable keeper who lets a horse for hire for a trip, impliedly promises that the horse is a kind and suitable one for the purpose for which he is let, and not vicious, nor in the habit of kicking: *Windle* v. *Jordan*, 75 Me.

BANK. See *Corporation*.

BILLS AND NOTES.

Sale of—Implied Warranty—Solvency.—Where one sells negotiable business paper in good faith without endorsing it, making no misrepresentations respecting it, and at a rate of discount indicating that the purchaser has a compensation for his risk, there is no implied warranty on the part of the seller as to the past, present or future solvency of the makers or indorsers: *Milliken* v. *Chapman*, 75 Me.

In cases of sale or barter of commercial paper, as of other personal property, the rule of *caveat emptor* applies: *Id.*

Indorsement as Co-sureties—Liability of Indorsers to equal Contribution inter se.—The liabilities *inter se* of successive indorsers of a bill or note must, in the absence of all evidence to the contrary, be determined according to the ordinary principles of the law-merchant, whereby a prior indorser must indemnify a subsequent one: *Macdonald* v. *Whitfeld*, 8 Appeal Cases 733.

But the whole circumstances attendant upon the making, issue and transference of a bill or note may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, either as makers or indorsers; and reasonable inferences derived from these facts and circumstances, are admitted to the effect of qualifying, altering or even inverting the relative liabilities which the law-merchant would otherwise assign to them: *Id.*

Where the directors of a company mutually agreed with each other to become sureties to the bank for the same debts of the company, and in pursuance of that agreement successively indorsed three promissory notes of the company: *Held*, reversing the judgment of the court

below, that they were entitled and liable to equal contribution *inter se*, and were not liable to indemnify each other successively according to the priority of their indorsements: *Id.*

Reynolds v. *Wheeler*, 10 C. B. (N. S.) 561, approved; *Steele* v. *McKinlay*, 5 App. Cas. 754, distinguished: *Id.*

COMMON CARRIER.

Railroad—Extra Charge for Fare Paid on Train—Expulsion.—A railroad company may charge a higher price for carrying passengers when the fare is paid on the train, than it does at its ticket offices, provided the price thus charged is reasonable, and the fare charged on the train does not exceed the maximum allowed by law: *Cin., San. & Cl. Railroad* v. *Skillman*, 39 or 40 Ohio St.

A person entering the cars, without having purchased a ticket, and persistently refusing to pay the usual and reasonable fare, upon demand by the conductor, and after reasonable time in which to determine whether he will or will not pay the same, may lawfully be removed from the train: *Id.*

The expulsion of such person may be at a place other than a railroad depot, or usual stopping place, provided care is taken not to expose him to serious injury or danger: *Id.*

Such person acquires no right to remain on the train, by offering to pay the usual fare after the train has been stopped for the purpose of ejecting him: *Id*

CONFLICT OF LAWS. See *Constitutional Law.*

CONSTITUTIONAL LAW.

Law Impairing the Obligation of Contracts.—In determining the question whether the Supreme Court of a state has given effect to a law of the state which impairs the obligation of a contract, the Supreme Court of the United States will decide for itself, independently of the decisions of the state court, whether there is a contract, and whether its obligation is impaired; and if the decision of the question as to the existence of the alleged contract requires a construction of state constitutions and laws, it is not necessarily governed by previous decisions of the state court, except where they have been so firmly established as to constitute a rule of property. This is true even where the state courts have construed the statute as creating a contract: *Louisville and N. Railroad Co.* v. *Palmes*, S. C. U. S., Oct. Term 1883.

CONTEMPT.

Attachment—Privilege from Arrest.—Disobedience by a solicitor to an order of court made against him as an officer of the court, is a contempt of a criminal nature, and an attachment granted to enforce compliance with the order of court is process of a punitive and disciplinary character; and therefore no privilege from arrest exists or can be claimed against the execution of the attachment: *In re Freston*, 11 Q. B. Div.

CONTRACT.

Approval of Agent—Fraudulent Rejection—Exercise of Judgment.—Under a contract between L. and a railroad company, L. agreed to fur-

nish the company a certain quantity of ice, of a given description, the same to be subject to the inspection and *approval* of an agent of the company. In an action by L. against the company to recover damages for a breach of the contract, it was *held*, 1st. That if the agent rejected the ice fraudulently, or in bad faith, the defendant was responsible for his act. 2d. But that under the contract, which was perfectly lawful, the judgment of the agent, no matter how erroneous or mistaken it might be, or how unreasonable it might appear to others, was conclusive between the parties, unless tainted with fraud or bad faith: *Lynn* v. *Baltimore & Ohio Railroad Co.*, 60 Md.

