or as a plantation and abode of slaves, must necessarily have been injured; and this must strike the mind almost as forcibly as if it had been distinctly alleged in the bill, that this cause of disease would extend to him or his family or slaves, or would diminish the market value of his lands. But it appears, by the proof, that he resides upon the lands; so that it sufficiently appears he was subject to the evil complained of. It is well settled, that a private individual may obtain an injunction to prevent a public mischief, by which he is affected in common with others. Eden on Inj. 267. Judge Story says, a Court of Equity will interfere in such cases, "upon the application of private parties directly affected by the nuisance." 2 Story, Eq. Jur., § 924; 12 Peters, 98.

But here the matter is not only presented as a public nuisance, but it is also alleged that a special injury, apart from the mischief to the public health, would be sustained by the complainant, in the damage to his lands and timber. This will justify a private individual in seeking relief for a public nuisance producing special injury to himself. *Crowder* vs. *Tinkler*, 19 Ves., 622; 12 Peters, 98.

No objection is made to the sufficiency of the evidence to sustain the verdict, and it must be taken as correct and to support the allegations of the bill.

We are therefore of opinion that there is no error in the decree, and it must be affirmed.

## ABSTRACTS OF RECENT AMERICAN DECISIONS.

*In the District Court of the United States, in and for the District of Maryland.*

HENRY KENDEPT *vs.* BARQUE THEODORE KORNER.

Libel in rem for seaman's wages.

The libellant was a citizen of Bremen, to which place the barque belonged. The libellant came to this port in another vessel belonging to Bremen, and was transferred from said vessel in this port, to the barque

Theodore Korner, to go a voyage to the Chincha Islands and elsewhere. On the return of the barque to this port, the libellant left her, and filed this libel to recover his wages. The District Court (Judge Giles) decided that by the terms of the treaty between our government and the Free Hanseatic Towns, this Court had no jurisdiction of the case; that the libellant must apply to the Consul for Bremen at this port, who is clothed with jurisdiction in all cases of dispute between masters of vessels and seamen, where the parties are citizens of Bremen.

The Circuit Court (Chief Justice Taney) affirmed this decree.

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*In the Circuit Court of the United States, in and for the District of Maryland.*

THE UNITED STATES *vs.* THE BRIG NEPTUNE AND OWNERS.

This was a libel in rem filed against the vessel, and in personam against the captain and owners, to enforce the penalties of the Act of 1848, passed in reference to passenger vessels.

The District Court (Judge Giles) decided that the said penalties could only be recovered by an action of debt on the common law side of the Court, and not by libel; and that the penalties were personal; and there was no lien on the vessel, and no remedy in rem, to enforce them.

Decree affirmed on both points on appeal, by the Circuit Court, (Chief Justice Taney.)

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*In the Superior Court of Chancery of Mississippi. June Sessions. Jackson,* 1854.

JAMES L. CALCOTE *vs.* FREDERICK STANTON AND HENRY S. BUCKNER.[1]

Per GLENN, Special Chancellor.

1. *Choses in Action—Assignment.*—The fact that a claim is disputed, will not forbid its transfer or assignment, nor will public policy avoid such a sale because it may become necessary in the assignee to set aside the fraud of the debtor, in order to effectuate his purchase.

[1] The points decided in this case are here presented. The opinion was so long that we have been compelled to give the points only, carefully prepared by the Special Chancellor, Hon. D. C. Glenn, to whom our readers are indebted for this and other valuable contributions.—EDS. LAW REG.

2. *Champerty—Maintenance.*—The doctrine of Champerty and Maintenance is now only applied to the purchase of controverted titles, productive of naked litigation among persons claiming the same thing by different titles, and is only enforced in cases where there is an adverse right claimed under an independent title, not in privity with the assignor or seller, and not under a disputed right claimed in privity or under a trust for the assignor or seller.

3. *Estoppel.*—Where A publicly and on record admits himself indebted to B in a sum certain, and B in the same manner states the same fact, and upon such statement C parts with his money or other valuable thing in purchase of the debt, upon settled principles of justice A and B are estopped from denying the *existence* of this debt in the hands of C or his assignee.

4. *Partnerships—Bankruptcy—Creditors.*—When the same parties composed three distinct firms, at different places and under different names, the three firms were entirely separate and distinct from each other, and kept their business, books and accounts accordingly, upon the bankruptcy of all the firms, *held*, that the social creditors of one firm, in a Court of Equity, could enforce payment of a stated amount or balance due it from the other firms.

