ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS.[1]

MASSACHUSETTS, SUPREME COURT.[2]

NEW YORK, SUPREME COURT.[3]

PENNSYLVANIA, SUPREME COURT.[4]

AGENT.

Knowledge of Agent notice to Principal.—If a purchaser's agent buys goods on behalf of his principal, from a factor, knowing, no matter by what means, that the goods are not the goods of the factor, the knowledge of the agent must be held to be the knowledge of the principal: *Dresser* vs. *Norwood*, Exch. Ch., 10 Jur. N. S. 851.

Government Board.—On question as to the authority of agents and their power to bind their principals, the same rules of law and equity apply, whether they act as the agent of a private individual or a private or a public company, or of a government board; and persons dealing with them are not only bound by the same obligations, but are entitled to the same rights and to rely on the same principles: *Thorn* vs. *Commissioners of Public Works*, 32 Beav. 490.

AGREEMENT.

Bill of Sale—What passes by.—M. & R. being copartners in business, R., by an agreement in writing, sold and conveyed to W. all his interest in "the property and effects" of the firm, being one-half, "that is to say, the undivided one-half of all the said goods, working tools, notes and bills receivable, and *all other valuable thing or things* belonging to said firm, *of every name and kind;*" subject, however, to the payment by W. of one-half of all the debts and liabilities of the firm, due and to become due, which he agreed to pay. It was contemplated at the time, that W. should take the place of M. in the firm, which he subsequently did. *Held*, that under the general terms of this agreement, R.'s interest in a sum of money deposited in bank to the credit of the firm of R. & M., passed to W., although the existence of such deposit was unknown to the parties at the time of the sale: *Cram* vs. *The Union Bank of Rochester*, 42 Barb.

And this, although an inventory of the property was taken, which the parties supposed embraced every article belonging to the firm; the contract not being, in terms, limited by the inventory, which was not men-

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[1] From "Notanda," by Tenison Edwards, Esq., for November, 1864, containing recent decisions of all the courts, as indicated by the letters following each case.

[2] From Charles Allen, Esq., Reporter; to appear in Vol. 8 of his Reports.

[3] From Hon. O. L. Barbour; to appear in Vol. 42 of his Reports.

[4] From R. E. Wright, Esq., Reporter; to appear in Vol. 11 of his Reports.

tioned or referred to in the bill of sale; the parties having employed words of description so general and comprehensive as to include every species and article of property of the firm, whether enumerated in the inventory or not: *Id.*

Suits to reform Written Agreements.—It is an invariable rule of courts of equity that in an action to reform a written agreement, on account of an alleged mistake of facts, relief will not be granted except upon the clearest and most satisfactory proof of the mistake, and of the real agreement between the parties: *Botsford* vs. *McLean*, 42 Barb.

A chattel-mortgage, given as collateral security for the payment of promissory notes, cannot properly be considered as evidence of an agreement to pay interest on the notes, except *according to their terms: Id.*

In the absence of any evidence or finding of *fraud* on the part of the defendant, or of a *mutual mistake*, no case is made for reforming a written contract: *Id.*

Bailment.

Liability of Gratuitous Bailee.—A., the owner of a shed, allowed B. to use it for the purpose of working up some timber. C., a carpenter employed by B. for the purpose, while employed on the work set fire to the shed while lighting his pipe. *Held*, that the law as to gratuitous bailment of a chattel did not apply, and that B. was not liable for the damage. The negligence of C. was not relative to his employment: *Woodman* vs. *Joiner*, Exch., 10 Jur. N. S. 852.

Bills and Notes.

Notice of Dishonor—Delay.—Where the holder of a check transmits it through the post to the drawees, and the cash for it is not remitted by return of post, that should be considered as a dishonor, and notice of it should at once be given to the drawer. In the present case, the drawees having continued to pay over the counter for three days after the transmission of the check: *Held*, that notice of the dishonor not having been promptly given, the drawer was exonerated: *Bailey* vs. *Bodenham*, 16 C. B. N. S. 288.

Presentment through Post.—*Quære*, whether transmission of a check to the drawers through the post is a good presentment. Evidence of usage may make it a good presentment: *Id.*

Notice to Surety—Married Woman.—A surety upon a note is not discharged by notice to the holder to sue the principal debtor, unless the notice and the evidence of it are so clear and distinct that the meaning of the surety can be at once apprehended without explanation or argument: *Shimer et al.* vs. *Jones et al.*, 11 Wright.

