RECENT CASES.

BANKRUPTCY—NEW PROMISE—MADE BETWEEN ADJUDICATION AND DISCHARGE—The promise of a bankrupt to pay a provable debt is enforceable after discharge, although the promise was given before discharge but after adjudication. Old Town Bank v. Parker, 87 Atl. Rep. 1105 (Md. 1913).

It is clear that such a promise given after discharge will give rise to a cause of action. Mutual Life Ass'n v. Beatty, 93 Fed. 747 (1899). The cause of action may be the new promise, which has for its consideration the moral obligation to pay the debt which has been discharged but has remained unpaid. Needham v. Matthewson, 81 Kan. 340 (1901); Stewart v. Reckless, 24 N. J. L., 427 (1854); Murphy v. Crawford, 114 Pa. 496 (1886). In Dusenbury v. Hoyt, 53 N. Y. 521 (1873), it was held that the real cause of action is the new promise, but that, by a procedural anomaly, the old promise is declared on. Another line of cases hold that the discharge does not extinguish the debt, but merely bars the remedy and that a promise by a bankrupt, after discharge, amounts to a waiver of the plea of discharge which he might offer in answer to action on the old promise. This waiver needs no consideration. In these jurisdictions action is on the old promise, the new one being reserved as a replication to the plea of discharge. Way v. Sperry, 6 Cush. 238 (Mass. 1850); Champion v. Buckingham, 165 Mass. 76 (1895); Fletcher v. Neally, 20 N. H. 464 (1846). But a promise to pay a debt which has been discharged by voluntary compensation is without consideration, moral or legal, and cannot be enforced. Warren v. Whitney, 24 Me. 561 (1845). Jurisdictions which hold that only the remedy is barred by discharge, hold that the debt itself is extinguished by composition and that there can be no waiver, since there is no cause of action. Porter v. Bell, 15 Lea 569 (Tenn. 1885); Taylor v. Skiles, 81 S. W. Rep. 1258 (Tenn. 1904); *contra,* Willing v. Peters, 12 S. & R. 177 (Pa. 1824).

Since the discharge refers only to liabilities of the bankrupt incurred before the filing of his petition, and since the bankrupt is not discharged from any incurred after adjudication, a promise to pay given after adjudication is as forceful as if given after the actual discharge. Otis v. Gazlin, 31 Me. 567 (1850); Kirkpatrick v. Tattersall, 13 M. & W. 766 (Eng. 1845); Zavelo v. Reeves, 227 U. S. 625 (1912). A promise mailed before filing petition but received after adjudication has been held to have revived the debt. Cheney v. Barge, 26 Ill. App. 182 (1887). A contingent promise (contingency unfulfilled at time of bankruptcy) given before adjudication to a creditor who has refrained from pressing his claim in the bankruptcy proceedings, has also been held to be enforceable. Kingston v. Wharton, 2 S. & R. 208 (Pa. 1816).

BILLS AND NOTES—INTOXICATED MAKER—The holder of a note in due course can not recover against the maker, from whom it was obtained by fraud, while he was so intoxicated as to destroy the rational faculties of the mind. Green v. Gunsten, 142 N. W. Rep. 261 (Wis. 1913).

The court bases the decision on the principle announced in Burnsinger v. Bank of Watertown, 67 Wis. 75 (1886), that an obligation is void when entered into by a person while so intoxicated that he does not know the nature of the obligation. The plaintiff cannot be assisted because of his position as a holder in due course, for it is provided in the Negotiable Instruments Law that a holder of a note in due course takes no title where the note was void in its inception. Brannan's N. I. L., §55 (1911).

This case disregards what has always been the law, *viz.*, that intoxication of the maker of a note was no defence against a holder in due course on the ground of public policy and necessity of commerce. State Bank v. McCoy, 69 Pa. 204 (1871); McSparran v. Neeley, 91 Pa. 17 (1879); Smith v. Williamson, 8 Utah, 219 (1892).

For a thorough discussion, see the article by Mr. Sidney J. Dudley on "Intoxication as a Defence to an Express Contract" in 62 U. of P. L. Rev. 34.

COLLEGES—GREEK LETTER SOCIETIES—REFUSAL OF ADMISSION—Under an act of the Legislature abolishing all Greek letter fraternities and secret orders among the students of educational institutions supported by state aid, the trustees and faculties of such institutions were required to enforce these provisions by such rules and punishments as they should prescribe. A member of a fraternity chapter at another college applied for admission to the University of Mississippi and was refused, because he would not sign a pledge to give up all affiliations with his society while a student there. Bill was filed for injunction against trustees. *Held:* The Legislature is in control of colleges and universities of the state and has the right to legislate for their welfare. When it has done this, it is not subject to any control by the courts. Univ. of Miss. v. Waugh, 62 So. Rep. 827 (Miss. 1913).

Where no special act of the Legislature has been passed, the educational authorities in state institutions have the power to adopt appropriate rules but such rules must be reasonable and their enforcement also must be reasonable. Fertich v. Michener, 111 Ind. 472 (1877). Such authorities have no power to legislate concerning the acts of school children while at home; a rule preventing them from attending social parties invades the rights of the parents and exceeds the authority of the school board. Dritt v. Snodgrass, 66 Mo. 286 (1877). It has been held that connection with fraternities may be forbidden after the matriculation of a student, but that no such conditions can be attached to his admission. State v. White, 82 Ind. 278 (1882). In this case it was said that it was clearly within the power of the trustees and faculty to absolutely prohibit any connection between Greek fraternities and the university. A dissenting opinion went further and claimed that if there be expulsion for disobedience, there should also be exclusion for refusing to promise compliance with proper regulations.

A student must be given an opportunity to be heard in his defence and all evidence must be carefully considered before his dismission is justified. Goldstein v. New York Univ., 77 N. Y. S. 80 (1902). But where such an opportunity has been offered and a careful examination made, any student may be removed when it would be injurious to the institution to allow him longer to remain. Koblitz v. Western Reserve Univ., 21 Ohio Cir. Ct. Rep. 144 (1901). An action of mandamus may be maintained to reinstate a pupil in school if the action of the officers, by which the party was refused admission to or continuance in the school, was an arbitrary or capricious exercise of authority. Jackson v. State, 42 L. R. A. 792 (Neb. 1898).

CONTRACTS—ILLEGALITY—RECOVERY FOR WORK DONE—A contract, made in violation of a statute providing that no member of the Legislature shall be interested in any contract with the state, is unenforceable. Where one of the parties thereto has performed in whole or in part, he can not avoid the unlawful agreement and recover reasonable compensation. Norbeck v. State, 142 N. W. Rep. 847 (S. D. 1913).

