by the contract to the purchaser, and the *legal fee* by the will to the husband, who joined in the contract."

We are unable to reconcile this statement with any of the authorities, or, in the present state of the law, with principle. It is quite certain that, as yet, a court of law has not taken any judicial notice of the separate estate of married women, or of their power to make appointments of the legal estate in property; and it therefore seems to us that in the case just mentioned the legal estate was vested in the heir of the married woman, and that inasmuch as the equitable fee was vested in the purchaser, no interest whatever passed to or was vested in the husband. It is somewhat singular that in Harris *vs.* Mott, the heir at law of the married woman, in whom, according to all the previous authorities, the legal estate was vested, was not before the Court. The case is, however, very insufficiently reported, and was evidently very hastily considered. It scarcely deserved any comment from Lord ST. LEONARDS, but it is singular that the comment, such as it is, should be so unsatisfactory.

We think that the Vice-Chancellor's decision in the principal case was, in this respect also, correct, and that so long as a court of law refuses, even in the case of an express power of appointment, to recognise that a married woman has any power over the legal fee, her implied power of disposition, arising simply by virtue of her estate, cannot have a wider operation, but that while she may dispose by deed or will of her separate estate in fee-simple, whether given to her directly or through the medium of trustees, this disposition only operates in equity, and that the legal estate remains outstanding in her heir at law, who, as a trustee, is bound to convey the same to the persons in whose favor the disposition is made.—*Solicitors' Journal.*

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MASSACHUSETTS.[1]

SUPREME COURT OF NEW YORK.[2]

SUPREME COURT OF THE UNITED STATES.[3]

COMMON CARRIER.

Railroad Companies; Liability as Carriers of Goods.—The owner of goods, sueing a common carrier, to recover damages happening to the goods through negligence, must give evidence sufficient to show that the goods were in good condition when they came to the possession of the defendant, as a part of the evidence that they have been injured while in his custody: *Smith et al.* vs. *The New York Central Railroad Company*, 43 Barb.

It may be shown by direct affirmative evidence, or by proof of facts

[1] From Charles Allen, Esq., Reporter; to appear in Vol. 9 of his Reports.

[2] From Hon. O. L. Barbour, Reporter; to appear in Vol. 43 of his Reports.

[3] From J. W. Wallace, Esq., Reporter; to appear in Vol. 2 of his Reports.

and circumstances from which the presumption of fact arises, that the goods were in a proper condition when the carrier received them: *Id.*

Where property is delivered to a railroad company to be transported by that and another company, over their respective roads, it is enough for the owner, in an action against the company delivering the property, to recover damages for negligence, to show that he delivered the property to the first company in good order; and the burthen is then cast upon the company delivering the goods injured, of proving that they were not injured while in its possession, or that they came to its possession thus injured: *Id.*

Constitutional Law.

State Legislature—Power to pass private Act ordering private sale of an Intestate's Estate.—A state legislature may, constitutionally, pass a private act authorizing a court to decree, on the petition of an administrator, *private* sale of the real estate of an intestate to pay his debts, even though the act should not require notice to heirs or to any one, and although the same general subject is regulated by general statute much more full and provident in its nature: *Florentine* vs. *Barton*, 2 Wall.

In making the order of sale under such private act, the court is presumed to have adjudged every question necessary to justify such order or decree, viz.: The death of the owners; that the petitioners were his administrators; that the personal estate was insufficient to pay the debts of deceased; that the private Acts of Assembly, as to the manner of sale, were within the constitutional power of the legislature, and that all the provisions of the law as to notices which are directory to the administrators have been complied with. Nor need it enter upon the record the evidence on which any fact is decided. Especially does all this apply after long lapse of time: *Id.*

Contract.

Letter written on Sunday.—If a letter is written and delivered on Sunday, requesting and promising to pay for the performance of services, and there is no proof of an agreement made on that day to perform the same, the person who received the letter may maintain an action upon the promise contained therein, if he subsequently performs the services on week-days: *Tuckerman* vs. *Hinkley*, 9 Allen.

Corporations.

Liability of Stockholders; actions between them.—An action will not lie by one stockholder of a manufacturing corporation against fellow-stockholders, to enforce a personal liability for a debt of the company: *Richardson* vs. *Abendroth et al.*, 43 Barb.

Though others may have a lien upon or equitably own stock in a corporation, the legal title is in, and the legal liability for debts of the corporation upon, him in whose name the stock is registered: *Id.*

Where stock was hypothecated by the owner, and was afterwards assigned to trustees for the benefit of creditors, neither the pledgee nor the assignee taking a transfer upon the books of the company, or causing themselves to be registered as stockholders; *Held*, that the title remained in the original holder, and that he could not sue his fellow-

stockholders, to enforce a personal liability for a debt claimed to be due him from the corporation: *Id.*

LANDLORD AND TENANT.

Rent—Written Lease.—Rent due upon a written lease cannot be recovered under a count for use and occupation; and the defendant may prove such written lease under an answer which simply denies all the allegations of the declaration: *Warren* vs. *Ferdinand*, 9 Allen.