A married woman is entitled to notice on account of her separate estate as any other person would be, either from the party interested to give notice or some one authorized by him: notice to the husband alone without more is not notice to the wife; though if intended for the wife and delivered to the husband for her, it is then a question of service merely: *Id.*

Where the proof of notice relied on to discharge a surety from a note

held by a married woman was the admission of the husband made after the alleged notice, that the surety had called upon him and told him to bring suit upon the note immediately or he would be no longer responsible as surety, it was insufficient; so also were the admissions of the wife that her husband had informed her of his conversation with the surety as to what he wanted him to do with the note, not communicated to her as a warning or notice from the surety, nor by the husband as his constituted agent: *Id.*

It was therefore error to instruct the jury that if all the testimony on the subject of notice was believed in point of law, the notice would be sufficient to discharge the defendant; they should have been instructed that it was insufficient: *Id.*

Upon the question as to the solvency of the principal debtor, the attention of the jury must be restricted to the time when the notice was given to sue out the note, and not to the time when it matured: *Id.*

Conflict of Laws.

Procedure.—Semble, where an action is brought in one country, and the rights are governed by a foreign law, which entitles the plaintiff to recover, yet, as the remedy is governed by the *lex fori*, the plaintiff will be defeated if by that law there is an impediment to his procedure; as in the present case, an unregistered medical attendant suing for medical attendance, &c.: *De La Rosa* vs. *Prieto*, 16 C. B. N. S. 578.

Contract.

Evidence.—Where there is a written contract with respect to the price to be paid for a particular thing, but such thing has not been definitely or adequately described, extrinsic evidence will be admitted to show what was intended; as where there was a contract that for a certain sum the defendants should be at liberty to obtain from plaintiff's quarry all the stone, of whatever description, they may require in the enlargement of the old compensation reservoir. *Held*, evidence might be received to show what enlargement was in contemplation at the date of the contract: *Chadwick* vs. *Burnley Improvement Commissioners*, Q B., 12 W. R. 1877.

Corporation.

Treasurer's Bond—Sureties.—The sureties on the bond of the treasurer of a railroad company, the condition of which provides for his faithful discharge of the duties of the office "during his continuance in office, during the present year and for such further periods as he may from time to time be elected to said office," are not liable for defaults which occur after an omission to re-elect him at a regular meeting for that purpose, and after such further time as may be reasonably sufficient for the election and qualification of his successor, although he continues to act as treasurer, and is re-elected at the next regular meeting thereafter; but they are not discharged from their liability by a vote of the corporation postponing for five weeks the time of the regular meeting for the election of officers, and the consequent postponement of an election for that period, nor by the corporation's assuming the entire manage-

ment of the railroad, after having leased it to another corporation: *Lexington and W. C. R. Co.* vs. *Elwell and others*, 8 Allen.

No formal vote of a corporation accepting their treasurer's bond need be shown, in order to entitle them to maintain an action upon it: *Id.*

A corporation is not estopped to maintain an action upon their treasurer's bond by having accepted a report of an auditing committee who had approved his accounts, nor by making a report founded thereon to the legislature: *Id.*

An indorsement by the treasurer of a corporation upon notes signed by himself, and running to the corporation, is sufficient evidence to render the sureties upon his bond liable for the amount indorsed, as for moneys received by him in his official capacity: *Id.*

Covenant.

Licensee of Mines.—A licensee of the working of minerals under certain lands, covenants with the grantor to make certain payments in respect to any damage to the surface. *Held*, this is a covenant that runs with the land and binds an assignee of the license. *Held*, also, that although the license was to three, and the covenant by the three jointly and severally, yet the assignee of two was liable on the covenant: *Norval* vs. *Pascoe*, V. C. Kindersley, 10 Jur. N. S. 792.

Criminal Law.

Attempt to Steal.—An attempt to commit felony can only in point of law be made out where, if no interruption had taken place, the attempt could have been carried out successfully. Therefore, where a person puts his hand into the pocket of another, with intent to steal, but there was nothing in the pocket which the prisoner could have stolen, a conviction for an attempt to commit larceny was quashed: *Regina* vs. *Collins*, C. C. R., 33 L. J. N. S. Mag. Cas. 177.