Consideration—Nudum pactum.—F. sued L. and J., and set out in the *narr.* as his cause of action, that the father of the defendants in his lifetime was indebted to the plaintiff for money lent on his promissory note for $500, and that after his death the defendants agreed that if the plaintiff would deliver up to them the said promissory note, then due and unpaid, they would pay him $500; in consideration of which promise the said plaintiff did deliver up to said defendants the said note of their father; but the defendants did not pay the said sum of $500. The plaintiff stated in evidence, as the reason of the transfer of the note of the father to the defendants, and the giving of theirs, that the defendants said if he would give them no trouble they would be responsible for the money. The deceased left no estate out of which the note could have been paid; and it did not appear that at the time the plaintiff relinquished the note, any administrator of the personal estate of the deceased had been appointed: *Held*, that there was no legal consideration upon which the defendants could be held liable to pay the plaintiff's demand, their undertaking being *nudum pactum*: *Schroeder* v. *Fink*, 60 Md.

CORPORATION. See *Negligence*.

Pledgee of Stock—Not liable as Stockholder.—A. being indebted to a bank, pledged to it as collateral security for such debt certain shares of stock in the Salem Manufacturing Company, and executed to the president of the bank a power of attorney to transfer the stock, on the books of the company, to the pledgee, or any other person to whom the same may be sold. The stock was never transferred on the books of the company to the bank; it never voted upon it or exercised acts of ownership thereof: *Held*, the bank was not a stockholder and was not liable to creditors of the corporation in an action to enforce the individual liability of stockholders: *Henke* v. *Salem Manufacturing Co.*, 39 or 40 Ohio St.

COVENANT.

Building Estate—Mutual Restriction Covenants—Alteration of Character of Property—Breach of Covenant—Injunction.—A building estate was laid out in lots, which were sold by the owners of the estate to different purchasers, each of whom covenanted with the vendors, and with the owners of the other lots entitled to the benefit of the covenant, not to build a shop on his land, or to use his house as a shop, or to carry on any trade therein. The purchaser of one of the lots, who occupied his house as a private residence, brought an action against the purchaser of another lot, who was using his house as a beer-shop with an

"off" license, to restrain him from breaking his covenant, and for damages. The defendant had, to the knowledge of the plaintiff, so used his house for three years before the action was commenced There was evidence that several other houses built on others of the lots (one of them immediately opposite the plaintiff's house), had been for sometime used as shops, notwithstanding the covenant, and that many of the houses adjoining the plaintiff's house were occupied, not each by a single tenant, but each by two families at weekly rents: *Held*, that the character of the property had become so changed that the original purpose—the keeping the estate as a residential property—for which the covenant had been entered into had failed, and that it would under the circumstances be inequitable to enforce the specific performance of the covenant: *Sayers* v. *Collyer*, 24 Ch. Div.

The principle of *Duke of Bedford* v. *Trustees of the British Museum*, 3 My. & K. 552, applied. *Id.*

CRIMINAL LAW. See *Jury*.

Homicide—Self Defence.—Where one is assaulted in his home, or the home itself is attacked, he may use such means as are *necessary* to repel the assailant from the house or to prevent his forcible entry, or material injury to his home, even to the taking of life. But a homicide in such a case would not be justifiable unless the slayer, in the careful and proper use of his faculties, *bona fide believes*, and has reasonable ground to believe, that the killing *is* necessary to repel the assailant or prevent his forcible entry: *State* v. *Peacock*, 39 or 40 Ohio St.

DAMAGES.

Exemplary—When allowed.—Punitive or exemplary damages are only allowed because of the malicious motive which is supposed, from the circumstances attending the wrong, to have animated the wrongdoer and prompted it. If the cause of offence were discontinued with such reasonable promptness as the circumstances of the case allowed, exemplary damages should not be awarded: *Oursler* v. *Balto. & Ohio Railroad Co.*, 60 Md.

DIVORCE.