The case follows the general rule regarding illegal contracts, when the parties are in *pari delicto*. Scott v. Brown, 2 Q. B. 724 (Eng. 1892); Society v. Wetherill, 127 Fed. 947 (1904); Hope v. Park Asso., 58 N. J. L. 627 (1896); Pittsburgh v. Goshorn, 230 Pa. 212 (1911). The law leaves the parties to illegal agreements where it finds them and gives them no assistance in extricating themselves therefrom. Shaffer v. Pinchback, 133 Ill. 410 (1890); Johnson v. Hulings, 103 Pa. 498 (1883). The effect of the doctrine

is the same whether the inherent nature of the contract is illegal; Sullivan v. Horgan, 20 Atl. Rep. 232 (R. I. 1890); or whether the illegality arises from the character or relationship of the parties. Milford v. Milford Waterworks, 124 Pa. 610 (1889). Where, by statute, it is unlawful to work more than a certain number of hours a day, no recovery can be had for work overtime. Short v. Bullim, 57 Pac. Rep. 720 (Utah, 1899). Money paid to an executor to induce him to resign can not be recovered. Ellicott v. Chamberlin, 38 N. J. E. 604 (1884); nor for money furnished or services rendered on Sunday. Kinney v. McDermot, 55 Ia. 674 (1881).

The general rule does not apply where the parties are not in *pari delicto*. In such cases, the innocent person alone has a remedy. Burrows v. Rhodes, 1 Q. B. 816 (Eng. 1897); Pearl v. Walter, 80 Mich. 317 (1890). Parties are not in *pari delicto* where the contract is induced by fraud; National Bank & Loan Co. v. Petrie, 189 U. S. 423 (1903); or by duress. Klein v. Pederson, 65 Neb. 452, 91 N. W. Rep. 281 (1902).

Where the contract is not expressly declared void by statute, and does not involve moral turpitude, but is prohibited only, the rule in the principal case has no application. Under such circumstances, though the parties are in equal fault, if one of them has received something of value, relief will be granted to the extent of restoring the property or its value. Manchester Ry. Co. v. Ry. Co., 20 Atl. Rep. 383 (1890).

CONTRACTS—OFFER AND ACCEPTANCE—A cotton broker received from a manufacturer an order to buy cotton which read, "You can accept this as an order subject to withdrawal before execution." At 10.05 A. M. the broker purchased cotton to fill the order, and at 10.15 A. M. wired the manufacturer of his acceptance. At 10.40 A. M. the broker received a telegram, dispatched at 9.55 A. M., withdrawing the offer. *Held:* A binding contract was made, the offer being accepted before withdrawal. Weld & Co. v. Victory Mfg. Co., 205 Fed. Rep. 770 (1913).

The court considered the contract as made at 10.15 A. M., holding that an acceptance by wire takes effect when sent; a revocation of an offer when received. Brauer v. Shaw, 168 Mass. 198 (1897); Burton v. United States, 202 U. S. 344, pp. 384-5 (1906).

Although the question was not considered by the court, it is submitted that the acceptance in fact took place at 10.05 A. M., when the cotton was purchased. This offer was one leading to the formation of a bilateral contract, which is usually to be accepted by a promise, as distinguished from a unilateral contract, to be accepted by performance of the requirements of the offer. Langdell, Summary of Contracts, pp. 12-13. Since, however, an offerer may dictate the manner of indicating acceptance, Scott v. Davis, 141 Mo. 213 (1897); Swing v. Walker, 27 Pa. Super. Ct. 366 (1905), it would seem that an offer of a bilateral contract could be so made as to permit acceptance by an act rather than a promise. As regards the necessity for notice of acceptance, the rule most frequently applied to unilateral contracts would undoubtedly be asserted, *viz.*, that if the act of acceptance is of such a kind that notice of it will not quickly come to the offerer, the offeree is bound to give notice of acceptance within a reasonable time. Bishop v. Eaton, 161 Mass. 496 (1894). The contract is not formed by the giving of the notice but by doing the act which has been, under the circumstances, impliedly selected by the offerer as the manner in which the offeree may indicate his acceptance. The notice is, in this view, material only as the performance of an implied requirement which prevents the offerer ending the contractual obligation already imposed on him as by a condition subsequent. Bishop v. Eaton, *supra*. In the present case the known fact that the offeree purchased cotton from third person practically only to make re-sales to others on arrangements made with them is sufficient to justify a finding that the offerer contemplated his proposal should be acceptable by a purchase of cotton in pursuance to his order. "Before execution," in the order, shows

this to have been his intention. His attempted withdrawal also contained the phrase, "if not bought." See opinion of Folger, J., in White v. Corlies, 26 N. Y. 467 (1871).

CORPORATION—CONSENT TO *Ultra Vires* ACTS—In an action on an accommodation note brought by a bank against a corporation, the defence was that the endorsement was an *ultra vires* act. It was contended by the bank that since all the stockholders had consented to the act, and were thus estopped from pleading its illegality, the corporation which represents and acts for the stockholders would be in no better position. *Held:* The consent of all the stockholders will not estop the corporation from challenging the legality of an act which is wholly beyond the scope of its charter powers. Savannah Ice Company v. Canal-Louisiana Bank & Trust Company, 79 S. E. Rep. 45 (Ga. 1913).

This is in accord with the weight of authority in this country and is put on the ground that the powers of a corporation depend, not upon the consent of its stockholders, but upon the powers granted by the state. 1 Clark & Marshall on Private Corporations, §§125, 171, 182; Thompson on Corporations (2nd Ed.), §§2003, 2776; Thompson v. West, 59 Neb. 677, 49 L. R. A. 337 (1900); Park Hotel Company v. Fourth National Bank of St. Louis, 86 Fed. 742 (1898), in which it was said that a contract which a corporation has no power to make, it has no power to ratify, and no power to estop itself from denying.

A contrary view seems to prevail in a very few jurisdictions. Martin v. Niagara Falls Manufacturing Company, 122 N. Y. 165 (1899); Murphy v. Arkansas Land Company, 97 Fed. 723 (1899); Perkins v. Trinity Realty Company, 69 N. J. Eq. 723 (1905); 1 Cook on Corporations (7th Ed.), §§3, 774, in which the rule is stated that a private corporation is bound if all of its stockholders assent and none of its creditors are injured. However, an examination of the authorities cited shows that the rule is based mostly on *dicta* and is unsound, for it is a well established principle that stockholders in a corporation cannot by consent set aside and render void a limitation placed by law upon the corporate action.

The doctrine in the principle case may not be invoked to defeat the ends of justice or work a legal wrong, as where the corporation has acquired and retains the fruits of the *ultra vires* contract or act. Pittsburgh, *etc.*, Railroad Company v. Altoona & Beech Creek Railroad Company, 196 Pa. 452 (1900); Kellogg-Mackay Company v. Havre Hotel Company *et al.*, 199 Fed. 727 (1912); Thompson on Corporations (2nd Ed.), §§2003, 2778. At one time it was held by a few jurisdictions that even though the corporation had received or enjoyed the consideration or the benefits of the act, this fact did not estop it from defending on the ground of *ultra vires*. Albert v. Savings Bank of Baltimore, 1 Md. Chan. 407 (1849).