Deed.

Bill in Equity to reform where no Fraud, Accident, or Mistake is alleged.—A grantor of land cannot maintain a bill in equity to reform his deed, by inserting therein a reservation which was included in the oral agreement between the parties, if the omission to insert it does not appear to have occurred through fraud, accident, or mistake, but in consequence of his relying upon the promise of the grantee to carry out the oral agreement. Nor, in such case, can relief be granted to the plaintiff on the ground that the defendant's refusal to perform his promise is fraudulent: *Andrew* vs. *Spurr*, 8 Allen.

Reservation of Wood, &c.—If the grantor in a deed describes the granted premises in general terms, and reserves the wood and timber "on said premises, south of the meadow or low land," the reservation includes the wood and timber upon all of the granted premises which lie further to the south than the meadow, and is not limited to that upon the portion of the premises lying directly south of the meadow: *Cronin* vs. *Richardson*, 8 Allen.

What may pass as Appurtenant.—A deed of a certain described lot

of land, "together with all the dwelling-house and building, with the appurtenances, situate thereon or thereto belonging, to have and to hold the above-granted premises, with the privileges and appurtenances thereto belonging," includes a small lot of land adjoining the granted premises, which is habitually used with the dwelling-house, and is reasonably necessary to be held in connection with it: *Ammidown* vs. *Ball*, 8 Allen.

Divorce.

Insanity of Libellant.—This court has authority to entertain a petition filed by a third party, representing that a libellant for divorce is insane; and, if such insanity is established, the court will appoint a guardian *ad litem* to conduct the cause for the libellant: *Denny and another* vs. *Denny*, 8 Allen.

Desertion.—If a married woman leaves her husband with his consent, and remains absent five years, this is not such a desertion as will entitle him to a divorce: *Lea* vs. *Lea*, 8 Allen.

Easement.

Grant.—After a partition by deed of certain real estate, a question arose whether a right of way, or user of way which had for many years existed to and from one portion of the estate over another portion, now become severed, passed by the deed. The only words which could include it were "with their and every of their rights, members, easements, and appurtenances." *Held*, that it neither passed by the words nor by implied grant: *Worthington* vs. *Gimson*, 2 Ell. & Ell. 618.

Extinguishment by Merger.—Where the title to two lots of ground with an alley between them, running from one street to another, which alley had been dedicated to the use of the lots bounding thereon by a former owner, became vested in two persons as tenants in common, who continued the use of the alley for many years, the right to use it passes to a purchaser of an inner lot at a joint sale of the interests of the two tenants in common by the administrator of one after his decease, and the survivor and the purchaser of the two lots have no right to close it, though the measurement in his deed extended to the centre of the alley and embraced the whole of it: *McCarty* vs. *Kitchenman*, 11 Wright.

The easement being apparent and continuous, was not extinguished by merger, in consequence of the unity of possession in the two joint owners who had purchased subject to it, and had maintained its use; it could not, therefore, be closed without the consent of all the owners of lots bounding on it: *Id.*

Eminent Domain.

Title to Land taken for Public Use.—Title to land entered upon, against the consent of the owner, by a water company, under their act of incorporation, for the purpose of constructing a reservoir, does not pass to the company until compensation is made or adequate security is given therefore: *Borough of Easton's Appeal*, 11 Wright.

Hence, where the landowner refused the bond tendered by the com-

pany, the sureties whereon afterward proved insufficient, and the company instituted proceedings to assess damages from the award of viewers, in which the plaintiff appealed, no title to the land passed until by his agreement, judgment was entered for the amount of the damages agreed upon: and the judgment as for purchase-money was entitled to be first paid out of the proceeds of the lot: *Id.*

A mortgage by the company of their property, franchises, and effects, given after their entry upon the reservoir lot and before judgment for damages, would bind their equitable interest therein subject to the payment of the judgment for purchase-money: *Held*, therefore, on distribution of the proceeds of the sheriff's sale of the lot, that the balance in bond after the judgment passed to the prior mortgage in preference to one executed after the entry of the judgment and the vesting of the legal title in the company: *Id.*

Whether a party to the distribution of money in court may be allowed costs for witnesses, subpœnas, &c., is a matter for the discretion of the court under the circumstances: as against an undisputed lien no such costs will be allowed, but as against a contesting claim the successful party is entitled to costs out of the part of the fund contended for: *Id.*

False Pretences.