Bigamy of Petitioner under belief of Wife's Death.—A husband believing that his wife was dead married again, and subsequently discovered that his wife was alive and had committed adultery: *Held*, that notwithstanding the bigamy, he was entitled to a dissolution of his marriage: *Freegard* v. *Freegard*, 8 Prob. Div.

EQUITY.

Injunction—Light and Air—Adjoining Owner—Railroad.—The plaintiff was owner of a house, some of the windows of which overlooked a piece of land belonging to a railway company and used as a goods yard of a station. When the house had been built sixteen years the company put up a screen opposite the plaintiff's windows to prevent his acquiring an easement of light and air. The plaintiff brought an action for injunction to restrain the company from interfering with his light and air; and moved for an interlocutory injunction till the

hearing: *Held* (reversing the decision of BACON, V. C.), that the plaintiff had no equity to restrain the company from taking measures to prevent prescriptive rights from being acquired for windows looking upon their land. The injunction was therefore refused: *Norton* v. *London aud Northwestern Railway Company*, 9 Ch. D. 623, and *Swindon Waterworks Company* v. *Wilts and Berks Canal Navigation Company*, Law Rep., 7 H. L. 697, considered: *Bonner* v. *Great Western Railway Company*, 24 Ch. Div. 1.

EVIDENCE. See *Slander*.

Variance between Note and Mortgage—Parol Evidence to Explain—Interest.—If a promissory note and a mortgage given to secure it, executed at the same time, do not correspond as to interest, extrinsic evidence is admissible in an action at law to show which paper expresses the real intention and agreement of the parties: *Payson* v. *Lamson*, 134 Mass.

EXECUTOR.

Commissions.—A testator cannot by any thing put in his will, in any wise affect the commissions which the law allows his executor; and where there has been a full administration, even the court has no power to deprive him of the minimum amount which the law gives him: *Handy* v. *Collins*, 60 Md.

FIXTURES.

Contract to Purchase—Betterments.—Buildings erected on the land of another by one occupying under a contract to purchase become the property of the owner of the soil if the purchase be not completed, and are not betterments: *Tyler* v. *Fickett*, 75 Me.

Tenant—Removal after end of Term—Replevin.—A tenant at will of a lessee of land erected a small building on the land resting on stone posts sunk into the ground. The building was erected with the knowledge and consent of the lessor of the land, and with an understanding on his part, and on that of the tenant at will, that it could be removed as a trade fixture. Both tenancies expired at the same time, and neither tenant removed the building; the lessor resumed possession of the land, and soon after the former tenant at will hired it with other land at an increased rent: *Held*, that the tenant at will could not, after this, remove the building, or maintain replevin for it, on the refusal of the owner of the land to allow its removal: *McIzer* v. *Estabrook*, 134 Mass.

FORMER RECOVERY.

Recovery against Agent—Subsequent Suit against Principal.—A judgment against an agent for a fraud committed while acting within the scope of his agency, on which no collection or payment has been made, is no bar to an action against the principal for the same fraud: *Maple* v. *C., H. & D. Railroad*, 39 or 40 Ohio St.

In such a case the fact that the principal was wholly ignorant of the fraud, is immaterial: *Id.*

HUSBAND AND WIFE.

Recent Legislation—Effect on Doctrine that Husband and Wife are

one Person.—Having regard to the Married Women's Property Act of 1882, the old rule of law that husband and wife were for most purposes one person, so that under a gift by will to a husband and wife and a third person the husband and wife took only one moiety between them, the third person taking the other moiety, is no longer applicable to such a gift under a will that has come into operation since the commencement of that act: *In re March*, 24 Ch. Div. 222.

INFANT.

Ratification of Contract—Ignorance of Previous Invalidity.—Where a person of full age promises to perform a contract entered into during his minority, he thereby ratifies the contract, although he does not know at the time of the promise, that by reason of his minority at the time of the contract, he is not legally liable thereon: *Anderson* v. *Loward*, 39 or 40 Ohio St.

INJUNCTION. See *Equity*.

Collection of Taxes.—The collection of taxes under the internal revenue laws, by United States officers who claim the same to have been properly assessed, will not be enjoined: *Snyder* v. *Marks*, S. C. U. S., Oct. Term 1883.

INSURANCE.