CORPORATION—PAYMENT OF DIVIDENDS FROM CAPITAL—Upon the purchase of two thousand shares of its capital stock, the vendor gave its bond to vendee, guaranteeing that the dividends upon such stock would amount to $1000 within a specified time. There having been no dividends within the specified time, vendee brought suit upon the bond. *Held:* That vendee could not recover. Jorguson v. Apex Gold Mines Co., 133 Pac. Rep. 465 (Wash. 1913).

The decision proceeded upon the statute in the jurisdiction making it unlawful to declare dividends except from net profits; and the bond could not be enforced, since it required dividends to be paid out of the capital.

There are varying statutory or constitutional provisions in a number of states expressly restricting the right to pay dividends except out of net profits properly applicable thereto, and which shall not in any way impair or diminish the capital. But the principle upon which these statutes are based, and the prohibitions which they express, are fully recognized by the

common law. It is a fundamental rule of the common law, that dividends can be paid only out of surplus earnings, and cannot properly be declared out of capital. *In re* National Funds Co., L. R. 10 Ch. Div. 118 (Eng. 1878); Mobile R. R. Co. v. Tennessee, 153 U. S. 486 (1893); Martin v. Zellerbach, 38 Cal. 300 (1869); Hubbard v. Weare, 79 Iowa, 678 (1890); Grant v. Southern Contract Co., 104 Ky. 781 (1898); Field v. Lamson & Goodnow Co., 162 Mass. 388 (1894); Morawetz on Corporations (2nd Ed.), §435; Thompson on Corporations (2nd Ed.), §5305; Cook on Corporations (6th Ed.), §546. Since the stockholders, in the absence of statute, are not individually liable for the debts of the corporation, the creditors deal with the corporation on the faith of its capital stock as the only means of repayment, and therefore it would be a fraud upon the creditors to divert the capital stock by distribution among the stockholders as a dividend. Moreover, each stockholder is entitled to have the capital preserved unimpaired for the purpose of carrying on the business for which the company was formed. Reed v. Mfg. Co., 40 Ga. 98 (1869).

This principle, however, does not extend so far as to maintain the capital at its original value, where, from its very nature, it is subject to a steady waste and depreciation. For example, in the case of a mining corporation, the profits subject to distribution are the net proceeds of its mining operations, without any deduction for decrease in value of the mine by reason of the ore being taken out. This principle applies to all corporations organized for the purpose of utilizing a wasting property—a property that can be used only by consuming it—as a mine, a lease, or a patent; nor is there any obligation imposed upon such a company to set apart a sinking fund to meet the depreciation in the value of the property. Lee v. Neuchatel Co., 41 Ch. Div. 1 (Eng. 1887); Excelsior Mining Co. v. Pierce, 90 Cal. 131 (1891).

As to the question of the guaranty, the courts, with practical unanimity, in sustaining the objection against any dividends which cannot be paid out of income, but which can be paid only by drawing upon the capital, have construed general language guaranteeing dividends upon stock to mean that dividends should be paid out of profits if any were made, but not otherwise. Bingham v. Marion Trust Co., 27 Ind. App. 247 (1901); Lockhart v. Van Alstyne, 31 Mich. 76 (1875); Ohio School v. Rosenthal, 45 Ohio St. 183 (1887); Pittsburgh & C. R. R. Co. v. County of Allegheny, 63 Pa. 126 (1869). Where such construction is not possible, such guarantee is held to be in contravention of public policy and void; Lockhart v. Van Alstyne, 31 Mich. 76 (1875); and, in Memphis Co. v. Memphis & C. R. R. Co., 85 Tenn. 703 (1887), such agreement was held to be an *ultra vires* act, and therefore unenforceable.

COURTS—ASSOCIATE JUDGES UNLEARNED IN THE LAW—On undisputed facts the learned president judge dismissed a petition for a mandamus, but his two associates, unlearned in the law, filed what they called a dissenting opinion and directed a writ of peremptory mandamus to issue. *Held:* Appeal granted. It was never contemplated that such judges should set up their judgment against that of the head of the court on a matter of law. Com. *ex rel.* v. Lenhart, Appellant, 241 Pa. 129 (1913).

The powers and duties of associate judges of the same court depend upon the constitution and statutes of the state where they act. Pennsylvania seems to be the only jurisdiction having associate judges unlearned in the law. They are provided for by the Act of 1834, P. L. 333, §§19 and 27. By §20 of the same act it is provided that "the two associate judges shall have power to hold common pleas court, to hear and determine all causes, matters and things cognizable therein according to the Constitution, laws and usages of the Commonwealth." The act also extends their power to the Orphans' Court but by §58 the presence of the president judge, learned in the law, is necessary to hold a court of oyer and terminer. By the 5th

article of the Constitution of 1874, §5, "the office of associate judge not learned in the law is abolished in counties forming separate districts."

Although elected by the people of the counties in which they sit, such judges are officers of the state and unimpeachable save by the state. Leib v. Com., 9 Watts, 200 (1840), Com. v. Dumbauld, 97 Pa. 293 (1881), Campbell v. Com., 96 Pa. 344 (1881). Two such judges cannot override the decision of the president judge in matters of law. Syracuse *etc.* Oil Co. v. Carothers, 63 Pa. 379 (1869); Glamorgan Iron Co. v. Snyder, 84 Pa. 397 (1877). But they can announce a decision made on an argument before a full court. Reiber v. Boos, 110 Pa. 594, 1 Atl. Rep. 422 (1885). Or hear and determine a motion when so directed by the president judge. Van Vliet v. Conrad, 95 Pa. 494 (1880). Two associates may, however, overrule the law judge upon a writ of *habeas corpus*. Com. v. Kyder, 1 Penny. 143 (1881). Or in the granting or refusal to grant a liquor license. Leister's Appeal, 20 W. N. C. 224, 11 Atl. Rep. 387 (1887); Branches' License, 164 Pa. 427, 60 Atl. Rep. 296, 35 W. N. C. 310 (1894). In the absence of the president judge the associates cannot refuse to assume any of the legal functions of a court. Richardson v. Stewart's Lessee, 2 S. & R. 84 (1815).

CRIMINAL LAW—UNREASONABLE SEARCHES—Officers, without a warrant, entered the premises of the accused, forcibly took from his person his keys, opened his safe therewith, and therein found whiskey which they subsequently offered as evidence in an action against him. *Held:* Evidence so obtained is not admissible because it is in violation of the constitutional provision that "no person shall be compelled to give testimony tending in any manner to incriminate himself." Underwood v. State, 78 S. E. Rep. 1103 (Ga. 1913).