Double Misstatement.—Indictment for obtaining a horse under false pretences. The false statement laid was that prisoner represented himself the servant of W. Hardman. The evidence proved that the prosecutor understood him to mean W. Harding, whom prosecutor knew, and prisoner humored the mistake, and obtained the horse on approval. Conviction quashed: the false pretence laid not being the one that operated on the prosecutor's mind: *The Queen* vs. *Bulmer*, C. C. R., 33 L. J. N. S. Mag. Cas. 151.

Guardian.

Care in investment of Ward's Money.—It is not reasonable care and prudence in a guardian to invest his ward's money in the note of a single person or a single firm, in active business, without security, unless extraordinary circumstances are shown to justify such an investment; and if a loss occurs in consequence thereof, he will be held responsible for it: *Clark and another* vs. *Garfield*, 8 Allen.

Ground Rent.

Arrears to be collected out of the Land.—Though the covenant in a ground-rent deed is personal on the part of the covenantor, yet as to arrears of rent accruing after his decease the landlord is restricted to the realty out of which it issues, and is not entitled to payment out of money in the hands of the executors: *Williams' Appeal*, 11 Wright.

But the personal representatives of the covenantor may be sued for breaches of the covenant in the ground-rent deed occurring after his death, the judgment to be restricted to the land bound by the covenant: *Id.*

Quain's Appeal, 10 Harris 510, considered and affirmed. *Taylor et al.* vs. *Painter*, 3 Phila. Rep. 365, affirmed: *Id.*

Husband and Wife.

Curtesy in Wife's Land in Remainder.—A man has no interest as tenant by the curtesy in land which his wife owns in remainder or reversion, subject to a life estate; and he can convey no title thereto, which will be valid against a subsequent levy thereon of an execution against him and his wife: *Shores* vs. *Carley and others*, 8 Allen.

Bill in Equity against separate Estate.—A bill in equity lies to enforce payment out of the separate estate of a married woman, so far as she has the right of disposal thereof, of a bond given by her for the price of land conveyed to her to her sole and separate use, provided that no effectual remedy exists at law. And the creditor is not confined to collateral security held by him for the bond: *Rogers* vs. *Ward*, 8 Allen.

Such bill need not set out any specific estate or property belonging to the defendant in her own right, but may allege generally that she is possessed of property to her sole and separate use, and subject to her disposal, which is chargeable with the payment of the bond: *Id.*

Legislative Divorces in other States—Estoppel.—The legislature of a foreign state has no power to dissolve the marriage contract, when the wife alone is resident within the state and subject to its jurisdiction, so as to affect rights of property in another state where the husband is actually resident: *Todd* vs. *Kerr*, 42 Barb.

Where the husband is a citizen of one state and the wife resident within another, can a state legislature destroy or impair the obligation of the marriage contract by an act which takes the form of a law? Is not such an act within the spirit, if not the very letter, of the constitutional provision which forbids a state to pass any law impairing the obligation of contracts? *Quære: Id.*

In such a case the wife is not estopped from denying the force and efficacy of the legislative divorce: *Id.*

One who is not bound by an estoppel cannot claim the advantages of it. And as the husband, under such circumstances, is not bound or affected by the law of the foreign state, and therefore could not claim that the act of the wife, in procuring the passage of the law, had the effect of an estoppel, neither can his heir at law so claim: *Id.*

Insolvency.

Discharge is bar to recovery of Damages for conversion of Goods.—A discharge in insolvency is a bar to the recovery of damages for the conversion of goods, though such damages are alleged by way of aggravation in an action of tort for breaking and entering the plaintiff's close: *Bickford* vs. *Barnard and another*, 8 Allen.

Insurance.

Time Policy with Extension Clause.—A time policy of insurance on a vessel contained an extension clause, as follows: "If on a passage at the end of the term, the risk to continue at *pro rata* premium until arrival at port of destination." At the end of the term the vessel was on a passage to Woosung, under a charter-party which provided that,

"on arrival at Woosung, the captain shall take his orders from the chief of the French marine service at that port, who will indicate to him within twenty-four hours if he is to discharge at Woosung, or go on to Chusan, and that after the arrival of the ship at Woosung, the marine might keep her as long as it might wish, and send her to such safe and accessible port as it might judge desirable." *Held*, that if no orders to go to another port were received within twenty-four hours after notice to the chief of the French marine service at Woosung of her arrival there, that should be regarded as her port of destination, within the meaning of the extension clause: *Wales and others* vs. *The China Mutual Ins. Co.*, 8 Allen.