5. *Rule in Equity as to Partnerships.*—In Equity, all contracts and dealings between such firms of a moral and legal nature are deemed obligatory, though void at law; and in all such cases, Equity looks behind the form of transactions to their substance, and treats the different firms for purposes of substantial justice exactly as if they were composed of strangers or were in fact corporate companies.

6. *Equity—Jurisdiction—Assignment.*—(1.) Wherever a remedy is more full and complete in Equity than at Law, or from the subject-matter of a suit or the circumstances surrounding it, more full and perfect relief can be had in Equity than at Law, Equity will take Jurisdiction.

(2.) Where an equitable interest in a *chose in action* is vested in the holder by assignment, his rights will be enforced in Equity if there is no legal remedy, or the remedy at law is a doubtful or a difficult one.

(3.) Courts of Equity are not ousted of an original jurisdiction because the same has been answered by Courts of Law, or has been conferred upon the latter by statute.

7. *Certificate of Bankruptcy—Fraud.*—Bankruptcy is pleadable in bar to all actions and in all Courts, and this bar may be avoided wherever it is interposed, by showing fraud in the procurement of the discharge.

8. *Bankrupt Law of* 1841—*Fraud.*—A creditor of any class, whether he has or has not proved his claim against the bankrupt, whether he has or has not participated in the bankrupt proceedings, is not barred from suit or recovery on his claim when he can show that the discharge was fraudulently obtained, and that the bar is a nullity; *Provided,* he was ignorant of the fraud, and there were no circumstances which would justly put him upon inquiry, and he has not delayed action too long after coming to a knowledge of the fraud.

9. *Fifth Section—No Bar in case of Fraud.*—The 5th Section of the Act of 1841 did not intend that the proving of claims by creditors should effect an absolute abandonment of all claims against the future acquisitions of the debtor, but simply a waiver of all right of such creditor in Law or Equity, inconsistent with the bankrupt proceedings, in case the bankrupt should obtain a discharge which was not "impeachable for some fraud or wilful concealment of his property."

10. *Law of* 1841—*Effect on Creditors.*—The Bankrupt Law of 1841 was a legislative confiscation of existing rights for the benefit of the debtor, with the privilege to the creditor to avoid the same for fraud on the part of the bankrupt when it became known to him.

11. *Statute of Limitations—Law and Equity.*—Courts of law are bound by the statute of limitations, and Equity also regards it, except in cases of fraud and pure trust, yet Courts of Equity are not within the statute, and never permit a plea thereof when conscience would be violated.

12. *Fraud—Concealment—Equity—Limitations.*—In cases where the party by fraud has kept concealed the rights of complainant, and has thereby delayed him in the assertion of those rights, lapse of time ought not upon principles of justice be admitted to repel relief. On the contrary, it would seem that the length of time during which the fraud has been successfully concealed and practised, is rather an aggravation of the offence, and calls more loudly upon a Court of Equity to grant ample and decisive relief.

*In the Supreme Court of Appeals of Virginia.*[1]

1. A negotiable note is signed R. H. E., for S. H. C., the latter name being within brackets, On the face of the paper it is the note of R. H. E. *Early* vs. *Wilkinson & Hunt.*

2. The father of an infant child being dead, the mother is entitled to its custody as of right; and she does not lose this right by a second marriage. But where she is seeking by the writ of *habeas corpus* to have the child placed in her custody, the Court may exercise its discretion, and determine whether, under the circumstances, it is best for the infant that he should be assigned to the custody of the mother. *Armstrong* vs. *Stone & Wife.*

3. Testator devises his real estate to his wife for life, remainder to his son J.; and bequeaths his personal estate to his eight children. The wife renounces the will, and takes her third of the real and personal estate. The two-thirds of the real estate, devised to the wife for life, is to be rented out, and the proceeds applied to satisfy the legatees of the personal estate for the one-third of that fund taken by the wife; and upon their satisfaction, or the death of the wife, whichever event shall first happen, the said two-thirds of the real estate passes at once to the remainderman J. *McReynolds* vs. *Countz et als.*

4. In the penal part of a bond the names of fourteen obligors are inserted, binding themselves in a penalty to T. The condition recites that T has admitted the above bound his deputies in the office of sheriff of G county for twelve months. Now, if the above bound shall well and truly discharge the duties of their respective offices of sheriffs as aforesaid, &c., the names of the parties who were admitted as deputy sheriffs being omitted. Two of the persons whose names were inserted in the penal part of the bond did not sign it; and one signed the bond, whose name did not appear in the body of the instrument. On a motion by the administrator of T, the high sheriff, for the default of one of the fourteen who had signed the bond, as deputy high sheriff. *Held,*

1st. That there being nothing on the face of the bond to indicate that all named in the penalty were not appointed as deputies, and the obligors having sealed and delivered the bond in its present form, they are estopped from denying the fact.

