that did not exist, or put A's debt on B's property after it had been acquired free of this debt, any more than the laws of a state can be extended out of its dominion, to prevent property from being so acquired, where the debt was also created out of its dominion.

In short, where there is no lien on a boat or vessel, and she has been sold, where by the law, the title passed free, the legislature cannot compel the courts to lay any lien on such boat or vessel.

Petition dismissed.

Ripley & Logan and *Bullitt & Smith*, for plaintiffs.

Speed, for defendant.

ABSTRACTS OF RECENT ENGLISH DECISIONS.

Action—Malicious Prosecution.—Declaration stated that defendant had falsely and maliciously procured plaintiff to be adjudged a bankrupt. The adjudication of bankruptcy had been made on an affidavit by defendant, containing statements which were not true in fact. The adjudication was subsequently annulled, on the ground that the affidavit did not show that an act of bankruptcy had been committed. Action maintainable, although the affidavit did not show an act of bankruptcy committed, and the Commissioner had committed an error in adjudicating plaintiff to be a bankrupt. *Farley* vs. *Danks*, 24 L. J. Q. B. 244.

Agent—Charter party.—By charter party between plaintiffs and defendants described as of London, merchants, it was agreed that plaintiffs' ship should proceed to Torrevieja, and there load a full cargo, at merchants' risk and expense, which said merchants thereby bound themselves to ship, and being so loaded, should proceed to Memel and deliver her cargo, being paid freight, half to be paid in cash on unloading and delivery, and remainder by good bills on London. Thirty running days to be allowed said merchants for loading at Torrevieja and discharging at Memel. At foot of charter party, "By authority of, and as agents for M. A. H. Schwedersky, of Memel," followed by signatures of plaintiff and defendants. Defendants personally liable for breach of charter party. *Lennard* vs. *Robinson*, 24 L. J. Q. B. 275; 19 Jur., 853.

Auctioneer—Agent.—An auctioneer may bring an action in his own name for the price of goods sold by him as auctioneer, and delivered to the

purchaser; and a plea alleging that the goods were sold by plaintiff as an auctioneer, agent, and trustee for K., and that after the sale and before action, defendant paid the said K. the price of the goods, is no answer to the action. *Robinson* vs. *Rutter*, 24 L. J. Q. B. 250; 19 Jurist, 823.

Bills and Notes—Alteration.—A joint and several promissory note, although it contains two promises in the alternative, is one contract and one instrument, and if it is designedly altered in any part by the payee, so as to alter the liability of the maker, it is entirely vitiated. *Gardner* vs. *Walsh*, 19 Jurist, 828; 24 L. J. Q. B. 276.

In an action upon a joint and several note, it appeared that after it was a perfect instrument, according to the intention of the parties, as the joint and several note of the defendant and E. B., and after it had completely issued and negotiated, plaintiff, without the consent of defendant, caused it to be signed by A. C., as a joint and several maker along with defendant and E. B. Held, that the instrument so altered would operate differently from the original instrument, whether the alteration were or were not material, and therefore defendant was discharged from liability. *Ibid.*

Contract—Gaming.—The enactment in section 18, of 8 and 9 Vict. c. 109, making void all contracts by way of wagering or gaming, applies to a wager made on a game in itself lawful, and the proviso in the same section does not except betting between two persons at the game of billiards, where no money is produced or staked at the time. *Parsons* vs. *Alexander*, 24 L. J. Q. B. 277.

Costs—Negligence of Attorney.—A bill of exchange on which an action had been brought, having been burnt by the negligence of the clerk of the plaintiffs' attorney, the plaintiffs are not entitled, on taxation, to the costs of producing two witnesses at the trial to prove the destruction of the bill, for the purpose of rendering admissible secondary evidence of its contents. Per POLLOCK, C. B. and MARTIN B.; *contra*, per ALDERSON B. and PLATT B. *Mathews* vs. *Livesey*, 24 L. J. Exch. 252.

Debtor and Creditor—Assignment.—H. executed a deed of assignment of his goods, in trust for the plaintiff and his other creditors, on the 19th August, and left it in the hands of his attorney, stating that he would communicate it to his creditors himself. On the 22d August he wrote to the plaintiff, communicating to him that he had executed the deed. On the next day, at one o'clock, the plaintiff, who resided within one day's post, received this letter, and he answered it, announcing his assent, by the post of the 24th. In the meantime, at four o'clock on the 23d, a writ of fieri facias

at the suit of the defendant against H., was delivered to the sheriff. On an issue under the Interpleader Act between the plaintiff and the defendant—Held:

First, That the deed was not revocable by H. after it was communicated to the plaintiff.