Insurable Interest—Statements in Application.—The conditions annexed to a policy of insurance, and forming a part thereof, required that applications for insurance should specify the nature of the applicant's title, if less than a fee simple; and that any misstatement or concealment should render the insurance void. B., in an application for insurance, represented that he owned the property by virtue of an article of agreement with C. The agreement, as proved, was for the sale of a village lot by C. to B., without any exception or reservation, for a specified sum to be paid by B. The dwelling-house was on the lot, at the date of the agreement, and when the insurance was applied for. There was no proof that B. represented, in his application, that he owned the dwelling-house as a chattel not affixed to the soil. *Held*, that the contract of insurance related solely to the interest which B. had in the building, as the vendee in possession of the soil on which it stood; and that the judge, on the trial, properly overruled B.'s offer to prove that the building was a chattel not affixed to the freehold, and that, at the time of the insurance, he was the owner of it, and continued to be the owner up to the time of the fire: *Birmingham* vs. *The Empire Insurance Company*, 42 Barb.

Held, also, that the statement in the application, respecting the nature of B.'s title, was a warranty; and it being untrue, the policy did not take effect. That the insurers did not insure the building as a chattel: *Id.*

That the agreement of the parties precluded all inquiry as to whether B. had any other insurable interest than that warranted; or as to whether the thing warranted was material to the risk: *Id.*

Where a party states, in his application for insurance, that he is the owner of the property, by virtue of an article of agreement with another, he cannot be allowed to show, in an action on the policy, that at the time of making the application he told the agent of the insurer that he owned the building, having purchased it before he took the contract for the land: it being an offer to contradict the written application by parol: *Id.*

Where articles of agreement for the sale and purchase of land provide that in case the purchaser shall be in default in making his payments, the vendor shall have the right to declare the contract void, and may take possession of the premises; and the purchaser being in default, the vendor notified him to surrender the possession, and he complied with the demand and removed from the premises; *Held*, that these proceedings terminated B.'s insurable interest in the building, under the contract, and the contract became void: *Id.*

JUDGMENT.

Assignment after Payment—Power of Attorney over.—A bail for a stay of execution in a judgment for arrears of ground-rent, who, after the expiration of the stay and judgment upon his recognisance of bail, pays the debt, interest, and costs, and obtains an assignment of the original judgment from the plaintiff's attorney, is not thereby entitled to priority over a judgment afterwards obtained by the plaintiff for arrears of rent subsequently accrued: *De Cou's Appeal, Fassitt et al.* vs. *Middleton*, 11 Wright.

Whether an attorney at law has power after obtaining judgment to assign it, not decided: but he has no power after judgment to make such an assignment of it to one who pays it because he must do so, as will continue the judgment to the prejudice of his client's rights in other respects: *Id.*

Such assignment alone will not interfere with the claim of the ground-rent owner to the proceeds of sheriff's sale of the real estate bound, for his right takes effect by relation back to the date of the deed by which the rent was reserved: to give the judgment assigned priority, there must be an estoppel, by agreement to guarantee it, or some stipulation to postpone; for though the assignment imports warranty of title, it is not a guaranty of collection or of the lien as primary, but only of a sound debt unimpaired by secret defences, payment, or other matter which would render it invalid: *Id.*

MORTGAGE.

Of Personalty, for Sums to become Due.—A mortgage of personal property given to secure such sums as may thereafter become due to the mortgagee is not a valid security, as against a judgment-creditor of the mortgagor, for claims accruing after the property was attached in his suit, and the mortgagee summoned as trustee: *Barnard* vs. *Moore and another*, 8 Allen.

Assignor and Assignee of, Accounts between—Over-Payments.—If the owner of a mortgage assigns the same, and subsequently acquires the title to the mortgaged premises, he takes them subject to the charge created by the mortgage. In other words, he occupies the place of the mortgagor, and the account between him and the assignee should be stated as between mortgagor and mortgagee: *Thompson* vs. *Otis*, 42 Barb.