2d. The deputy sheriffs having no joint interest in or authority over the the whole office, and, therefore, one not being responsible for the other

[1] The Reporter has kindly furnished us with these abstracts. The cases themselves will be found in 9th Grattan's Reports.

merely by virtue of the office, they can only be held liable for the acts of each other in consequence of an express understanding. As, therefore, they do not and cannot be made to stand as principals in respect to the acts of others, each one must be regarded as principal so far as his own acts are involved, and the remaining obligors are his sureties.

3d. Though some of the persons named in the penalty did not sign the bond, the parties who did sign it are to be considered as the obligors who are bound, and are recited to have been admitted as deputies.

4th. A party signing the bond, whose name is not in the penalty, does not vitiate the bond, and he is bound as an obligor. *Cox and others* vs. *Thomas' Administrator.*

5. The Circuit Court is a Court of general jurisdiction, taking cognizance of all actions at law between individuals, with authority to pronounce judgments, and to issue executions for their enforcement. Where its jurisdiction is questioned, it must decide the question itself. And whenever the subject matter is a controversy at law between individuals, the jurisdiction is presumed from the fact that it has pronounced the judgment; and the correctness of such judgment can be inquired into only by some appellate tribunal. *Id.*

6. Two deeds are made by an old man shortly before his death, by which he conveys the whole of his property which he had not before disposed of, to one of his sons. *Held,*

1st. That the principle which has been applied to last wills, in respect to the state of mind and degree of capacity sufficient to make a valid devise or disposition of property, is equally applicable to the case of this grantor.

2d. The grantor not laboring under a total or temporary deprivation of reason, he was of legal capacity to make a valid disposition of his property, if he was capable of recollecting the property he was about to dispose of, the manner of distributing it, and the object of his bounty.

3d. Although the grantor or testator may labor under no legal incapacity to do a valid act or make a contract, yet if the whole transaction taken together with all the facts, mental weakness being one of them, shows that the particular act was not attended with the consent of his will and understanding, it is void. *Greer* vs. *Greer.*

7. In an action at law, the defendant is prevented by unavoidable accident from setting up offsets which he held against the plaintiff; these offsets being in no way connected with the debts sued upon. He is not entitled to enjoin the judgment and set up his offsets against it, but must pursue his remedy at law for their recovery. And if the claims which he

holds against the plaintiff at law, are only recoverable in equity, still he is not entitled to enjoin the judgment, and have them set off in equity. *Hudson* vs. *Kline.*

8. A vendee of land being entitled to come into equity to enjoin a judgment recovered by an assignee of a bond given for the purchase money, on the ground of difficulties in the title, and it being doubtful whether he can get a title; though the title is decreed to him in his suit, he is entitled to set up in equity offsets he held against his vendor prior to the assignment; and he was not bound to plead them at law. *Bagsdale* vs. *Hagy and others.*

9. A sells to B a number of slaves at a price much below their value, for the purpose of defrauding his creditors. B executes to him her bonds for the purchase money, and he assigns the bonds to bona fide creditors; and soon thereafter dies. B sells a part of the property, and pays off the bonds, and then conveys the remainder of the property to the widow and child of A. Upon a bill by other creditors of A to set aside these deeds as fraudulent, they are set aside, and the property conveyed in the last of them is sold, and the proceeds are applied to pay the claims of the creditors. All the creditors of A not being satisfied out of this fund, B is held liable to satisfy them to the extent of the price of the slaves sold by her. *Williamson's Executor* vs. *Goodwin et als.*

10. S by his will emancipated his slave at a specified future period; provided she shall leave the State within six months thereafter. But if she does not leave the State within the six months, then she is to become a slave to his estate forever. And provided, that the laws of the State shall so require her to leave it. *Held,* That the condition is void; and she is free, though she does not leave the State within six months after the time specified. *Forward's Administrator* vs. *Thamer.*