LIMITATIONS.

Lex fori.—It is a settled principle of international law that all suits must be brought within the period prescribed by the local laws of the country where they are commenced: *Power* vs. *Hathaway*, 43 Barb.

Where the plaintiff and defendant at the time of contracting the debt were and had ever since been residents of the state of Michigan; *Held*, that the courts of New York could not give effect to the statutes of limitations of the state of Michigan; and that the defendant, being a non-resident of New York, could not set up our statute as a bar: *Id.*

MORTGAGE.

Release of Portion of Land bound.—A mortgagee of land may release a portion thereof from the operation of his mortgage without impairing his security upon the remainder, provided he has no actual or constructive notice of the existence of a right of any other part thereof to exemption from contribution; and the record of a subsequent conveyance of such other part is not constructive notice to him thereof: *George* vs. *Wood*, 9 Allen.

In a bill in equity to redeem a mortgage, a right to contribution from a subsequent grantee, of a portion of the mortgaged premises, cannot be settled, unless such grantee is made a party to the bill: *Id.*

Mortgagee disseised—Assignment.—A mortgagee of land who is disseised, cannot make a valid assignment of his mortgage: *Dadmun* vs. *Lawson*, 9 Allen.

To secure Future Liability.—The validity of a mortgage of land in this Commonwealth is to be decided by the laws of this Commonwealth, although both parties to it reside in another state: *Goddard* vs. *Sawyer*, 9 Allen.

By the laws of this Commonwealth a mortgage of land is valid, which is made to secure the mortgagee from loss by reason of a liability that he may subsequently incur: *Id.*

A mortgage, the condition of which is, that the grantor shall indemnify the grantee against all loss, cost, damage and expense, to which he may be subject, by reason of indorsing at the grantor's request, "a note of two thousand dollars, made payable to the order of" the grantor, "and by him signed and indorsed," is not void for uncertainty; and, in an action to foreclose such mortgage, the plaintiff may prove, as the note therein referred to, a note for two thousand dollars, signed by the mortgagor, payable to his own order, and indorsed by himself and the plaintiff: *Id.*

Payment by Labor of Mortgagor—Parties to Bill to redeem—Proceed-

ings under Bill to redeem.—If a mortgagor of land performs labor for the mortgagee, under an agreement that his wages shall be applied upon the mortgage-debt, and earns more than enough to satisfy the same, the debt nevertheless remains undischarged until the actual application of the wages thereupon; and if such application has not been made, and the condition of the mortgage has been broken, the mortgagor may maintain a bill to redeem: *Doody* vs. *Pierce*, 9 Allen.

A mortgagee of land, who has assigned his interest in the mortgage since the breach of the condition, may be included as a defendant in a bill to redeem, especially if it appears that he is interested in the taking of the account: *Id.*

Although a suit in equity to redeem land from a mortgage has been set down for a hearing on the bill and answer, and a hearing had on the question of jurisdiction, the court may allow the filing of a replication, and send the case to a master to take evidence and state the account between the parties: *Id.*

A suit in equity to redeem land from a mortgage may be sent to a master to take an account of payments made upon the mortgage-debt, although the mortgagee has never been in possession of the premises, and has received no rents and profits: *Id.*

A plaintiff in equity is a competent witness in his own behalf, although one of the defendants is dead; and he may also introduce in evidence his books of account, provided they have been properly kept, to prove charges against the defendants for labor performed by him: *Id.*

Negligence.

Trustees operating a Railroad, liable.—If a mortgage of a railroad has been executed to trustees for the benefit of bondholders, and the trustees, after entering into possession, lease the railroad to others, but, under a verbal agreement, continue to operate the road for the lessees and receive the earnings, pay the expenses, select, contract with, and discharge the persons employed on the road, and exercise all the powers usually exercised by railroad corporations over their own roads, the trustees are personally responsible for an injury sustained by reason of the negligence of one of the persons so employed: *Ballou* vs. *Farnum*, 9 Allen.

Responsibility of Owner of Building to the City Corporation for Defective Awning.—The owner of a building who has leased the lower story for shops, and portions of the upper story for various purposes, including one or two rooms to the town in which the building is situated, and has himself remained in possession of the residue thereof, is, in the absence of an express agreement with tenants to the contrary, responsible for the safety of an awning erected along the whole front of the building for the benefit of the shops: *Inhabitants of Milford* vs. *Holbrook*, 9 Allen.

If in such case the owner has had due notice, he may be held liable to the town for damages which they have been compelled to pay to one who has suffered an injury by reason of the falling of the awning, through a defect; and the occupants of the shops need not be joined as defendants: *Id.*

A notice by the town to such owner, of an action brought against them to recover damages for an injury sustained "on the sidewalk in

front of or near Union Block, so called, in Milford," (that being the name of his building), requesting him to defend the same, and stating that, if the town was liable, he was responsible to them, because the injury, if it occurred, must have occurred through his negligence, sufficiently connects the defendant and his property with the alleged injury: *Id.*

In such action by the town against such owner, after such notice, the verdict and judgment against the town are conclusive evidence of the existence of a defect in the highway, the injury to the individual while he was in the exercise of due care, and the amount of the injury: *Id.*

Negotiable Instruments.