Over-payments made by him under a mutual mistake, or from erroneous computations, though in a certain sense voluntary, are not so in the sense which precludes their being recovered back: *Id.*

NEGLIGENCE.

Scienter—Corporation.—In an action of tort for negligently keeping a dog which was given to bite, a corporation may be liable as well as an individual, but the *scienter* must be proved with regard to some person who had control of the yard where the dog was kept, or of the dog itself, and *scienter* in a mere servant was held not sufficient to maintain the action: *Stiles* vs. *Cardiff Navigation Co.*, Q. B., 33 L. J. N. S. 310.

Railroad Company.—Crossing a railroad track without looking to see if a train is coming is not conclusive proof of a want of care; and if it appears that there is a double track, and a person has just bought a ticket at a station for a train which is to pass upon the further track, and the station agent says to him, "The train is coming; we will cross over," and he attempts to follow the agent, upon the premises of the railroad company, to take his place in the train, which meanwhile has arrived, and, in crossing over the nearer track for that purpose, is struck by a train coming from the other direction, and partially behind him, which he did not look for or see until too late to save himself, it is proper to submit it as a question of fact for the jury to determine whether he was careless. And while so going from the ticket office to take his seat in the cars he is to be considered as a passenger, and is entitled to the rights of a passenger; and it is the duty of the railroad company to use the utmost care and diligence in providing for him a safe and convenient way and manner of access to the train, and in preventing the interposition of any obstacle which would unreasonably impede him or expose him to harm while proceeding to take his seat in the cars, in order to prevent those injuries which human care and foresight can guard against: *Warren* vs. *Fitchburg R.R. Co.*, 8 Allen.

Fellow-Servant.—Plaintiff was employed by builders in erecting a scaffolding, and met with an injury which arose from a deficient supply of boards, through the negligence of the foreman of the works; the defendants, the builders, not knowing of the negligence, and the foreman being a competent person. *Held*, the defendants were exempt from liability under the rule that the plaintiff and the foreman were fellow-servants in a common employment. The case would have been different if the foreman was the general agent of the defendants and represented them. BYLES, J., agreed in the law, but considered that the foreman was acting-master, and represented the defendants: *Gallagher* vs. *Piper*. 16 C. B. N. S. 669.

Public Bodies.—Persons intrusted with the performance of a public duty, discharging it gratuitously, and themselves taking no personal part in its performance, and having no funds at their disposal, out of which compensation for injury, arising from the negligent acts of the persons employed by them, can be made, are exempted from liability in respect to such negligence. The drainage commissioners of the Middle Level Fens, held entitled to this exemption in an action for damages in not properly maintaining a sluice which they were bound to maintain. Per COCKBURN, C. J., and MELLOR, J. BLACKBURN, J., dissentiente: *Cox* vs. *Wise*, Q. B., 33 L. J. N. S. 281.

Injury to Servant.—A railroad company may be held liable for an injury to one of its servants, which is caused by a want of repair in the road-bed of the railroad: *Snow* vs. *Housatonic R.R. Co.*, 8 Allen.

If it is the duty of a servant of a railroad company to uncouple the cars of a train, and this cannot easily be done while the train is still, and he, in endeavoring to uncouple them while the train is in motion, steps between the cars and meets with an injury which is caused by a want of repair of the road-bed of the railroad, the court cannot rule as

matter of law that he was careless, but should submit the question to be determined by the jury; although he continued in the employment of the company after he knew of the defect: *Id.*

PARTITION.

Bill in Equity to correct after Thirteen Years.—A bill in equity does not lie to correct an error in the report of commissioners appointed to make partition of the real estate of a deceased person, thirteen years after its acceptance and confirmation by the probate court, especially if such bill does not allege that the defendants, who claim title to the premises in dispute as purchasers, knew of the error at the time when they acquired their title: *Hathaway and another* vs. *Thayer and others*, 8 Allen.

PARTNERSHIP.

One Partner drawing more than his Share—Action by the Partners.—A member of a firm which consists of more than two persons is liable to his partners jointly for a sum which, upon settlement, he is found to have withdrawn from the joint funds in excess of his share; and one of them cannot maintain an action therefor in his own name alone, although he has an assignment of all the right and interest of his associates in the assets of the firm: *Wiggin* vs. *Cumings*, 8 Allen.