11. Testator by his will says: "Whenever my executors think best, they shall sell my land in B, together with all the personal estate thereto belonging, except the slaves; and reserving one hundred and fifty acres of said land, which, with one-fourth of the said slaves, they shall hold in trust for the benefit of my daughter N. B.," &c. "The money arising from the sale of the land and other property above mentioned, together with all other moneys remaining in the hands of my executors, after payment of debts and legacies; also the remaining three-fourths of my slaves belonging to my said plantation, I desire shall be equally divided between my son B and my daughters M and J." *Held,* The will does not confer on the executors a naked power; but it vests in them an interest and a trust, and

it is their duty to take possession of the land and to account for the rents and profits until it is sold. *Mosly's Administrator et als.* vs. *Mosly's Administrators.*

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*In the Supreme Court of Alabama, January Term,* 1854.

1. An infant is *in esse,* for the purpose of taking an estate for its benefit, from the time of its conception, provided it be born alive and after such a period of fœtal existence that its continuance in life may be reasonably expected. *Nelson* vs. *Iverson.*

2. An action on the case lies against the owners of a steamboat to recover damages for the loss of a slave who was hired as a deck hand on the boat, and was killed in consequence of a collision with another boat; if his death was the legitimate and natural consequence of the collision, and the collision was caused by the negligence and want of skill of the boat's officers. (*But note* that the captain was one of the part-owners.) *Cook & Scott* vs. *Parham.*

3. It is the duty of the owners of the boat to use due care in providing competent officers for her; and the owner of the slave may hold them responsible for the neglect of this duty, although he had the means of knowing the officers' character for skill and care when he hired his slave to them. *Ib.*

4. If the slave's death was caused by his own act, in leaping into the river when frightened out of his ordinary presence of mind by the excitement, confusion and danger produced by the collision, it would be the legitimate consequence of that collision, and the defendants would be liable. *Ib.*

5. When an agent pays the money of his principal to a person who is not authorized to receive it, the principal may sue the receiver in assumpsit, for money had and received; but the bringing of such an action is a ratification of the payment, and discharges the agent from all further responsibility. *Van Dyke* vs. *The State.*

6. The General Assembly, by a joint resolution of both houses during its regular session, having adjourned on the 20th of December, 1853, to meet again on the 9th of January, 1854, a member who went home and returned during the recess, was held entitled to mileage, but not to *per diem* compensation during the recess. *Ex parte Pickett.*

7. When the act incorporating the municipal authorities of a city makes it their duty to keep in repair the streets and bridges within the corporate

limits, and in consideration thereof relieves them from other duties, an action on the case lies against them for a neglect of this duty, in favor of a person who is thereby injured. *Smoot* vs. *The Mayor, Aldermen, &c., of Wetumpka.*

8. A legislative grant to an incorporated company, conferring upon them "the exclusive right and privilege of conducting and bringing water for the supply of the city for the term of forty years," gives them no right to divert the water of a running stream, to the injury of riparian proprietors, without making compensation. *Stein* vs. *Burden.*

9. A municipal corporation, owning lands on a water-course from three to five miles distant from the city, has no right to divert the water from the stream, to the injury of other riparian proprietors, in sufficient quantities to supply the domestic wants of its inhabitants. *Ib.*

10. A riparian proprietor is entitled to nominal damages for a diversion of the water from his mill, without any proof of actual damage. *Ib.*

11. The uniform and uninterrupted diversion of water from a running stream for a period of twenty years, gives a title by prescription. It is not necessary that the water should be used in precisely the same manner, or applied in the same way; but no change is allowed which would be injurious to those whose interests are involved. *Ib.*

12. The points ruled in this case were re-affirmed in the case of *Stein* vs. *Ashby*, at the same term.

13. When justification and the general issue are pleaded to an action of slander, if the defendant fails to establish the former plea, it may be considered by the jury in aggravation of damages. *Robinson* vs. *Drummond.*

14. A deed which is void as to third persons on account of an adverse holding, is nevertheless binding and valid as between the parties themselves; and the fact that the vendee himself was in possession, as tenant of the adverse holder, does not affect the principle. *Abernathy* vs. *Bouzman.*

15. On questions of insanity, a witness whose acquaintance with the party has been such as to enable him to form a correct opinion of his mental condition, may not only depose to facts conducing to establish unsoundness of mind, but may also, in connection with those facts, give his own opinion upon the question of sanity or insanity. *Florey's Executors* vs. *Florey.*