Fire Policy—Innocent Concealment of Prior Insurance—Forfeiture—Warranty.—The fact that, at the time of making a contract of insurance, by an agent of the insured with an agent of an insurance company, a prior insurance by the same company existed on the same property, which was a material fact, and which was not known to either contracting party, will not avoid the contract, although the contract would not have been made if the existence of such prior insurance had been known at the time: *Bridgewater Iron Co.* v. *Enterprise Ins. Co.*, 134 Mass.

If, at the time of making verbal application for insurance, the applicant produces a list of the existing insurance on the property sought to be insured, and states his honest belief that it is correct, and the insurance company has the means of verifying the statement, but fails to do so, and the list proves to be incorrect, this is not a misrepresentation of fact which will avoid a policy subsequently issued, containing an express warranty that all the facts and circumstances have been truly stated in the application, and a condition that, "if any material fact or circumstance shall not have been fairly represented," the policy shall be null and void: *Id.*

Suicide.—In order that a self-killing shall be a death "by suicide" or "by his own hand," within the meaning of those words as used in an insurance policy, the deceased must have understood the moral character of the act he was about to commit as well as its physical consequences: *Manhattan Life Ins. Co.* v. *Broughton*, S. C. U. S., Oct. Term 1883.

INTEREST. See *Evidence*.

JUROR.

Polling of Jury.—Where the jury is polled in a murder case, it is

the duty of each juror to say for himself whether he finds the prisoner guilty of *murder in the first*, or *second degree: Williams* v. *The State*, 60 Md.

Where the response of each juror in such case is simply "guilty," without a designation of the degree of guilt, such verdict is a nullity. And the fact that the clerk, immediately after polling the jury, called upon them to hearken to the verdict as the court has recorded it—"your foreman saith that J. W., the prisoner at the bar, is guilty of murder in the first degree, and so say you all"—does not affect the question: *Id.*

Non-age of a Juror—After Verdict rendered.—After verdict rendered, it is too late to object that a juror was not of proper age, although the party was not aware of the fact prior to the verdict: *Johns* v. *Hodges*, 60 Md.

Discretion of Judge.—A judge may in his discretion exclude from the panel a juror who is not legally disqualified to sit; exceptions do not lie to the act. He may put a legal juror off, but cannot allow an illegal juror to go on: *Snow* v. *Weeks*, 75 Me.

LANDLORD AND TENANT. See *Fixtures.*

LEASE. See *Vendor and Vendee.*

LEGACY.

Charge on Land.—If one of several executors of a will, who are also residuary devisees and legatees, is a devisee of a parcel of land on the condition of his paying a certain legacy, and accepts the devise, the giving of a bond by all the executors, conditioned to pay debts and legacies, will not vest in him an absolute title to the land so devised, which he can convey to a *bona fide* purchaser free of the lien for the legacy; and such purchaser cannot maintain a bill in equity to compel the legatee to seek payment of the legacy from the residuary estate, or from the sureties on the bond, before proceeding against the land: *Trustees, &c.*, v. *Smith*, 134 Mass.

LUNATIC. See *Negligence.*

MASTER AND SERVANT.

Negligence—Risks of Employment.—W., employed as a repairman by the Pennsylvania Railroad Company, while proceeding down the track on a hand car, on a very foggy morning, to surface up the track, was run into by an extra train coming in an opposite direction, at a rapid speed, and without any previous warning, and was permanently injured by the collision. It was the practice of the company, of which W. had knowledge, to run extra trains without previous notice. In an action against the railroad company by W. to recover damages for the injuries he had sustained, it was *held:* 1st. That when W. entered the service of the defendant as a repairman on its road, he took upon himself the natural and ordinary risks belonging to such service. 2d. That if with the knowledge that the defendant in the management of its road was in the habit of running extra trains without notice, and that it was his duty as one of the repairmen to be always on the look-

out for danger from that source, he continued to remain in the defendant's service, he must be considered as having assumed the risk to which he was thereby exposed, and having been injured in consequence thereof, he could not recover damages of the defendant: *Pennsylvania Railroad Co.* v. *Wachter*, 60 Md.

MECHANICS' LIEN.

Materials furnished to Vendee under Verbal Contract.—A. made a verbal contract to purchase a lot of land of B., took possession of it, erected a building upon it, and failed to pay for the labor and materials which entered into the construction of the building. One lien-creditor attached the building as personal property, and another attached the building with the lot of land as real estate. *Held*, that the building became a part of the real estate of B., and that as against him neither creditor obtained a valid attachment upon the building: *Dustin* v. *Crosby*, 75 Me.