Liability to accept.—Two distinct mercantile houses, V. & Co., at Buenos Ayres, and R. & Co., at London, agree by letter to enter into exchange transactions on joint profit and loss, by V. & Co. drawing on R. & Co. and selling the bills in usual course. It was *held*, that although this amounted to a partnership *quoad* such transactions, yet that there was no authority, either actual or implied, in V. & Co., by their drawing, to bind R. & Co. as drawers or to accept; nor any liability of R. & Co. for money had and received on the sale of bills which R. & Co. refused to accept: *Nicholson* vs. *Ricketts*, 2 Ell. & Ell. 497.

PATENT.

Chemical Discoveries.—Wide distinctions drawn between inventions in mechanics and inventions in chemistry. In the latter a patent was held valid, although the material produced thereby was previously known, but could only be produced in such small quantities as to be rather a matter of curiosity than of use. Whereas, by means of the process adopted by the invention, the material was produced in quantities sufficient to supply the market for useful and economical purposes: *Young* vs. *Fernie*, V. C. STEWART, 10 Jur. N. S. 926.

QUO WARRANTO.

Private Office.—Quo warranto will not issue except concerning an office of a public nature, and was refused concerning an office of a society, incorporated for a private eleemosynary purpose: *Ex parte Keble Smith*, Q. B., 2 New Rep. 321.

REPLEVIN.

Statement of Value of Goods—Defence to Action.—It is not necessary, in a writ of replevin, which is directed to a deputy sheriff, to allege the value of the goods to be replevied: *Pomeroy* vs. *Trimper*, 8 Allen.

A defendant in replevin, who has prevented the officer from delivering the replevied property to the plaintiff by attaching it upon a writ in his own favor, cannot object to the prosecution of the replevin on the ground of such non-delivery: *Id.*

It is no ground for dismissing a writ of replevin, that an animal described in the writ as a heifer is described in the certificate of appraisement as a cow; or that the plaintiff has caused the officer, to whom the writ was committed, to bring an action against the defendant and another officer for taking the replevied property out of his hands, before its delivery to the plaintiff; or that the plaintiff, as executor, has commenced an action against the defendant and his officer for the conversion of the replevied property, if it does not appear that the conversion relied upon was the same act for which the replevin was brought: *Id.*

SHERIFF.

Suit upon Official Bond.—The recovery of a judgment against a sheriff, for an escape, will establish the liability of the sheriff, so as to authorize an application under the Revised Statutes (2 R. S. 476, §§ 1, 2, 3), by the party injured, for leave to prosecute the official bond of the sheriff; provided there has been no stay of proceedings ordered upon such judgment. But, if the proceedings have been stayed, by order of the court, no such application can be made during the continuance of the stay: *Matter of Chamberlain et al.*, 42 Barb.

STREAM.

Rights of Riparian Owners.—The owner of land through which a stream flows, may increase the volume of water therein by draining into it, without liability for damages to a lower owner, but he cannot by any artificial channel drain off water standing upon his own land upon that of another: *Miller* vs. *Laubach*, 11 Wright.

In an action for damages caused by turning water from defendant's land upon that of the plaintiff, the charge of the court to the jury, that if they found that the defendant did collect water from his own land, and turned it in a body upon that of the plaintiff, through an artificial channel, to his injury, the latter was entitled to recover the damages he had sustained, was not error: *Id.*

SURETY.

Concealment—Fraud.—Plaintiff being dissatisfied with his commission agent, who was largely indebted to him on account of sales, threatened to dismiss him unless he procured a surety. Defendant became a surety, but was not informed that the agent was then in arrear. *Held*, this concealment was evidence of fraud for the jury to find a verdict for defendant: *Lee* vs. *Jones*, C. P., 2 New R. 26.

TAXATION.

Remedies for Collection of Assessments—Power of Legislature—Constitutional Law.—The assessment authorized by the act of the legislature of April 19, 1859, to provide for closing the entrance of the tunnel of the Long Island Railroad Company, in the city of Brooklyn, being a tax imposed for a local improvement, and the power exercised by the legislature in that Act and in the Act of March 23d, 1860, modifying the same, by providing for the collection of such tax by a sale of the property of owners not benefited by the improvement, being a legitimate exercise of the taxing power, the legislature also had the power to give a remedy by action, in the name of the collector appointed under the Act of 1859, against an owner of property benefited, for the recovery of an assessment made upon his property: *Litchfield, Collector, &c.*, vs. *McComber*, 42 Barb.