Holders presumed to be bonâ fide for value.—Where a mortgage is made in express terms subject to certain bonds secured by prior mortgage, these bonds being negotiable in form, and having in fact passed into circulation before such former mortgage was given, the junior mortgagees, and all parties claiming under them, are estopped from denying the amount or the validity of such bonds so secured, if in the hands of *bonâ fide* holders. Parties holding negotiable instruments are presumed to hold them for full value, and whether such instruments are bought at par or below it, they are, generally speaking, to be paid in full, when in the hands of *bonâ fide* holders for value. If meant to be impeached, they must be impeached by specific allegations distinctly proved: *Bronson et al.* vs. *La Crosse and Milwaukee Railroad Co.*, 2 Wall.

A court of equity, where a mortgage authorizes the payment of the expenses of the mortgagee, may pay, out of funds in his hands, the taxed costs, and also such counsel fees in behalf of the complainants as, in the discretion of the court, it may seem right to allow: *Id.*

Practice.

Bills of Exception—Courts—Jurisdiction.—The court reprehends severely the practice of counsel in excepting to instructions *as a whole*, instead of excepting as they ought, if they except at all, to each instruction *specifically*. Referring to *Rogers* vs. *The Marshal*, 1 Wall. 644, &c., it calls attention anew to the penalty which may attend this unprofessional and slatternly mode of bringing instructions below before this court; the penalty, to wit, that the exception to the whole series of propositions may be overruled, no matter how wrong some may be, if any *one* of them all be correct; and when, if counsel had excepted specifically, a different result might have followed: *Harvey* vs. *Tyler*, 2 Wall.

Where a statute gives to county courts authority and jurisdiction to hear and determine *all cases at common law or in chancery within their respective counties, and "all such other matters as by particular statute"* might be made cognisable therein, such county courts are courts of general jurisdiction; and when jurisdiction of a matter, such as power to declare a redemption of land from forfeiture for taxes (in regard to which the court could act only "by particular statute"), is so given to it,—parties, a subject-matter for consideration, a judgment to be given, &c., being all in view and provided for by the particular statute,—the general rule about the indulgence of presumptions not inconsistent with the record in favor of the jurisdiction, prevails in regard to proceedings

under the statute. At any rate, a judgment under it, declaring lands redeemed, cannot be questioned collaterally: *Id.*

Statutes are to be considered as acting prospectively, unless the contrary is declared or implied in them: *Id.*

SALE.

Rights of Owner against Purchasers from a third Person having no authority to sell.—One whose property has been sold from time to time by another person, without authority, is not estopped from maintaining an action against the purchasers to recover its value, if he was not present at any of the sales, and did nothing to induce them to buy the property, and has not been guilty of any fraudulent act or contrivance, or meditated or promoted any express fraud; although he knew that they were making the purchases under the mistaken belief that the person who assumed to sell the property had authority to do so, and gave them no notice to the contrary: *Bragg* vs. *Boston & Worcester R. R. Corporation*, 9 Allen.

Evidence of Value.—The price at which goods have been sold at auction is admissible as evidence of their value: *Kent* vs. *Whitney*, 9 Allen.

SHERIFF.

Levy.—To render a seizure of property under process effectual, it must be accompanied by possession. The sheriff must not only seize, but he must take the property attached into his custody. In case of neglect to perform his duty in this respect, the sheriff is subjected to personal responsibility: *Smith et al.* vs. *Orser, Sheriff*, 43 Barb.

Upon an attachment being issued against one or more members of a firm, the sheriff must proceed to serve it upon the interest of the defendants in the attachment in property owned by them jointly with others, in the same manner that he is required to do under an execution: *Id.*

A sheriff is not responsible for such acts as the law requires him to perform. He could not execute the commands of process, either in the case of an execution or an attachment, without taking the manual possession of the property which he is required to seize: *Id.*

An action will not lie against a sheriff as a wrongdoer, by all the members of a firm, a part of whom are the defendants in an attachment, on the ground that upon such attachment he has seized and taken into his custody property belonging to the plaintiffs collectively as a partnership: *Id.*

Counts for detaining the plaintiff's property, and for wrongfully and negligently injuring it while in the defendant's possession as sheriff, may be joined in the same complaint, where they arise out of the same transaction. If they do not, the defendant's remedy is to demur; and if he fails to do so, he waives the objection: *Id.*

WILL.

Execution on Sunday.—The execution of a will on the Lord's Day, by a testator, is not "work, labor, or business," within the meaning of Gen. Sts. c. 4, § 1, and a will so executed is valid: *Bennett* vs. *Brooks*, 9 Allen.