As a general rule evidence unlawfully obtained is held admissible provided the accused is not compelled to do any act which incriminates himself, and a confession or incriminating admission is not extorted from him. Legatt v. Tollervey, 14 East 302 (Eng. 1811); State v. Flynn, 36 N. H. 64 (1858); State v. Burroughs, 72 Me. 479 (1881); Com. v. Smith, 166 Mass. 370, 44 N. E. Rep. 503 (1896); Williams v. State, 100 Ga. 511, 28 S. E. Rep. 624 (1897); Martin v. State, 1 Ala. App. 215, 56 S. E. Rep. 3 (1911). See also 4 Wigmore on Evidence, §2264.

The contrary view is that by a liberal interpretation of the constitutional provision mentioned, evidence which is secured by the unauthorized search of the person, or by invasion or trepass upon his premises, is inadmissible. The leading case cited for authority for this view is Boyd v. U. S., 116 U. S. 616, 6 Sup. Ct. 524 (1886). There is some doubt whether this case really decides the point in question and is not but *dicta* as to the principle advanced. The case has been followed, however, in the case of an unauthorized search of premises. State v. Slamon, 73 Vt. 212, 50 Atl. Rep. 1097 (1901). And the principle has been supported in cases where there has been an unauthorized search of the person as in the principal case. Evans v. State, 106 Ga. 519, 32 S. E. Rep. 659 (1899); Hammock v. State, 1 Ga. App. 126, 58 S. E. Rep. 66 (1907).

The court in Hammock v. State, *supra*, attempts to distinguish the apparent conflict in the cases and to reconcile them in the following language: "Under the Constitution persons are protected against unlawful searches and seizures and also against being compelled to give testimony tending in any manner to incriminate themselves. A violation of the former right does not necessarily render evidence, incidentally disclosed thereby, inadmissible. A violation of the latter right does. When the act in question is a concurrent violation of both rights, the person is none the less to be protected."

DIVORCE—CONTRACT FOR ALIMONY *Pendente Lite*—A contract, made after divorce proceedings have commenced, stipulating the amount of alimony

to be paid, will be enforced, provided that the divorce was justified and that there was no collusion or suppression of facts from the court. Such an agreement, when not made to facilitate divorce, but devised solely as an amicable settlement of property rights, is not against public policy. Maish v. Maish, 87 Atl. Rep. 729 (Conn. 1913).

The majority of jurisdictions are in accord with this case. Burnett v. Paine, 62 Me. 122 (1874); Pryor v. Pryor, 88 Ark. 302 (1908); Palmer v. Fagerlin, 163 Mich. 345 (1910); Warren v. Warren, 116 Minn. 458 (1912); *Contra*, Moon v. Bann, 58 Ind., 194 (1877); Hamilton v. Hamilton, 89 Ill. 349 (1878); Lake v. Lake, 136 App. Div. 47 (N. Y. 1909). As a general rule, however, a similar contract made before marriage is illegal, as an agreement in derogation of marriage; Watson v. Watson, 77 N. E. Rep. 335 (Ind. 1906); and does not limit the liability for or the amount of alimony. Stearns v. Stearns, 66 Vt. 187 (1893). So a contract made after marriage, while living in amity is void. Daggett v. Daggett, 5 Paige, 509 (N. Y. 1835). But where disagreements have occurred and a separation is contemplated or has taken place, a contract to support during lifetime is valid. Gaines v. Poor, 60 Ky. 210 (1861); and if a divorce is subsequently decreed, no additional alimony will be granted. Galusha v. Galusha, 116 N. Y. 635 (1889); though there has been a change in the husband's financial condition. Henderson v. Henderson, 37 Ore. 141 (1900).

A contract, made pending petition for divorce, to pay stipulated sum in lieu of alimony, is looked upon with suspicion, as tending to facilitate divorce. Goodwin v. Goodwin, 4 Day 343 (Conn. 1810). But if the agreement be made without fraud or collusion and amply protects the interests of the wife and fairly disposes of the property rights of the parties, it will be sustained. Parsons v. Parsons, 62 S. W. Rep. 719 (Ky. 1901). But a contract to pay certain sum whether or not alimony is granted is illegal. Speck v. Dausman, 7 Mo. App. 165 (1879).

EQUITY PRACTICE—SET-OFF AND COUNTERCLAIM IN ANSWER—In a suit in equity for infringement of a patent, the answer sought to interpose, under the second paragraph of rule 30 of the new equity rules (198 Fed. XXVII, 115 C. C. A. XXVII, effective February 1st, 1913), a counterclaim arising out of the infringement of another patent, which was the subject of an independent suit in equity between the same parties in the same court. *Held:* The counterclaim was rightly pleaded in the answer. Marconi Wireless Telegraph Company of America v. National Electric Signaling Company *et al.*, 206 Fed. 295 (1913).

This is the liberal interpretation of a rule which says: "The answer *must* state in short and simple form any counter-claim arising out of the transaction which is the subject matter of the suit, and *may*, without cross-bill, set out any set-off or counter-claim against the plaintiff which might be the subject of an independent suit in equity against him, and such set-off or counter-claim, so set up, shall have the same effect as a cross-suit, so as to enable the court to pronounce a final judgment in the same suit on the original and cross-claims." In arriving at above conclusion the court drew a sharp distinction between the mandatory and permissive portions of the rule, saying that when the claim arises out of the same transaction it must be included in the answer, so the matter shall be rendered *res adjudicata* and future litigation avoided; but when it arises out of another transaction and is the subject of an independent suit in equity it may be included in the answer, at the discretion of the court, but if omitted the doctrine of *res adjudicata* would not be invoked against the defendant. In the latter case it is in the nature of a cross-suit, and does more than take the place of a cross-bill, which is merely auxiliary to and a part of the original suit, the subject matter being essentially connected with that of the original bill. Lovell v. Latham & Company, 186 Fed. 602 (1911). The new rule 30, by saying that any claim which might be the subject of an independent equity suit may be set out in the answer with the same effect as

a "cross-suit," seems to warrant the broad meaning given to "counter-claim," for if restricted to claims arising out of the same transaction it would only have the same effect as a "cross-bill," which is impliedly abolished by this rule, and the greater part of the paragraph would be purposeless.

The interpretation of the rule is in accord with the present English practice. Beddall v. Maitland, 17 Ch. Div. 174, 181 (1879). But a different view was taken in Terry Steam Turbine Company v. B. F. Sturtevant Company, 204 Fed. 103 (1913), where it was said that "To make 'counterclaim' include all cross claims upon which the defendant might sue the plaintiff in equity, even if having no connection, however remote, with the plaintiff's cause of action, is to permit two original bills in the same suit, which is certainly in violation of well-settled principles." *Accord*, Williams Patent Crusher & Pulverizer Company v. Kinsey Manufacturing Company, 205 Fed. 375 (1913). In these two cases, the court seems to hold that the permissive way of pleading is no broader than the mandatory.