MORTGAGE.

Form of.—No precise form of words is necessary to constitute a mortgage, but there must be a present purpose of the mortgagor to pledge his land for the payment of a sum of money, or the performance of some other act: *New Orleans Nat. Banking Association* v. *Adams*, S. C. U. S., Oct. Term 1883.

MUNICIPAL CORPORATION

Negligence—Defective Footpath.—If between the sidewalk of a street in a city and that portion of the street wrought for a carriage-way there is a grassed space, over which a footpath has been worn by use of persons having occasion to enter another street abutting on this street, but not crossing it, or to come in the opposite direction, the city is liable to a person injured by a defect in such path, if the path was known to and recognised by the city as a part of the wrought line of travel, in the absence of any path or other provision made by the city for crossing the street at or near the locality in question, or of any barrier or other warning to indicate that the path as actually used was unsafe or unsuitable: *Aston* v. *City of Newton*, 134 Mass.

NEGLIGENCE. See *Municipal Corporation.*

Corporation—Independent Contractor.—A corporation organized for the purpose of constructing and operating a railroad, having acquired its right of way by the exercise of the power of eminent domain, or otherwise, may contract with another person for the construction of the whole or any part of the road, without retaining the right to control the mode or manner of doing the work; and in such case the corporation is not liable to third persons for an injury resulting from the carelessness or wilful act of the contractor: *Hughes* v. *Cin. and Sp. Railroad Co.*, 39 or 40 Ohio St.

A right reserved in the contract, on the part of the railroad company, to direct as to the quantity of work to be done, or the condition of the work when completed, is not a right to control the mode or manner of doing the work, within the rule above stated: *Id.*

The rule of non-liability on the part of the employer for the wrong

of the contractor, applies to contracts in respect to real estate as well as movable property, except that owners of real estate cannot relieve themselves for liability, through the intervention of a contractor, for the erection of a nuisance; nor for an injury to third persons, necessarily or naturally resulting from doing the work in the manner it was contracted to be done: *Id.*

Breach of Duty—Defective Article supplied for Use—Liability of Person supplying a Defective Article causing Injury to the Person who used it.—The defendant, a dock owner, supplied and put up a staging outside a ship in his dock under a contract with the shipowner. The plaintiff was a workman in the employ of a ship painter who had contracted with the shipowner to paint the outside of the ship, and in order to do the painting the plaintiff went on and used the staging, when one of the ropes by which it was slung, being unfit for use when supplied by the defendant, broke, and by reason thereof the plaintiff fell into the dock and was injured. *Held*, reversing the decision of the Queen's Bench Division, that the plaintiff, being engaged on work on the vessel in the performance of which the defendant, as dock owner, was interested, the defendant was under an obligation to him to take reasonable care that at the time he supplied the staging and ropes they were in a fit state to be used, and that for the neglect of such duty the defendant was liable to the plaintiff for the injury he had sustained. *Held*, also, by BRETT, M. R., that whenever one person is by circumstances placed in such a position with regard to another, that every one of ordinary sense who did think would at once recognise that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger or injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger: *Heaven* v. *Pender*, 11 Q. B. Div. 503.

Physician's Certificate of Insanity—Commitments to Insane Asylum—Evidence.—In an action against physicians, for falsely certifying, through malice or negligence, to the insanity of a person, who is thereby committed to the insane asylum, and the pleadings raise the issue as to the sanity of such person at the time when the certificate alleges her to be insane, the burden of proof is on the plaintiff in respect to the averment and claim that she was then sane: *Pennell* v. *Cummings*, 75 Me.

In such an action the falsehood, and not the insufficiency of the certificate, is the ground of action against the certifying physicians. Without statutory provisions to that effect there cannot be a civil action for damages against a physician, based upon the insufficiency of the methods which he pursued in reaching and certifying a correct conclusion: *Id.*

If physicians who have certified to the insanity of a person, have not made the inquiry and examination which the statute requires, or if their evidence and certificate in any respect of form or substance is not sufficient to justify a commitment, the municipal officers should not commit, and if they do it is their fault and not that of the physicians, provided they have stated facts and opinions truly and have acted with due professional skill and care: *Id.*

PARENT AND CHILD.

