is one of bailment. It remains to consider, what is the effect of the bailment being terminated? It is, I apprehend, as, if the bailment had never existed, the property reverts to the pledger as absolute owner of it. Then it becomes a question, what damages the absolute owner is entitled to recover against the person who converts his property? I conceive the true rule as to the damages, where an action of trover lies, is, that if the plaintiff could resume the property, supposing he had an opportunity of laying his hands upon it, and become the rightful and absolute owner against all the world, he is entitled to recover full damages; and in the present case, supposing that, instead of bringing this action, he had had the means of getting the brandy back into his possession, I apprehend he would have been entitled to hold, not only as against the present defendant, but as against everybody else. Therefore, the action of trover, which is substituted for his right of resumption, ought to be treated upon the footing of his being the absolute owner, and deprived of his property. So, I apprehend, if the action was brought against the vendee, it would be precisely the case of an action brought against the pledgee of a factor, and just as in that case, the pledgee of the factor, though he is a perfectly innocent pledgee, cannot get damages in law with respect to the amount due from the owner of the goods; so, by analogy to that in this case, the vendee of the present defendant would be unable to set up any claim whatever under an assignment from the plaintiff to the defendants. The defendants, therefore, were liable to the full damages.

Rule absolute, that the verdict for the plaintiff should stand, with 40*s*. damages.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW YORK.[1]

Insurance—Agent of Insurers interested in Risk.—Where an agent of an insurance company, authorized to effect insurances on vessels, &c, and

[1] From Hon. O. L. Barbour, to appear in Vol. 41 of his Reports.

to procure policies from the company and deliver them to the insured, receives and accepts an application, and negotiates an insurance as agent on property of which he is one of the owners, and communicates the transaction to his principal without disclosing his interest in the property, and on receiving a policy from the company, delivers the same to the insured, such policy is void: *Rith et al.* vs. *The Washington Marine Ins. Company.*

One acting in behalf of another cannot at the same time take upon himself incompatible duties and characters; or become agent in a transaction where he has an adverse interest or employment: *Id.*

An insurance, procured in that manner, is not avoided on account of the materiality of the relation of the agent to the risk, but because it is against public policy to allow such agreements to stand: *Id.*

Even if it could be shown that the relation was not material to the risk, the insurance would be void: *Id.*

Usury—Estoppel.—Nothing short of a corrupt and illegal *contract* in violation of the statute will constitute usury. It must be an agreement for the loan or forbearance of money, goods, or things in action, by which illegal interest is reserved or taken. Otherwise usury does not exist: *Lesley* vs. *Johnston et al.*

Where a contract for the loan of money, legal and innocent in itself, is once made and consummated, it cannot be made usurious and illegal by any subsequent transactions of the parties: *Id.*

Where, subsequent to the execution of a bond and mortgage, the mortgagors made an agreement with B. that if he would pay the money due thereon to the holder of the mortgage, take an assignment thereof, and execute a covenant extending the time of payment, they would pay him a bonus of $4355.55, which was acceded to by B., and was carried into effect by both parties: *Held*, that the subsequent usurious agreement did not taint the mortgage with usury, or constitute a defence to an action to foreclose the same, brought by an innocent purchaser: *Id.*

A person who does acts or makes representations or admissions designed to influence, and which do influence the conduct of another, will be precluded from denying such acts and representations where such denial will operate to the injury of the person so influenced by them: *Id.*

Mortgagors, long after the execution of the mortgage, at a time when B. was about to become the assignee thereof, covenanted with him that

there was due and unpaid upon the mortgage $27,222.20, and that there was no set-off, defence, or counter claim thereto. Subsequently, by another instrument, they declared and affirmed that $18,222.20 was still due and unpaid, for principal. These papers were left with B., and exhibited by him to the plaintiff as an inducement for the latter to purchase the bond and mortgage; one of the mortgagors telling him there was over $18,000 of principal due, and assuring him he could have no better investment, and no better security for his money. Confiding in these representations, the plaintiff took an assignment of the bond and mortgage, paying B. $18,222.20 for principal, besides the arrears of interest: *Held*, that the mortgagors could not be permitted, afterwards, to deny what they had thus asserted to be true, and were estopped from disputing that the money paid by the plaintiff was the true sum due and payable at the time: *Id.*

Employer and Employee.—An employer is liable in damages to an employee for an injury resulting from the employer's negligence: *Connolly* vs. *Poillon.*

It is the duty of an employer to exercise care and prudence that persons in his employ be not exposed to unreasonable risks and dangers; and the employee has a right to understand that the employer will exercise due diligence in protecting him from injury: *Id.*