FALSE IMPRISONMENT—ERROR IN PROCUREMENT—The defendant truthfully stated facts amounting to a trespass by the plaintiff to a justice, and asked for the plaintiff's ejection but not for his arrest. Under the instruction of the justice he swore that the plaintiff came under the Disorderly Persons Act, and in so doing, swore to an erroneous conclusion of law. The ensuing arrest was held not to have been of the defendant's procurement, and he was therefore not liable for false imprisonment. Kendel v. Guterl, 87 Atl. Rep., 84 (N. J., 1913).

This rule prevails in most jurisdictions, and has long been recognized in New Jersey. Booth v. Kurrus, 55 N. J. L. 370 (1893) puts it on the ground that complainant has a right to submit a true statement of facts to the judgment of a magistrate, no matter what his notion was as to their legal value. *Cf.* also Grove v. Van Duyn, 44 N. J. L. 654 (1882). The following cases indorse the general proposition that the defendant is not liable for false imprisonment, if he did not participate in the plaintiff's arrest beyond making the complaint which was insufficient and rendered the ensuing warrant void on its face. Smith v. Clark, 106 Pac. Rep. 653 (Utah, 1910); Bert v. Schwartz, 137 N. Y. App. 230 (1910); McIntosh v. Bullard, 129 S. W. Rep. 85 (Ark., 1910); Cooper v. Harding, 7 Q. B. 28 (Eng., 1845); Sloan v. Schomaker, 136 Pa. 382 (1891); Murphy v. Walters, 34 Mich. 180 (1876). Similarly a complaint based upon an ordinance subsequently declared invalid does not make the complainant liable. Gifford v. Wiggins, 50 Minn. 401 (1892).

The rule in New York was at first *contra*. Gold v. Bissell, 1 Wend. 210 (N. Y., 1828); but it is now in accord with the prevailing opinion. Brown v. Chadsey, 39 Barb. 253 (N. Y., 1863); and Swart v. Rickart, 148 N. Y. 264 (1896) made the jurisdiction of the magistrate, and the consequent lack of liability on the complainant's part dependent upon the magistrate's own discretion. *Cf.* Novak v. Waller, 10 N. Y. Supp. 199 (1890).

The minority view is summarized in Fkumoto v. Marsh, 130 Cal. 66 (1900). "The court's jurisdiction to issue a warrant depends on the legal sufficiency of the affidavit for the arrest and not on the judge's opinion as to its legal sufficiency. The plaintiff must see to it that he is clothed with actual, not merely apparent, authority before he can deprive the defendant of his liberty."

JURY—RIGHT TO TRIAL BY JURY—JUDGMENT *N. O. V.*—A Massachusetts statute (1909, C. 236), provides that in civil cases when the lower court denies a request by either party, that judgment should be directed for that party and the jury returns a verdict for the other party, the Supreme Judicial Court, if from the evidence it appears that the request should have been granted, may direct a verdict for the party in whose behalf the request was made and erroneously refused. In a negligence case the Street Railway Company re-

quested that a judgment be directed for them; request was refused and the company appealed, invoking the above statute. The plaintiff claimed that he was denied his right to trial by jury as provided in the Seventh Amendment of the Federal Constitution. *Held:* This statuate does not take away the constitutional right to trial by jury. Bothwell v. Boston Elevated Ry. Co., 102 N. E. Rep. 665 (Mass., 1913).

This branch of the law has recently been subjected to a great amount of discussion caused by the decision of the United States Supreme Court in Slocum v. N. Y. Life Ins. Co., 228 U. S. 364 (1913); 61 U. P. L. R. 673. In this case, a Pennsylvania statute, Pa. L. 1905, p. 286, c. 198, similar to the Massachusetts statute was held by a decision of five to four to deny the right to trial by jury and to be, therefore, unconstitutional. The decision is based on the principle that it is an unconstitutional exercise of the power of legislation for the court to authorize the entry of judgment, in cases where jury trial has been had, in any way except in conformity with the verdict, the only method, therefore, of correcting an error resulting from an erroneous refusal to direct a verdict is to order a new trial. The dissenting opinion holds that the statute provides merely a simplification of the common law practice of demurring to evidence. The statute is not unconstitutional as the appellate court merely reconsiders the question of law as to whether there is enough evidence to go to the jury and does not concern itself with any questions of fact.

It is submitted that the principal case and the dissenting opinion of the Slocum case show the better view of the law. The statute does not infringe upon the functions of the jury; it merely gives the appellate court the power which the lower court always had—of directing a verdict provided the law required it; and is of help to lessen the delays of litigation.

LIBEL AND SLANDER—PRIVILEGE—MISTAKE—A statement was published in a newspaper that the plaintiff had been indicted by a grand jury. The libellous publication, though intended to refer to him, was due to a mistake in identity, a man with a similar name having been indicted. *Held:* Evidence of reasonable care inadmissible. The plaintiff was entitled to an action, since the occasion was not privileged so far as he was concerned. Sweet v. Post Publishing Co., 102 N. E. Rep. 660 (Mass., 1913).

It is well settled that the proprietor of a newspaper possesses no special immunity from liability for publishing libels. Smith v. Tribune, 4 Bissell 447 (U. S. 1867); Ryalls v. Leader, L. R. 1 Ex. 296 (1866); Morse v. Times-Republican, 124 Iowa 707 (1904). Where the occasion is not privileged, it is no defence that there was a *bona fide* belief, founded upon reasonable grounds, that the statements were true. Anderson v. Fairfax, 4 N. S. Wales L. R. 183 (1883); Ingram v. Reed, 5 Pa. Super. Ct. 550 (1897). Unprivileged news is printed at the peril of the publisher. Burt v. Advertiser, 154 Mass. 238 (1891).

As a general rule, fair and accurate reports of judicial proceedings are qualifiedly privileged. Kimber v. Press Ass., 1 Q. B. 65 (Eng. 1893); McBee v. Fulton, 47 Md. 403 (1877); Willman v. Press Publishing Co., 49 N. Y. App. Div. 35 (1900); unless publication is prohibited by the court, or the subject matter is obscene or blasphemous. Amer. Pub. Co. v. Gamble, 115 Tenn. 663 (1905).

The principal case must be distinguished from cases where the publication was caused by a mistake of identity, but was intended to refer to another person, of the same name and description, as to whom the facts stated of the plaintiff were true or justifiable on the ground of privilege. Some jurisdictions hold that since it can not be proved that the words were written "of and concerning the plaintiff," he can not recover. Hanson v. Globe Newspaper Co., 159 Mass. 293 (1893); Hutchinson v. Robinson, 21 N. S. Wales L. R. 130 (1900). However, the weight of authority holds that since the publication by mistake is not true, or the occasion privileged, as to the person libelled, he is

entitled to recover. Griebel v. Rochester, 60 Hun 319 (N. Y. 1890). Fox v. Broderick, 14 Ir. C. L. 453 (1864); Pullman v. Hill. 1 Q. B. 524 (Eng. 1891). So where the name of the plaintiff was inserted under the heading "Bankruptcies" instead of "Dissolutions of Partnerships," recovery was allowed. Shepheard v. Whitaker, L. R. 10 C. P. 502 (Eng. 1875). Similarly, where the mistake was due to an error in setting type. Taylor v. Hearst, 107 Cal. 262 (1895).