Right of Mother to recover for Loss of Child's Service.—A mother sued the county commissioners of Hartford county to recover for injury done to her minor son, alleged to have been caused by the negligence of the defendants in not keeping a public road in repair, over which the son was riding at the time he was injured. The father had died before the injury occurred. *Held*, 1st. That the mother, the father being dead, was entitled to recover for the services of her minor son, provided he was at the time of the injury, actually living with and supported by her. 2d. That if the son were thus living with and supported by his mother, she was clearly entitled to recover for the care and labor of nursing him, and the expense and cost of medicines and medical attendance to which she was subjected on account of his injury, and which she procured for him. 3. That the plaintiff was not entitled to recover for the pain and suffering of her son, nor for her own anxiety and suffering on his account: *County Commissioners* v. *Hamilton*, 60 Md.

PARTNERSHIP.

Real Estate in Name of one Partner—Improvements thereon—Presumption.—Improvements of a permanent nature, erected upon real estate owned by one member of a partnership who holds the legal title thereto, will, notwithstanding the real estate is used as the place of business of the firm, be presumed to be the individual property of such partner until it is proven that such improvements were erected by the firm and paid for out of firm assets, or contributed as firm capital by such partner: *Goepper* v *Kinsinger*, 39 or 40 Ohio St.

In the absence of proof of such joint ownership by the firm, or representations or conduct of the individual partner as will mislead creditors and, as to them, estop him from denying the ownership of the firm, the right of the creditor to subject such property to the payment of partnership debts, in preference to the individual debts of such partners, must depend upon the right of the partners as between themselves: *Id.*

In a case therefore where all the facts proved are consistent with the ownership of such partner, and that the *use* alone of the property was contributed to the firm, during its existence as such, that view should be adopted, rather than one that will subject such property to partnership liabilities to the exclusion of individual creditors: *Id.*

PATENT.

Construction of License.—An individual was licensed for five years to use a certain patented article in a certain manufacture, in a certain territory, and obligated himself to use the same according to the directions of the licensor, and to use all his business tact and skill, &c., to extend the sale of the product in the manufacture of which the patent was to be used: he further agreed in such license to accept the rights covered by certain patents and to maintain them at his own cost and expense in suits at law; the license was revokable upon failure of the licensee to perform his covenants. *Held*, that in the absence of express words to show an intent to extend the right to an executor, administrator or assignee, the license terminated upon the death of the licensee within the

five years. *Oliver* v. *Morgan*, 10 Heisk. 322, departed from: *Oliver* v. *Rumford Chemical Works*, S. C. U. S., Oct. Term 1883.

PROHIBITION.

Cannot be used as a Substitute for an Appeal—When Judgment of United States Court may be reviewed.—It appearing upon an application for a writ of prohibition that the evident purpose thereof was to correct a supposed error in a judgment of an admiralty court on the merits of an action. *Held*, that the remedy, if any, was by appeal; and that if an appeal would not lie the parties were concluded by what had been done: *Ex parte State of Pennsylvania*, S. C. U. S., Oct. Term 1883.

Congress alone has the power to determine whether the judgment of a court of the United States, of competent jurisdiction shall be reviewed or not: *Id.*

RAILROAD. See *Common Carrier.*

Consolidation of two Roads.—When two companies are authorized to consolidate their roads, it is to be presumed that the franchises and privileges of each continue to exist in respect to the several roads so consolidated: *County of Green* v. *Conners*, S. C. U. S., Oct. Term 1883.

REMOVAL OF CAUSES.

Interpleader Bill.—A bill of interpleader, brought by a citizen of another state against two citizens of this state, cannot be removed on the petition of one of the defendants, to the Circuit Court of the United States, under the U. S. Stat. of March 3d 1875, § 2: *Mutual Life Ins. Co.* v. *Allen*, 134 Mass.

REPLEVIN. See *Fixtures.*

SALE.

Bill of Sale—When Delivery of Goods unnecessary.—An administrator, upon proof of the execution of a formal bill of sale of personal property to his intestate, acknowledging receipt of the consideration therein named, and proof of a subsequent sale of the same property by the grantor, is *prima facie* entitled, in an action for conversion against the latter, to recover the value of the property at the time of the subsequent sale: *Philbrook* v. *Eaton*, 134 Mass.

No delivery of the personal property named in a formal bill of sale is necessary to pass the title, as between the parties: *Id.*

SLANDER.