Secondly, That the title vested in the plaintiff under the deed before any actual assent expressed by him to take the goods and accept the duties of the trust. *Siggers* vs. *Evans*, 19 Jurist, 851, Q. B.

Easement—Mines—Support of Surface.—Where the surface of land and the minerals under it belong to different owners, the owner of the surface is prima facie entitled to support from the subjacent strata; and the owner of the minerals in working them is bound to leave sufficient support for the surface of its natural strata. A deed of the 29th December, 1671, which severed the surface from the minerals, contained a reservation of the mines to the grantor, with free and full power and liberty to work, sink, dig for, or win the same, and to drive drifts, make water-courses, or do any other act necessary or convenient for the working, winning or gating the same, with a covenant by the grantor to pay to the grantee treble the damages, loss or prejudice which the grantee should sustain by reason of such digging, working, etc. Held, that the reservation was subject to the implied right of the grantee of the surface to support from the minerals, and did not empower the grantor to remove the whole of the minerals without leaving a support for the surface. *Smart* vs. *Morton*, 19 Jurist, 825, Queen's Bench.

And therefore, in an action by the grantee of the surface for improperly working the minerals, "without leaving any proper or sufficient support in that behalf," whereby the surface subsided, etc., the plea justifying under the reservation and the powers in the deed: Held, that plaintiff was entitled to the verdict upon a replication which traversed that the acts complained of were "necessary for the working, sinking, digging, and winning the said mines," although necessary for the complete removal of all the minerals reserved. *Ibid.*

The practice of working formerly was to leave pillars for the support of the surface, but since 1810 the practice had been to work out all the coal, paying compensation for subsidence. It was admitted, that if defendant was entitled to do so without leaving support, the mine had been worked skilfully and properly, and according to the course and practice of mining in such case used and approved of. Held, that the course and practice

alleged must be taken to be the course and practice used, and approved of at the time of the reservation. *Ibid.*

Error—Attorney General's Fiat.—After conviction of misdemeanor, the Attorney General's fiat for a writ of error, where probable cause is shown, ought to be granted *ex debito justitiæ;* but it is in the discretion of the Attorney General to grant or withhold his fiat, and the Court will not interfere after he has exercised his discretion, and refused to grant his fiat. *R.* vs. *Newton,* 24 L. J., Q. B. 246.

Executors.—The rule that when a creditor is appointed executor by his debtor, his right of action is suspended, because he is presumed to have retained the amount of his debt, and is the person both to pay and receive, applies only where the executor has received assets: *Semble,* that it applies only where he has had legal assets, and not equitable alone. The rule does not apply where the debt arises on a negotiable instrument which has been legally transferred by the executor. Meaning of statement of assets in plea. Evidence of legal assets. *Lowe* vs. *Peskett,* 24 L. J. Com. Pl. 196.

Fraud—Liability of Directors.—Where the directors of a company, by fraudulent representations, induce persons to pay deposits, a director who was not in office when the frauds were committed, but continues in office after he was or might have been aware of the frauds, is liable to the depositors. *Beeching* vs. *Lloyd,* 19 Jur. 769, V. Ch. Kindersley.

Two of the shareholders in a company, who have been induced by fraud to pay deposits, may proceed, on that account, on behalf of themselves and the other shareholders, against the directors. *Ibid.*

Illegal Combination—Bond.—The condition of a bond recited that the obligors were manufacturers in W. and the neighborhood, and that combinations of workmen, preventing free labor by fear of social persecution, injuriously interfered with the management of their manufactures, and that these combinations were sustained by funds extorted from workmen employed by the obligors, and that measures were necessary to protect as well the obligors in the free management of their capital, as the workmen in the free disposal of their labor; wherefore the obligors had agreed, in regard to the amount of wages, the periods of engagement, the hours of work, and the general management of their establishment, to act in conformity with the lawful resolutions of a majority of the obligors present at a meeting, and declared that the bond should be void if this agreement was performed. In an action on the bond—Held,

By CROMPTON, J., that the bond was void, such combinations, whether on the part of the workmen to increase, or of the masters to lower wages, being illegal, and indictable at common law, as tending directly to impede and interfere with the free course of trade and manufacture; and

By LORD CAMPBELL, C. J., that though such combinations were not indictable at common law, nor rendered illegal by any statute, the bond could not be enforced by action, being void as against public policy. But,

By ERLE, J., that the agreement was legal, inasmuch as the obligors had an important interest for the protection of which it was necessary, and there was no reason for saying that the restraint was greater than was required for that protection; and therefore, the bond was not void. *Hilton* vs. *Eckersly*, 19 Jurist, 874, Queen's Bench.