NEGLIGENCE—RAILROAD TORPEDO—PROXIMATE CAUSE—The brother of the deceased picked up a signal torpedo from the track of the defendant, and being unaware of its dangerous character, struck it with an iron. The torpedo exploded killing the deceased, an eight year old boy. *Held:* The negligence of the defendant's servants in carelessly and wantonly permitting such dangerous and highly explosive torpedoes to fall on the roadbed, was the proximate cause of the boy's death. Mills v. Central of Ga. Ry. Co., 78 S. E. Rep. 816 (Ga. 1913).

Though these "torpedo" cases do not turn on the question as to what intervening circumstance or fact would break the chain of causation or free the negligent person from the result of his negligence, the decisions in some have depended upon this character of evidence. Harriman v. Pittsburgh, *etc.*, Ry. Co., 45 Ohio St. 11 (1887). This point is fully discussed in Carpenter v. Miller & Son, 232 Pa. 362 (1911), where the court ruled that the intervention of the plaintiff rather than the negligence of the defendant was the proximate cause, and that the defendant could not have forseen the injury. Shields v. Pittsburgh Ry. Co., 24 N. E. Rep. 658 (Ohio 1890) which arose out of the same accident as Harriman v. Pittsburgh Ry. Co., *supra*, was decided upon the law of master and servant and the question of proximate cause was ignored.

Several cases which at first glance appear to be *contra* to the principal case, are not so in fact. There was a nonsuit in Hughes v. Boston & Maine R. R. Co., 71 N. H. 279 (1902) because no evidence was introduced from which negligence could possibly be inferred. The same general result was reached in Louisville & N. R. Co. v. Hart, 70 S. W. Rep. 830 (Ky. 1902). Though the company knew that boys were accustomed to play where the torpedo was set, it was relieved from liability by the failure to show any negligence in the method of using torpedoes and of their care after the necessity of use had ceased. St. Louis & S. F. R. Co. v. Williams, 98 Ark. 72 (1911). An illustration was cited in Carter v. Columbia R. R. Co., 19 S. C. 20 (1882) from which it can be inferred that if the torpedo had been left on the track for an improper purpose, the decision would have been against the company, even though the deceased was an adult.

NEW TRIAL—IMPEACHMENT OF VERDICT BY JUROR—MISCONDUCT OF JURY—The testimony of a juror will not be received to impeach a verdict respecting a matter inherent in the verdict itself. McDonald v. Pless, 206 Fed. Rep. 263 (1913). Upon reasons of public policy, courts have almost universally refused to allow jurors to impeach their own verdicts. White v. White, 5 Rawle 61 (Pa. 1835); Clum v. Smith, 5 Hill, 560 (N. Y. 1843); Haight v. Turner, 21 Conn. 593 (1852;) Shepherd v. Inhab. Camden, 82 Me. 535 (1890).

In many states, however, it has been provided by statute that verdicts may be impeached by jurors. Cal. Code Civ. Pro. §657; Gantts Dig. 1971 (Ark.); Texas Code Crim. Pro. Art. 777. In the decisions based on these statutes it has generally been held that the affidavit of the juror must be voluntary. Hunter v. State, 8 Tex. App. 75 (1880). Such statutes are strictly construed and under them a verdict may not be impeached because of a misunderstanding of instructions or undue influence of other jurors. Wright v. Illinois Tel. Co., 20 Iowa 195 (1865).

PLEADING—STATUTE OF FRAUDS—The defense of non-compliance with the Statute of Frauds, if relied upon, must be specially pleaded. Lurie v. Pinanski, 102 N. E. Rep. 629 (Mass. 1913).

In England prior to the Judicature Acts, although the plaintiff need not allege a compliance with the Statute, yet the defendant is allowed to show a non-compliance with the Statute under the general issue. Eastwood v. Kenyon, 11 A. & E. 438 (Eng. 1840); Buttemere v. Hayes, 5 M. & W. 456 (Eng. 1839). The same rule has been to a large extent followed in the United States. Dunphy v. Ryan, 116 U. S. 491 (1885); Lozier v. Hill, 68 N. J. Eq. 300 (1904); Thielans v. White, 11 W. N. C. (Pa. 1882). In many jurisdictions, on the other hand, it has been held, in accord with the principal case, that a contract not made in compliance with the Statute of Frauds is a voidable and not a void contract, and can therefore only be avoided by a special plea of the Statute. James v. Smith, 1 Ch. 384 (Eng. 1891); Williams v. Davis, 46 Ill. App. 228 (1892); Livingston v. Murphy, 187 Mass. 315 (1905).

In a few jurisdictions it is held that compliance with the Statute must be alleged by the plaintiff. Duncan v. Clements, 17 Ark. 279 (1856); Wiseman v. Thompson, 94 Iowa 607 (1895); Morgan v. Wickliffe, 110 Ky. 215 (1901).

PROCEDURE—ATTACHMENT OF STOCK IN FOREIGN CORPORATION—Stock in a foreign corporation cannot be attached in an action against a non-resident, when the shares themselves are not within the state. United States Express Co. v. Hurlock, 87 Atl. Rep. 834 (Md. 1913).

It is universally held that the *situs* of the stock of a corporation is in the state of incorporation. Smith v. Downey, 8 Ind. App. 179 (1893); Ireland v. Globe Milling Co., 19 R. I. 180 (1895). In some jurisdictions, at the home of the owner. Ashley v. Quintard, 90 Fed. 84 (1898); Plimpton v. Bigelow, 93 N. Y. 592 (1883): or, where the certificates may be found. Simpson v. Jersey City Contracting Co., 165 N. Y. 193 (1900); Puget Sound Bank v. Mather, 60 Minn. 362 (1895). But this last proposition is not followed in jurisdictions where the certificates are considered as mere *indicia* of ownership and not as the property itself. Christmas v. Biddle, 13 Pa. 223 (1850); Young v. Tredegar Iron Co., 85 Tenn. 189 (1886); Armour Bros. v. St. Louis Bank, 113 Mo. 12 (1892). For the *dictum* to the effect that the stock could have been attached if found in the state, the court in the principal case relied on the distinguishable case of De Bearn v. Prince de Bearn, 115 Md. 668 (1911) in which the property attached was a registered bond in a foreign corporation.