Accusation of Crime—Amount of Proof necessary as to Truth of Accusation.—In an action of slander for words which imputed to the plaintiff the crime of stealing a horse, the defendant, as a defence, pleaded the truth of the alleged defamatory words. *Held*, that to maintain this defence, it was not necessary that it be proved beyond a reasonable doubt: *Bell* v. *McGinness*, 39 or 40 Ohio St.

SUNDAY.

Last Day—Tender on following Day.—If the last day of the three years limited by statute for the redemption of land from a mortgage,

falls on Sunday, a tender of the amount due on the mortgage upon the following day is too late: *Haley* v. *Young*, 134 Mass.

SURETY. See *Bills and Notes.*

Extension of Time—New Promise—Burden of Proof.—If, after time has been given to the principal by the creditor, the surety, with full knowledge of all the facts, promises to pay the note if the principal does not, he is liable without any new consideration for the promise: *Bramble* v. *Ward*, 39 or 40 Ohio St.

When the answer of a surety sets up that an extension of time was given to the principal, without the knowledge or consent of the surety, he must make this appear by a preponderance of the evidence: *Id.*

Bond of Agent—Concealment of Previous Default.—S. had knowledge that his agent, by culpable carelessness, had lost money collected by him in the discharge of his duties, and for that reason required that he should either give a bond to pay over all moneys hereafter received or collected by him, or quit his employment. S. did not inform the sureties of his agent's former culpable carelessness and they had no knowledge thereof. *Held*, that the principal could not avail himself of the guaranty thus obtained: *Smith* v. *Joselyn*, 39 or 40 Ohio St.

Co-Sureties in Severalty—Release—Pleading.—Where two or more sureties contract severally the creditor does not break the contract with one of them by releasing the other. The contract remaining entire, the surety in order to escape liability must show an existing right to contribution from his co-surety which has been taken away or injuriously affected by his release. *Held*, in an action upon a guarantee, that a plea to the effect that M. was the defendant's co-surety, and had been released in consideration of a new guarantee given to the plaintiff, constituted no defence; the plea nowhere averring or implying that the liability was joint, or that the defendant became surety on the faith of M.'s co-suretyship, or that any right of contribution had arisen against M. which had been taken away or injuriously affected, or that the defendant had suffered any damage or injury by the substitution described: *Ward* v. *National Bank of New Zealand*, 8 App. Cas. 755.

TAX AND TAXATION. See *Injunction.*

TIME. See *Sunday.*

TROVER.

Refusal to allow Employees to Rent a House—Loss of Rent—Malice.—Trover is not maintainable by the owner of a house against one, though owner of the land, who refuses to employ any tenant who may occupy the same: *Heywood* v. *Tillson*, 75 Me.

An employer has a right to refuse to employ or to retain in his service any person renting certain specified premises, and the owner of such premises has no cause of action against him for the exercise of such right, though such refusal was through malice or ill will to such owner:

TRUST.

Precatory Trust—Absolute Estate.—A testator gave to his wife all his real and personal estate "to her sole use, benefit and disposal;" and pro-

vided that "whatever may be left of my estate, if any, she may by will or otherwise give to those of my heirs that she may think best, she knowing my mind upon that subject. I am willing to leave the matter entirely with her, feeling satisfied that she will do as I have requested her to in the matter." *Held*, that the wife took all the estate which the testator could devise, with the absolute right of disposing of it as she saw fit: *Davis* v. *Mailey*, 134 Mass.

Precatory Trust.—A testator gave and devised all his real and personal estate unto and to the absolute use of his wife, her heirs, executors, administrators and assigns, "in full confidence that she will do what is right as to the disposal thereof, between my children, either in her lifetime or by will after her decease." *Held*, that under these words the widow took an absolute interest in the property unfettered by any trust in favor of the children: *In re Adams and Kensington Vestry*, 24 Ch. Div. 199.