16. Fraud, or undue influence, in procuring one legacy, does not invalidate other legacies which are the result of the testator's own free will;

but if the fraud or undue influence affects the whole will, though exercised by only one legatee, the whole will is void. *Ib.*

17. An insane delusion, existing in the testator's mind at the time of the execution of his will, as to the principal legatee being his son, renders the will void, if it is the offspring of that insane delusion. *Ib.*

18. Where the principal legatee, who was born in lawful wedlock two or three years after his mother's marriage with the testator, bears the peculiar, distinctive marks of the negro, while his mother and the testator were white persons of fair complexion, the testor's belief that the legatee was his son, is admissible evidence, in a contest touching the validity of the will, for the purpose of showing mental delusion on this particular subject. *Ib.*

19. A transcript from the records of a foreign court, whether of general or special and limited jurisdiction, is admissible evidence in the courts of this State, if properly authenticated; and our courts are bound to presume that the foreign court had jurisdiction of the subject-matter upon which it professes to adjudicate, until the contrary appears. *Slaughter* vs. *Cunningham.*

20. The husband is liable, in assumpsit, for necessaries furnished to his wife (she being separated from him without fault on her part) while confined in a lunatic asylum, although the credit was given to the person who, as agent for plaintiff, made the contract and paid the expenses, which were afterwards repaid to him by his principal; but if the person who made the contract was acting for himself individually, and not as agent of the plaintiff, the latter cannot, by voluntarily paying the debt, make the husband his debtor. *Wray* vs. *Cox.*

21. The husband is liable, in assumpsit, for necessary medical attendance on his wife, although the physician was called in against his objection, by his grown son, who lived with him, and who promised him to assume the payment; it being shown that the husband was present while the physician was rendering his services, and that the latter had no notice whatever that he was not to look to the husband for payment. *Cothran* vs. *Lee.*

22. An incorporated town retains its corporate capacity until its charter is declared forfeited in a direct judicial proceeding; it cannot be held, in any collateral proceeding, to have forfeited its charter by non-user. *Harris* vs. *Nesbit.*

23. A bond for title, given by an infant, is not absolutely void, but voidable only; and if the infant after attaining his majority, disaffirm the

contract and sue his vendee for use and occupation, the latter may recoup for valuable improvements erected on the land. *Weaver* vs. *Jones.*

24. A written order addressed to a mercantile firm in these words: "Please let the bearer, Mr. O., have any little things he may stand in need of, and I shall be good for the same:" *held* to be a direct original undertaking which would continue until revoked, or until the account was closed, and would embrace any articles of no great value, which would come under the denomination of necessaries for a person in O.'s condition. *Scott* vs. *Myatt & Moore.*

25. The owner of certain slaves being about to remove with them to Illinois for the purpose of emancipating them, conveyed them by absolute bill of sale to another, and took from him at the same time a bond conditioned that he should emancipate them when reasonable compensation had been made to him for his trouble and expenses with them: *held*, that inasmuch as there was nothing on the face of the bond requiring the obligor to emancipate the slaves *in this State*, his undertaking was not void, but formed a sufficient consideration for the bill of sale. *Prater's Administrator* vs. *Darby.*

26. The constitutional delegation of authority to the legislature "to pass laws to permit the owners of slaves to emancipate them," is not an inhibition of the owner's right to emancipate them except only under such regulations as the legislature may prescribe. *Ib.*

27. Certain boundaries are of more importance than quantity, in designating lands. Therefore, where a patent calls for a subdivision of a fractional quarter section, described as lying north of a certain creek, and containing a specified number of acres, it embraces all the land in the subdivision north of the creek, although the actual number of acres exceeds the number specified in the patent. *Stein* vs. *Ashby.*

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## *Points decided by the Supreme Court of Massachusetts, for the County of Suffolk, at the March Term,* 1854.

[From 1 Gray's Reports, now in press.][1]

1. *Can a Sheriff, in a criminal proceeding against him, be committed to his own Jail?*—This general question is discussed by the Court; and it is decided that a warrant to a Coroner to commit the Sheriff to the county jail of which, and of all the prisoners therein, he has by statute the cus-

[1] We are under obligations to Mr. Gray for the loan of the sheets in advance, from which we have digested these points. We understand that the first part of this volume will shortly be published.

tody, rule, and charge, is void; and the court will, on *habeas corpus*, discharge the sherrff held by the coroner on such a warrant. *Adams* vs. *Vose*, page 51.