The establishment of an office in the state, in which action is brought, by a corporation incorporated in another state does not change the *situs* of the stock for purposes of attachment, for the corporation as such continues in the state in which it was chartered and from which its stock must issue. Plimpton v. Bigelow, *supra;* New Jersey Sheep Co. v. Trader's Bank, 104 Ky. 90 (1898); Stevens v. Phoenix Ins. Co., 41 N. Y. 150 (1869). Where the stock register and minute books of the company have been kept outside of the state of incorporation it has been held that the corporation was domestic in both states and that stock of a non-resident could be attached in either state. Telegraph Co. v. Howell, 162 Mo. App. 108 (1911). So where the chief offices were in another state than that of incorporation. Bowman v. Breyfogle, 145 Ky. 443 (1911). But these cases are not followed by the weight of authority which holds that a corporation as such cannot leave the state of incorporation.

RAILROADS—STATUTE OF LIMITATIONS—ADVERSE POSSESSION—The owner of land abutting on a railroad's right of way claimed title to part of the right of way by adverse possession for over twenty-one years. *Held:* The right of way of a railroad company, as soon as it is acquired, is impressed with a public use and no right of occupancy in such right of way can be acquired by adverse possession. Conwell v. Philadelphia and Reading Ry., 241 Pa. 172 (1913).

The Statute of Limitations does not apply to lands which have been dedicated to the public use. Thus holders by adverse possession have not been allowed to set up their title when the property in dispute was part of a court house plot. Foley v. County Court, 54 W. Va. 16 (1903); or a room in a court house. Bay St. Louis v. Hancock Co., 80 Miss. 364 (1902). For the same reason streets and highways are not subject to adverse possession. Brown v. Carthage, 128 Mo. 10 (1895); Shirk v. Chicago, 195 Ill. 298 (1902); Bodine v. Trenton, 7 Vroom 198 (N. J. 1873). Likewise turnpikes as they are public highways. Stevenson's Appeal, 17 W. N. C. 429 (Pa. 1883). Railroads, as they are public highways, come under the same rule. Railroad v. Borough, 138 Pa. 91 (1890); Reading Co. v. Seip, 30 Pa. Super. Ct. 330 (1906); Railway v. Townsend, 190 U. S. 267 (1902); Railway v. Ely, 197 U. S. 1 (1904); Durham v. Railway, 121 Fed. 894 (N. C. 1903). The land belonging to a railroad which is not used for its tracks is however not considered dedicated to public use and such land may be acquired by adverse possession. Railway v. Frank, 39 Pa. Super. 624 (1909); Railway v. Tobyhanna Co., 232 Pa. 76 (1911).

When, however, the property is no longer used for public purposes, it ceases to be exempt from the Statute of Limitations and may be acquired by adverse possession. Collet v. Vanderburgh Co., 119 Ind. 27 (1889); Rector v. Christy, 114 Ia. 471 (1901).

SALES—CONDITIONAL SALES—MEASURE OF DAMAGES—A manufacturing company contracted to sell machines to a dealer under the arrangement that the title was to remain in the company until full payment was made, with a proviso that if payment was not made before a certain date, the dealer would give the company a promissory note for the purchase price. The machines were delivered and as no payment was made, the dealer gave the company his promissory note. As this note remained unpaid, the company brought suit thereon. The dealer claimed that he was not liable for the full purchase price, but the measure of damages should be the difference between the purchase price and the re-sale value. *Held:* As the dealer had accepted the goods under the contract, the company had the right to recover the purchase price which was represented by the promissory note. International Harvester Co. v. Pott, 142 N. W. Rep. 652 (S. D. 1913).

It is difficult to see how the idea of "measure of damages" was brought into this case. It is the universal rule that the difference between the purchase price and the market value as a measure of damages applies only where the vendee in a conditional sale has refused to accept the goods. Fireworks Co. v. Polites, 130 Pa. 536 (1889); Mitchell v. Baker, 208 Pa. 377 (1904); Dustan v. McAndrew, 44 N. Y. 72 (1870). Even the wording of the section of the code is contrary to the claim of the dealer as it limits the application of the rule to the "detriment caused by the breach of a buyer's agreement to accept and pay for personal property." S. D. Civil Code, §2303. The dealer based his claim on a previous South Dakota case where it was held that this measure of damages did apply even though there was delivery; but in that case the delivery was to the dealer to sell and title was to pass on fulfilment of the condition to the dealer's vendee and not to the dealer. Dowagiac Mfg. Co. v. White Rock Lumber Co., 26 S. D. 374 (1910). This case may be therefore distinguished from the principal case.

SALES—DELIVERY—A vendor surrendered bill of lading and authorized delivery of goods before payment. The vendee resold the goods and the vendor brought replevin, claiming that title to them still remained in him. *Held:* The conduct of parties did not show an intention that title should not pass without payment. The sale will be considered to have been made on credit and the defendant acquired good title, as did subsequent vendees. Kemper Grain Co. v. Harbour *et al.*, 133 Pac. Rep. 565 (Kan. 1913).

Upon such contracts the seller is not bound to deliver before payment is made; but if he does make an unqualified delivery, he waives his advantage and the title passes. Goodwin v. Boston & L. R. Co., 111 Mass. 487 (1873). Where the sale is held to be conditional upon payment, delivery of possession to the vendee and subsequent resale by him will not bar the original owner from asserting his title even as against a *bona fide* purchaser for value. Baals v. Stewart, 109 Ind. 371 (1886); Fairbanks Co. v. Graves, 90 Miss. 453 (1907); Riley v. Dillon, 148 Ala. 283 (1906). The majority of jurisdictions in the United States support this view but some are *contra*. Dearborn v. Raysor, 132 Pa. 231 (1890); Van Duzor v. Allen, 90 Ill. 499 (1878). As provided by the Factors' Act of 1889, the courts of England uphold title in a *bona fide* purchaser from a conditional vendee. Lee v. Butler, 2 Q. B. 318 (1893). In all cases, laches on the part of the vendor will be held to constitute a waiver if the property reaches the hands of innocent third persons. Leatherbury v. Connor, 54 N. J. L. 172 (1891); Victor Safe & Lock Co. v. Texas State Trust Co., 99 S. W. Rep. 1049 (Tex. 1907).

If the facts are such as to charge the subsequent purchaser with knowledge of the defect in the title of the original vendee, his vendor, good title will not pass to him. Johnson-Brinkman Commission Co. v. Central Bank, 116 Mo. 558 (1893); Garbutt v. Bank, 22 Wis. 384 (1867). Attaching or judgment creditors who levy on personal property are not *bona fide* purchasers and the rights of the original vendor may be asserted against such. Bergan v. Magnus, 98 Ga. 514 (1896); Stone v. Perry, 60 Me. 48 (1872).

TORTS—RELEASE—JOINT TORTFEASORS—The only instrument which will bar action against an alleged joint tortfeasor is a release for satisfaction given of a joint tortfeasor. McClure v. Penna. R. R. Co., 53 Pa. Sup. Ct. 638 (1913).