Lambe v. *Eames*, L. R., 6 Ch. 597; *In rė Hutchinson and Tenant*, 8 Ch. Div. 540; *Curnick* v. *Tucker*, L. R., 17 Eq. 320; and *Le Marchant* v. *Le Marchant*, L. R., 18 Eq. 414, commented on: *Id.*

UNITED STATES COURTS. See *Removal of Causes.*

Jurisdiction—Suit by Assignee—Collusion.—F. died in August of 1876, in New York, of which state he was a citizen; and presently afterwards, his widow and family removed to New Jersey. In February of 1877, the widow assigned an insurance policy on the life of her husband which was payable to her, to N., of New York, in trust, to pay a claim of $2000, and the necessary expenses of collection, and to invest the surplus for her benefit. In a suit on the policy brought by the widow in 1876, the Court of Common Pleas of New York city, in 1878, granted a nonsuit because the evidence showed that the death was caused by suicide, within the meaning of the policy *according to the law of the state of New York.* In 1879, in a suit brought by N. against the widow to be relieved of his trust, B., a citizen of New Jersey, was on her request substituted as trustee. There was evidence tending to show that one object in having B. appointed was to bring a suit in the United States Court. In a suit by B. in the United States Court, *Held*, that it had jurisdiction, and that the case was not within the 1st or 5th sections of the Act of March 3d 1875; and that the question involved was one of general jurisprudence, upon which the widow and her trustee had a right to seek the independent judgment of a federal court: *Manhattan Life Ins. Co.* v. *Broughton*, S. C. U. S., Oct. Term 1883.

VENDOR AND VENDEE. See *Fixtures.*

Lease—Option to Purchase Fee Simple—Nature of Interest conferred on Lessee—Real and Personal Representatives.—A lease of land contained a covenant by the lessor with the lessee, his executors, administrators and assigns, that if the lessee, his executors, administrators or assigns should at any time thereafter be desirous of purchasing the fee simple of the demised land, and should give notice in writing to the lessor, his heirs and assigns, then the lessor, his heirs or assigns would accept 1200*l.* for the purchase of the fee simple, and on receipt thereof would convey the fee simple to the lessee, his heirs or assigns, or as he

or they should direct. The lessee died intestate, and nearly twenty years after his death, his heir, who was also administrator of his personal estate, called on the devisee of the lessor to convey the fee simple to him in accordance with the covenant, and a conveyance was executed accordingly. The heir afterwards contracted to sell part of the property thus conveyed to him. *Held*, that the option to purchase was attached to the lease and passed with it; that it consequently passed as part of the lessee's personal estate to the administrator, and that the administrator could not make a good title to the purchaser, unless the next-of-kin of the lessee would concur in the sale: *In re Adams and the Kensington Vestry*, 24 Ch. Div. 199.

Vendor's Lien—Trust created—Impairment of the Security of the Cestuis que Trust.—G. and wife, in consideration of the conveyance to them by B. and wife of certain real estate, agreed in writing, under seal, to support said B. and wife and their daughter A., during their several lives, and to pay all their doctor's bills and other expenses, and to pay B. $25 for four years, and also to pay certain debts of B., and at certain periods to pay certain designated sums of money to other persons named; which several sums of money, together with the estimated value of the board and clothing of the persons to be provided for, were computed to amount to $5000. The same sum was named as the consideration in the conveyance from B. and wife to G. and wife. The latter took possession of the property, and proceeded to discharge the duties undertaken by the agreement. On a bill filed by B. and wife charging the non-payment of the consideration money, and praying a sale of the land for the payment thereof, it was *Held*, 1st. That complainants were not entitled to a decree for a sale of the land. 2d. That having accepted the deed from B. and wife under the written agreement, a trust was created, and G. and wife were bound in equity faithfully to perform the duties assumed by them, and the land was properly chargeable with the trust. 3d. That G. and wife should not be permitted to impair the security of the *cestuis que trust*, for the fulfilment of the several trusts, by the creation of liens beyond such as the court may adjudge to be authorized by the title given and the objects to be attained: *Benscotter* v. *Green*, 60 Md.

WARRANTY. See *Bills and Notes*.

WILL. See *Legacy; Trust.*

What is—Parol Evidence.—The following paper was propounded as a will: "Baltimore, July 20th 1882. In anticipation of my departure from the city of Baltimore, and to provide for possible contingencies, I hereby give, bargain and sell and transfer unto my daughter, Ann C. Kelleher, her personal representatives and assigns, all my machinery, horses, wagons, goods, chattels and effects, which I now have, or may hereafter acquire, or possess, and all moneys, claims and demands to which I am, or may be hereafter, entitled, reserving to myself the use of the same, and the right to dispose of the same otherwise, if I deem proper. Witness my hand and seal this 20th day of July 1882.

his
OWEN + KERNAN, [SEAL.]
mark

Witness:—James McColgan."