License—Trover.—Trover for sand, ore, etc. A party claiming ownership in a field, granted to the plaintiff a parol license to search therein for minerals. Plaintiff, acting under this license, dug pits in the field and threw up sand and gravel, mixed with ore, which the defendant took away, professing to act under the authority of a third party. Before defendant took away the sand, gravel and ore, the party who gave plaintiff the parol license, granted him a similar license by deed. Plaintiff entitled to maintain the action for the gravel, sand and ore, as against defendant, who was a wrong-doer. *Northam* vs. *Bowden*, 24 L. J. Ex. 237.

Lunatic—Fraud—Notice.—Although a purchaser obtained an estate from a lunatic through undue influence and for an inadequate consideration, a court of equity, upon the sale to a subsequent purchaser for value, without notice, would not, in the absence of the proof of notice, look at any evidence to vitiate the sale. A purchaser must not disregard plain marks and symbols of fraud. The facts, therefore, of each case must be considered with a view to uphold purchasers for value without notice, and at the same time to suppress fraud. In the absence of traces to excite suspicion of fraud, lapse of time will exonerate a purchaser from making inquiries into circumstances connected with a previous transaction, although they were alleged to have been based in fraud. Upon the purchase of an advowson from an alleged lunatic, the absence of a receipt for the purchase money on the deed of conveyance, the non-residence of the rector, the vendor, and an apparent inadequacy of price, were considered insufficient to put a purchaser thrice removed upon such inquiries as would affect him with notice. The Court, although it may disregard a single fact, will give effect to it when combined with other circumstances which tend to show that a purchaser had notice. *Greenslade* vs. *Dare*, 24 L. J. Chanc. 490.

Pleading—Estoppel.—An estoppel may be replied to a plea of *liberum tenementum. Feversham* (Ld.) vs. *Emerson*, 24 L. J. Exch. 254.

"If a party does not take the first opportunity, which the pleadings of any case afford him, of replying an estoppel, and pleads it afterwards, he leaves the estoppel at large, and leaves the jury to determine upon the evidence without regard to strict law." PARKE, B., id. 256.

Privileged Communications—Discovery—Equity.—Professional communications made with a view to secure the title of the client, against *all* claimants, are privileged from production, though made ante *litem motam. Manser* vs. *Dix*, 24 L. J. Ch. 497.

WOOD, V. Ch. Where the solicitor is protected from discovery and production, the client is also protected to the same extent. *Ibid.*

Ship and Shipping—Demurrage.—A consignee who receives goods under a bill of lading, which makes them deliverable to him on his "paying for the said goods as per charter party," does not become impliedly liable to pay demurrage, according to the charter party, for a detention of the ship at the port of loading, which occurred before the bill of lading was signed. *Smith* vs. *Sieveking* 24 L. J. Q. B. 257; 19 Jur., 824.

Solicitor's Lien.—A solicitor has no lien for his costs upon real estate recovered in ejectment; such costs are not similar to those due for recovering fund which is in Court. *Shaw* vs. *Neale*, 24 L. J. Chanc. 563.

Trust—Tenant at Will.—The doctrine, that a *cestui que trust*, who is in possession with the consent, or even the mere acquiescence of the trustee, must be regarded as his tenant at will, applies only to the case where the *cestui que trust* is the actual occupant. If he is merely allowed to receive the rents, or otherwise deal with the estate in the hands of the occupying tenant, he stands in the relation of an agent or bailiff of the estate. If, therefore, the actual occupier is, under such circumstances, permitted to occupy for more than twenty years without paying rent, or acknowledging title, the trustee is barred by the third and fourth Will. 4 c. 27. *Melling* vs. *Leak*, 24 L. J. C. P. 187; 19 Jur., 759.

Will—Banking Company.—If the interest of a testator in the subject-matter which he professes to bequeath as paid-up shares in a banking company, is complete, future calls fall on the legatee, and not on the general personal estate; but when further payments are required to make perfect that interest, the general personal estate is applicable for that purpose. *Armstrong* vs. *Burnet*, 24 L. J. Ch. 473; 19 Jurist, 765, Rolls.