A covenant not to sue one of several joint tortfeasors does not relieve the others from liability. Smith v. Dixie Park Co., 157 S. W. 900 (Tenn. 1913); Walsh v. Hanan, 93 App. Div. 580 (N. Y. 1904). It does not release the covenantee himself, but gives him an action in breach of contract if he is sued. Chicago & Alton R. R. v. Averill, 224 Ill. 516 (1906). It has been held in one case that the consideration given for a covenant not to sue does not apply in mitigation of damages against other tortfeasors. Musolf v. Duluth Electric Co., 122 N. W. Rep. 776 (Minn. 1909). A release not under seal is often given the effect of a covenant not to sue and does not affect those not included in its terms except in mitigation of damages. Edens v. Fletcher, 98 Pac. 784 (Kan. 1908); Gilbert v. Finch, 173 N. Y. 455 (1903).

To plead release, it must be shown that a joint tortfeasor was released. Satisfaction by a stranger is no defense. Pittsburgh Ry. Co. v. Chapman, 145 Fed. 886 (1906); Thomas v. C. R. R. of N. J., 194 Pa. 511 (1900); Hirschfield v. Alsberg, 47 Misc. 141 (N. Y. 1905). But other courts have held that anything given because of the claim is satisfaction therefor, and a release of anyone from liability for a consideration is a release *pro tanto* of all persons liable. Snyder v. Mutual Telegraph Co., 112 N. W. Rep. 776 (Ia. 1907); Hartigan v. Dickson, 81 Minn. 284 (1900).

To release joint tortfeasors, the release must be for satisfaction received by the claimant, because, although the claimant is entitled to but one satisfaction, he is entitled to that and may sue until he has recovered satisfaction. Sloan v. Herrick, 49 Vt. 328 (1874). If the release is under seal, the seal implies satisfaction and releases all joint tortfeasors despite any stipulation to the contrary in the deed. Smith v. Consolidated Gas Co., 36 Misc. 131 (N. Y. 1901); Seither v. Phila. Traction Co., 125 Pa. 397 (1889); Gunther v. Lee, 45 Md. 60 (1876). So also does a release not under seal if complete satisfaction is given. Seither v. Phila. Traction Co., *supra*. Part satisfaction for release not under seal acts as a release *pro tanto* of the joint tortfeasors. Home Telephone Co. v. Fields, 150 Ala. 306 (1907); Arnett v. Mo. Pac. R. R. Co., 64 Mo. App. 368 (1895). A *dictum* in Schramm v. Brooklyn Heights R. R., 35 App. Div. 334

(N. Y. 1898) indicates that any sum received in satisfaction of an unliquidated claim from one joint tortfeasor releases the rest.

UNITED STATES—SUITS AGAINST—JURISDICTION—The National Home for Disabled Soldiers was summoned as trustee in an action before a Maine court. The Home was established under an act of Congress and jurisdiction over its lands was ceded to the United States by an act of the State Legislature. *Held:* The essential character and functions of the Home are those of an agency—an instrumentality of the United States Government—and the United States has exclusive jurisdiction over it. Brooks Hardware Co. v. Greer *et al.*, 87 Atl. Rep. 889 (Me. 1913).

Congress has power to exercise exclusive legislation over all places purchased by consent of the state in which they are for the erection of forts, magazines, arsenals, dockyards and other needful buildings. U. S. Const., Art. I, §8. Accordingly, where the United States has purchased lands from any state with its consent for such purposes, the jurisdiction of the United States is exclusive. United States v. Cornell, 2 Mason, 60 (U. S. 1819); State v. Clary, 8 Mass. 72 (1811); State v. Mack, 23 Nev. 359 (1897); Allegheny Co. v. McClung, 53 Pa. 482 (1867).

The cession of exclusive jurisdiction may be accompanied, however, with any conditions not inconsistent with the effective use of the property for the public purposes intended. Ft. Leavenworth R. Co. v. Lowe, 114 U. S. 525 (1885). And where the purchase is made without consent of the state, it may impose the condition that such jurisdiction shall be retained by the United States only so long as the place is used for those purposes.. Palmer v. Barrett, 162 U. S. 399 (1896). It is customary for the ceding states to reserve the right to serve civil and criminal processes upon the lands. Brooks Hardware Co. v. Greer *et al.*, *supra;* United States v. Davis, 5 Mason, 356 (U. S. 1829). This condition is made to prevent such places from becoming sanctuaries for debtors and criminals, and is not considered as interfering in any way with the supremacy of the United States over them. State Legislatures may not by subsequent acts impose additional restrictions on the jurisdiction ceded. *In re* Ladd, 74 Fed. Rep. 31 (U. S. 1896).

The rights and remedies of the United States in respect to land owned by it within any state and over which it has no cession of jurisdiction are governed by the *lex rei sitae* unless treaties or statutes otherwise provide. United States v. Ames, 1 Woodb. & M. 76 (U. S. 1845).

WILLS—REPUBLICATION BY PAROL—The contestant of a will admitted to probate appealed from the decision of the Register, alleging that an earlier will had been republished by the testator after the execution of the one protested. *Held:* The appeal is dismissed, the evidence of parol republication being so uncertain and the testimony so conflicting that it could not be accepted as establishing a republication, were such thing possible by parol. Holmes' Estate, 240 Pa. 537 (1913).

When at common law devises of land by will first came to be permitted, it seems there could be a republication of a will by parol, since neither witnesses nor the signature of the testator to the original instrument were required. Anon., 2 Show. 48 (abt. 1680); Cotton v. Cotton, cited in 2 Vern. 209. In England republication by parol is prevented by the sixth section of the Act of 29 Car. II., c. 3. In America most courts hold a parol republication good if made in a way equivalent to the original execution of the will. *In re* Simpson, 56 How. Prac. 125 (N. Y. 1878); Havard v. Davis, 2 Binn. 406 (Pa. 1810); Love v. Johnston, 34 N. C. 355 (1851); Barker v. Bell, 46 Ala. 216 (1871); Maxwell v. Maxwell, 60 Ky. (3 Metc.), 101 (1860).

In Pennsylvania, under the Act of 1705, 1 Sm. Laws, 35, pl. 6, a will might be republished by a parol declaration because neither signature, seal, nor attestation of witnesses was necessary to its execution. Havard v. Davis,

supra. But it would seem that such republication must be with the same solemnities as were requisite to the execution of the original. Jones v. Hartley, 2 Whar. 103 (Pa. 1837); Campbell v. Jamison, 8 Pa. 498 (1848). Since the Act of 1833. P. L. 249, it would seem that republication by parol is not possible, at least where it would operate as a revocation of a subsequent will. Rankin v. Rankin, 5 W. N. C. 127 (1877); Rankin's Estate, 4 W. N. C. 203 (1877). But where there was but one will and a revocation *pro tanto* of the same by the subsequent birth of a child a parol republication to two witnesses was held good. Gillespie's Estate, 5 D. R. 65, 43 Pitts. L. J. 222 (Pa. 1895).