2. *Burden of proof in Criminal Cases.*—A party indicted for assault and battery, contended at the trial that the battery was justifiable in self defence; and the court held, that the burden of proof was not on him to establish the justification, but on the government throughout. The ground of the decision was, that the government sets up an *unjustifiable* beating; which is the issue the defendant has to meet. The order of proof, and the side by which the witnesses are called, are immaterial; and the defendant may all along require that the case be fully established against him. "There may be cases," said Bigelow, J., in delivering the opinion, "where a defendant relies on some distinct, substantive ground of defence to a criminal charge, not necessarily connected with the transaction on which the indictment is founded, (such as insanity, for instance,) in which the burden of proof is shifted upon the defendant. But in cases like the present, (and we do not intend to express an opinion beyond the precise case before us), where the defendant sets up no separate, independent fact, in answer to a criminal charge, but confines his defence to the original transaction charged as criminal, with its accompanying circumstances, the burden of proof does not change, but remains upon the government to satisfy the jury that the act was unjustifiable and unlawful." *Commonwealth* vs. *McKie*, page 61.

3. *Void and voidable executions.*—This distinction was discussed, and the court held that an execution, issued while the judgment debtor is imprisoned under a commitment on a prior execution, upon the same judgment, is void; and a sale of property under it, though made after the debtor's discharge from imprisonment, and to a purchaser without notice, passes no title. *Kennedy* vs. *Duncklee*, page 65.

4. *Civil suit against a felon.*—It was held, that the English rule that no civil suit lies against a felon for goods feloniously taken, until after a criminal prosecution has been instituted, is not in force in Massachusetts. This is an exceedingly well reasoned case upon a point on which there is great diversity in the American authorities. *Boston and Worcester Railroad Corporation* vs. *Dana*, page 83.

5. *Age of consent to matrimony—Construction of Statute.*—The court recognized the common law rule, that the age of consent is twelve in females, and fourteen in males. Also held, that the statute, which renders it penal for magistrates and ministers to solemnize marriages between minors, with-

out the consent of their parents, does not render void marriages solemnized contrary to its directions. These, it may be observed, are questions upon which there is no diversity in the authorities. *Patton* vs. *Hervey*, p. 119.

6. *Title by estoppel—Covenants of warranty.*—Where one, who has made a deed with full covenants of warranty, purchases, after eviction of his grantee, the paramount title, such title will not, without the grantee's consent, so enure to the latter by way of estoppel, as to defeat his right of action on the covenant against incumbrances, or reduce the amount of damages, which will be the consideration money paid, with interest. *Blanchard* vs. *Ellis*, page 195.

7. *Railroads as common carriers.*—Proprietors of a railroad who transport goods over their road for hire, and without additional charge deposit them in their warehouse until the owner or consignee has a reasonable time to take them away, are not, without negligence or default, liable as common carriers for the loss of the goods by fire, after they are unladen from the cars and placed in the warehouse; but are liable as warehousemen only for want of ordinary care; although the owner or consignee has no opportunity to take the goods away before the fire. *Norway Plains Company* vs. *Boston and Maine Railroad*, page 263.

8. *Estates tail.*—A devise to one, and the heirs of his body, "and to their heirs and assigns forever," creates an estate tail, which, in Massachusetts, as at common law, descends to the oldest son, and to the oldest son of the oldest son. *Wight* vs. *Thayer*, page 284.

9. *Promise to one to pay a third person.*—On a promise made by the purchaser to the vendor of an equity of redemption, and recited in the deed of the equity, to assume and cancel the mortgage on the premises, with the note it was given to secure, no action lies by the mortgagee. A suit can only be maintained by the vendor, to whom the promise was made. *Mellen* vs. *Whipple*, page 317.

10. *Lessee and his assignee.*—The assignee of all a lessee's interest in and to the lease may recover rent subsequently accruing, of one to whom such lessee has previously hired a portion of the demised premises for the whole term, and who occupies it accordingly, in (under the new Practice act of Massachusetts) an action of contract, without setting forth in his declaration the assignment from the original lessee to the defendant. And the defendant in such action is estopped to deny the estate of the original lessor in the premises. *Patton* vs. *Deshon*, page 325.

J. P. B.