If a tax is just and legal in its inception, there is no limitation upon the power of the legislature to provide for its collection; and such power is to be exercised at the discretion of the legislature: *Id.*

The tax laws proceed upon the principle that a tax assessed by authority of law, for a general or local purpose, creates a duty and an obligation by the tax-payer to make the payment. This obligation results from the nature of the relation between the government and the constituent: *Id.*

There is no such thing, under our system, as a tax upon lands irrespective of the owner, except in the single case of the lands of non-resident owners. The tax is assessed upon the person, in respect to the lands, as it certainly is assessed upon the person in respect to the personal property taxed: *Id.*

The power to tax being without limitation, it results by logical implication, that the legislature may resort to all or any of the usual remedies, for the collection of an assessment: *Id.*

The Act of April 19th, 1859, created the assessment district, therein mentioned, upon the theory that it was to be benefited by the improvement; and the collector being an officer appointed at the same time, there was no constitutional impediment in the way of conferring the power of appointing the collector upon the Long Island Railroad Company, who were exclusively interested in, and entitled to, the tax authorized to be collected: *Id.*

TIME.

When of the Essence of a Contract—Specific Performance.—If a thing sold is of greater or less value according to the effluxion of time, it is manifest that time is of the essence of the contract, and a stipulation as to time must be literally complied w th, in equity as well as at law: *Gale* vs. *Archer*, 42 Barb.

Where a contract for the sale and purchase of land contemplates that the vendor shall vacate his residence upon the premises, on the day named for the payment of the purchase-money, and seek a home elsewhere for himself and family, time must be regarded as of primary consequence to him, and as of the essence of the contract: *Id.*

So, also, where the agreement provides for the sale and transfer of a farm with growing crops thereon, in the midst of the growing season, with horses, cattle, &c., requiring personal attention: *Id.*

Bills for the specific performance of contracts are applications to the equitable jurisdiction of the court. The relief sought is not a matter of right: *Id.*

The court will exercise a sound and reasonable discretion, and will never grant the relief thus sought unless it is entirely equitable and right, and will work no injustice to the adverse party: *Id.*

TRUST.

Operative Trust—Powers of Cestui que Trust.—A devise to a trustee of real and personal estate to hold in trust for and to collect and receive the rents, issues, and interests, and pay over the same to son of the testatrix during his natural life without being subject to his debts and liabilities, is an active operative trust, and the whole estate is vested in the trustee: *Shankland's Appeal*, 11 Wright.

Hence the *cestui que trust* cannot dispose of his interest in the estate devised in trust for him, and a court of equity will not decree specific execution of the agreement of sale: *Id.*

WARRANTY.

Illegal Consideration.—No action lies on a warranty given upon the sale of a horse, the price of which was paid in spirituous liquors which the purchaser could not legally sell: *Howard* vs. *Harris*, 8 Allen.

WAY.

Private Way opening on Public Street.—If a private way is opened, leading from a public street, and prepared for use in the same manner as a public street, and with nothing to show that it is not such, the public may lawfully travel over it, although it is closed at one end; and in so doing they are bound only to the same degree of care, in respect to others who are also lawfully using it, as in travelling over public streets: *Danforth* vs. *Durell*, 8 Allen.

WILL.

Construction—Same Words same Meaning.—Unless there be some very strong indication to the contrary on the face of a will, the same words must be held to mean the same thing in every part of the will in which they are used—a very strong case of the rule: *Harvey* vs. *Harvey*, 32 Beav. 441.

Execution.—Part of a codicil, physically underneath or following the signature, pronounced for, the sense and manner in which it was written satisfying the court that it formed part of the codicil, antecedent to the signature: *In the Goods of Kimpton*, Probate Court, 33 L. J. N. S. 153.

Repugnancy.—Where a testator gives an absolute interest, and then adds that if the donee does not dispose of it by will, the fund shall go to other persons; this condition is void for repugnancy: *Weale* vs. *Oliver*, 32 Beav. 421.