were of a different character and would not be infringed by such a law. *Corfield* vs. *Coryell*, 4 Wash. C. C. 380. A similar decision has been made in that circuit by Mr. Justice Baldwin. *Bennett* vs. *Boggs*, Bald. 60.

In deciding this case, therefore, on the ground that the act on which it is founded makes no discrimination in its prohibitions between the inhabitants of other States and those of this Commonwealth, we wish not to be understood as implying that, if the law had been otherwise, it would have been unconstitutional. Until it has been directly determined by the Supreme Court of the United States that such a law appropriating the coast fisheries within the territorial limits of the State to the inhabitants of the Commonwealth, is repugnant to the Constitution of the United States, and void, it must be deemed an open question, to be decided by the competent tribunals, when it arises. Judgment for the plaintiff.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

Supreme Court of Ohio, Adjourned Term, 1856.

Wm. B. Gorton vs. *The Western Reserve Farmer's Insurance Company.* Petition in error to reverse the judgment of the District Court of Trumbull county. BARTLEY, J. Held:

1. That, although as a general rule, a supplemental or amendatory statute is to be construed as incorporating, by implication, the general powers and provisions of the original statute in *pari materia*, or so far as it has relation to the same subject matter; yet where the amendatory act relates, in part, at least, to new and distinct subjects, independent of the subject matter of the original act, the special provisions of the latter are not to be construed as applicable to such new and distinct subjects, without express provision or reference thereto in the amendatory act.

2. That the special provisions of the tenth section of the act incorporating the Western Reserve Farmers' Insurance Company, passed March 22d, 1849, relating to the forms and requisites of an application for a policy, and which, under the 25th section of that act, was operative only as to the subjects of insurance appertaining to farms, cannot be enlarged

or extended under the amendatory act, by implication, to the several new, distinct and independent classes of subjects, which the company is authorized to insure, by this amendment to its charter, passed March 18, 1850.

Judgment of the District Court reversed, and the cause remanded for further proceedings.

Charles Butler vs. *The City of Toledo.* BRINKERHOFF, J. Held:

Where the corporate authorities of a city had, in pursuance of its charter, levied a local assessment on lots bounding on and near to certain streets, for the purpose of grading said streets, and, from mistake in the preliminary estimate of cost, and extraordinary expense attending the collection of said assessment, the assessment proved insufficient to discharge the cost and expenses, a subsequent amendment of the charter, authorizing a re-assessment on the same lots, "sufficient in amount to meet said deficiency and the cost and expenses of such re-assessment, and all other expenses incidental to said improvements," is not in contravention of any provision of the constitution of 1802, and is a valid law, binding on all property within its purview, although the owner may have acquired title intermediate the assessment and re-assessment.

2. Nor is such re-assessment invalidated by the fact that a small part of the fund to be supplied has been expended in extending the grading somewhat beyond the strict line of the improvement expressly authorized, and into intersecting streets, where such extension was necessary to afford ingress and egress to and from the street authorized to be graded.

Bill dismissed.

John Doe ex. dem. Aten vs. *Daniel Stewart.* Error from Athens county. SWAN, J. Held:

That a description upon a duplicate, and a sale for taxes of a tract of land, as 115 acres, part of section 36, N. W. corner is defective, unless the 115 acres were situated in the N. W. corner of the section, and in a square form.

Judgment below affirmed.

Christian Shultz vs. *Henry Harvy.* Petition in error to reverse the judgment of the District Court of Cuyahoga county. BARTLEY, J. Held:

1. An agent or factor authorized by letter or memorandum in writing, to make a sale of property on specified terms, cannot delegate the authority, or through the substitution of another person, make a contract for the sale which will bind the principal, in the absence of any express authority to substitute another agent.

2. And such authority to a factor or agent cannot be enlarged by any usage or custom among merchants, unless such usage or custom has been so long continued and uniform, and so well established and well known that both parties can be fairly and reasonably presumed to have contracted with reference to it.

Judgment of the District Court affirmed.

The city of Zanesville vs. *Imri Richards, Auditor of Muskingum county.* Mandamus. RANNEY, C. J., delivered the opinion of the court. Held:

1. The 27th section of the act of March 11, 1853, to amend the act for the organization of cities and incorporated villages, (Swan's Rev. Stat., 988,) requires the Auditor of the county to place upon the duplicate of taxes the percentage regularly levied and certified by the council of a municipal corporation, on all the real and personal property returned on the grand levy in such corporation.

2. The provisions of this section are in no way restricted by any provision contained in the special act creating such corporation, or by any implication arising from the 94th section of the act of 1852. (Swan's Rev. Stat. 976.)

3. All such special acts are repealed by the last named act; and all exemptions of any part of the property in such corporation otherwise subject to taxation, from contributing to the general revenue fund, are in conflict with the second section of the 12th article of the constitution.

4. No tax, either for State, county, township, or corporation purposes, can be levied without express authority of law; and this section of the constitution is equally applicable to, and furnishes the governing principle for, all laws authorizing taxes to be levied for either purpose.

5. It requires a uniform rate per cent to be levied upon all property, according to its true value in money, within the limits of the local subdivision for which the revenue is collected; subject only to the exemptions specifically provided for in the section.

6. A writ of mandamus will not lie, to compel the county auditor to enter such tax upon the duplicate until the time arrives for making it up.

Writ dismissed and judgment for defendant.

Peter Long vs. *Vendever B. Moler.* Reserved in Montgomery county. BRINKERHOFF, J. Held:

1. Where a deed of conveyance, with a covenant that, at the time of the ensealing and execution thereof, the premises are free and clear of all incumbrances whatsoever, is executed subsequent to the day fixed by the

statute when the lien of the State for the taxes of the current year attaches, such lien is an incumbrance within the scope of the covenant, and for which an action on the covenant will well lie.

2. Incumbrances known to the parties at the time of the conveyance are not presumed to be excluded from the operation of such covenant.

3. Parol evidence is not admissible to show an understanding of the parties that such incumbrances were excluded from the operation of the covenant,

BARTLEY, J., dissented.

Marcus Miller vs. *Ohio.* J. R. SWAN, J., delivered the opinion of the court.

In a trial upon an information under the fourth section of the act to provide against the evils resulting from the sale of intoxicating liquors, proof was given that a sale was made to a person in the habit of getting intoxicated, but under circumstances tending to show that the liquor was obtained under false pretences, &c. Held, that it is error to charge the jury that if the defendant was induced to sell the liquor to such person under an imposition practiced upon the defendant so that the defendant had no intention to violate the law, he must, notwithstanding, be held to sell to such person at his peril, and must be deemed guilty under the statute.

Sentence reversed and cause remanded for further proceedings.

Horace G. Bigelow vs. *Corneleus G. W. Comegys.* Petition in error to reverse the judgment of the Superior Court of Cincinnati. BARTLEY, J. Held:

1. A replevin bond, which the statute required to be given with two or more sureties, is not void, because actually signed and delivered by one surety only.

2. The obligor of a bond cannot avoid his liability by showing that he was induced to execute the bond by the fraud of one of his co-obligors in which the obligee had no participation whatever.

3. Where one or two persons must suffer loss by the fraud and misconduct of a third person, he who reposes the first confidence, commits the first oversight and must bear the liability.

Judgment of the court below affirmed.