Thus, where the plaintiff, who was not a ship-carpenter, or joiner, or a mechanic of any kind, and knew nothing about the construction of scaffolding, or the forces it would be required to resist, was put into the hold of a gunboat by his employer, a ship-builder, to remove the chips and rubbish underneath a scaffold: *Held*, that he had a right to rely upon the superior knowledge of his employer, and upon his care that the scaffold was of sufficient strength to insure him against all harm: *Id.*

Justice's Judgment; proof of rendering; validity and effect—Appearance of Plaintiff in a Justice's Court.—A copy of a judgment rendered by a justice of the peace, and of the proceedings to recover the same, signed by the justice with his official signature, and proved by the testimony of a witness to be a correct copy, must, in a collateral action, be regarded as proof of the rendering of the judgment, and of the various proceedings by which it was obtained: *Wilkinson* vs. *Vorce.*

One serving a summons under a special authority given to him by the justice, is to be deemed a constable, *quoad* the action, and is prohibited from appearing and acting as counsel for the plaintiff on the trial: *Id.*

His appearance, on the trial, is an error for which the judgment and proceedings will be reversed on appeal. But it will not affect or take away the jurisdiction and authority of the justice to proceed in the action: *Id.*

The justice having acquired jurisdiction of the person of the defendant, and become completely possessed of the action, by the issuing and service of a summons in the manner required by law, his judgment will, until reversed, be valid and effectual, and good authority for the issuing of an execution, notwithstanding such irregular appearance for one of the parties: *Id.*

SUPREME COURT OF MICHIGAN.[1]

Opening Decree for Alimony.—Under the statute which authorizes the court, after decree for alimony, "from time to time, on the petition of either of the parties to revise and alter such decree respecting the amount of such alimony or allowance, and the payment thereof," the court is only authorized to open the decree, and revise or alter the same in view of circumstances occurring after the decree is granted. A petition which only shows that the petitioner was not aware, at the time the decree was entered, that the complainant would have dower in his lands notwithstanding the alimony, and that in view of that fact the alimony is unreasonable in amount, confers no jurisdiction: *Perkins* vs. *Perkins.*

Quo Warranto to try the Right to a Public Office which terminates pending the Proceeding.—Information in the nature of a *quo warranto*, charging defendant with intruding into the office of city attorney of Detroit, to which the relator claims to have been elected to fill a vacancy. The office terminated pending the proceeding. On motion to dismiss for this cause, it was held that, as the statute authorized a fine to be imposed on the defendant if found guilty of the intrusion, and as the relator could also, after judgment in his favor, file suggestion of damages and recover to a certain amount, the motion should be denied: *People* vs. *Hartwell.*

Election required by Statute to be held not affected by want of Notice.—A vacancy existing in the office of city attorney of Detroit, which the charter required should be filled at the next regular election, the common council ordered notice of the election, specifying the offices to be

[1] From T. M. Cooley, Esq., Reporter, to appear in 12 Michigan Reports.

filled, but taking no notice of this vacancy; and notice was given accordingly. Votes were given for the relator for this vacancy, but the common council treated them as void, and appointed defendant to fill it. It was held that the statute requiring notice of the election to be given was directory, and the validity of the election did not depend upon it: *Id.*

Renewal Note, retained by the Payee, a Satisfaction of the Old Note.—The indorsers of a note sent to the payee a new note executed by the same parties, payable at a later day, with directions to retain it only on condition of surrendering the first. The payee retained both until after the second note fell due, and then brought suit on the first. It was held, that by retaining the second note he had elected to take it in satisfaction of the first: *Sage* vs. *Walker.*

Will—Evidence of Declarations to establish Undue Influence.—Where a will is assailed on the ground of undue influence, the declarations of the deceased, made subsequent to the execution of the will, are admissible on that issue: *Moross* vs. *Cicotte.*

Laying out Highway—The whole Road petitioned for should be laid or none.—Under the statute for laying out highways, which empowers any seven or more freeholders to "make application to the commissioners of highways of the township for that purpose, who shall proceed to lay out" "*such highway,*" &c., it was held, that when a road was applied for, the commissioners must lay out the whole, or no part of it; and where they laid out a part only of the road asked for, the proceedings were quashed: *People* vs. *Township Board of Springwells.*

Proof of Payment erroneously rejected—Correcting the Error.—Assumpsit on note. Proof being offered of a payment of $5, the court rejected it, because it was not mentioned in the defendant's bill of particulars of set-off. Plaintiff, having recovered judgment, afterwards remitted $5 of its amount to cure this error. *Held,* on writ of error brought, that the error was not cured; as by rejecting this evidence the Court decided, in effect, that no payments could be allowed unless mentioned in the bill of particulars; and the court of error could not say that other payments were not excluded by this ruling: *Hanson* vs. *Olcott.*

Replevin for Property sold on Sunday.—A sale of property on Sunday being void, the seller may, on a subsequent day, on tendering back the