statute upon the subject, the contract of life insurance will, probably, be governed by the principle enunciated in the recent decisions in the English and Irish Courts.

A valid policy of life insurance is capable of assignment to a person who has no interest in the life insured: St. John *vs.* American Mutual Life Ins. Co., 3 Kernan 31; Ashley *vs.* Ashley, 3 Simons 149. It has been held that the company may make a valid agreement that an assignment after the loss shall avoid the policy: Day *vs.* Poughkeepsie Mutual Life Ins. Co., 23 Barb. 623. It is also the subject of a gift *causa mortis*. Witt *vs.* Amis, 1 Best & Smith Q. B. 109, (A. D. 1862). T. W. D.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MICHIGAN.[1]

Statute of Frauds—Agreement to answer for Debt of Another, &c.—Defendant sold certain notes and a mortgage to plaintiff, and verbally guaranteed the notes to be good and collectable, and that the mortgagor was responsible and able to pay, and the land mortgaged ample security, and the title perfect and unincumbered. Suit being brought upon this guaranty, the evidence to prove it was objected to, 1st. As within the provision of the Statute of Frauds relating to promises to pay the debt of another; 2d. As within the provision declaring that no one shall be charged by reason of any favorable representation or assurance made concerning the character, credit, ability, trade, or dealings of any other person, unless the same be in writing and signed; 3d. As within the law requiring agreements for the transfer or charging of the title of lands to be in writing. It was *held*, that none of these provisions applied to the case: *Huntington* vs. *Wellington*.

Assignments for Benefit of Creditors—Proof of Subsequent Acts of the Parties to establish Fraud.—Where an assignment for the benefit of creditors is assailed as fraudulent, the whole conduct of the assignee with reference to the property after the assignment should be allowed to be shown, as bearing upon the question of fraud. If that conduct has been entirely consistent with the professed object of the assignment, it cannot prejudice; but if it tends to show that the assignor still claims and seeks to derive a benefit from the property, to the prejudice of his creditors, it will generally tend, in a greater or less degree, according to the circum-

[1] From Hon. T. M. Cooley, Reporter, to appear in Vol. XII., Michigan Reports.

stances of the case, to show that the assignment was originally made with this fraudulent purpose: *Flaniyan* vs. *Lampman.*

So the fact that the assignor, ostensibly as the agent of one of the preferred creditors (whose claim was contested as fraudulent), purchased a part of the assigned property of the assignee at private sale, and afterwards continued in possession of it himself, is competent evidence as bearing on the question of intent: *Id.*

Where a question put by a party to his own witness was improperly overruled, it was held that the error was not cured by the party afterwards asking and obtaining an answer to the same question on the cross-examination of a witness of the opposite party: *Id.*

Subscription for Public Objects.—Where several persons mutually subscribe sums to be paid to a trustee for some common object, in which all have a general interest, as for the erection of school or church buildings, the subscriptions are based upon a legal consideration, and may be enforced: *Underwood* vs. *Waldron.*

Liability of Innkeeper for Clothing lost at a Ball.—A fire company made arrangements with the defendant, who was an innkeeper, for a ball at his house; the company selling the tickets and paying him a fixed price for the supper and for the use of the dancing and dressing rooms. Plaintiff, who was a resident of the place, attended the ball, leaving his overcoat, fur collar, and gloves at the office of the hotel, and during the night, spending some money for cigars, &c., at a saloon kept by defendant in one part of the hotel building. In the morning, his overcoat, collar, and gloves could not be found. On these facts, he brought suit to recover their value, declaring against defendant as *innkeeper.* It was held that plaintiff did not resort to the hotel for any purpose which brings him within the common law definition of the guest of an inn, and that he was not entitled to recover: *Hobbs* vs. *Carter.*

Murder—Omission of Matter of Form in the Information.—Defendant was informed against for the murder of one Balch, and convicted of manslaughter. The information charged the offence in the common law form, except that at its conclusion it averred that he "did kill and murder," without there showing the name of the person killed. It was therefore assigned for error that the information contained no charge of the murder of Balch. *Held* that, under the statute which declared that "no indictment for any offence shall be held insufficient for want of the aver

ment of any matter unnecessary to be proved," "nor for want of a proper and formal conclusion," and that every objection for any formal defect should be taken by demurrer or motion to quash, the information was sufficient: *Evans* vs. *People.*

SUPREME COURT OF MASSACHUSETTS.[1]

Corporation—Cannot form Partnership.—A manufacturing corporation under the laws of this Commonwealth cannot form a partnership with an individual: *Whittenton* vs. *Mills.*

A manufacturing corporation and an individual who have actually made a contract of partnership, and, either with or without the assent of all the stockholders of the corporation, acted and held themselves out to third persons as copartners for many years, and contracted debts as such, cannot, upon the petition of such individual, be put into insolvency as a partnership, under Statutes 1838, c. 163, and 1851, c. 327; and proceedings in insolvency so instituted will be suspended by this Court upon the application of the corporation: *Id.*

Deed—Tenant in Common.—A deed by a tenant in common of "sixty-four rods, being part of" the lot held in common, passes no title in common; nor in severalty, without possession taken under it of the part claimed: *Phillips* vs. *Tudor.*

Embezzlement by Treasurer of Railroad Corporation.—The treasurer of a railroad corporation is an "officer, agent, clerk, or servant of an incorporated company," within the meaning of a statute punishing embezzlement by such persons: *Commonwealth* vs. *Tuckerman.*

If money of a railroad corporation is received by their treasurer, and by him deposited to his credit as such treasurer, and afterwards drawn out by him either in bills or coin, such bills or coin are the property of the corporation, and, while in the hands of the treasurer, subjects of embezzlement by him; and if he afterwards, while still treasurer of the corporation, fraudulently converts such money to his own use, without their consent or knowledge, and without claim of right, it is embezzlement; although the guilty intent does not exist at the moment of drawing the money out of the bank, but is formed afterwards; and although at the

[1] From Horace Gray, Jr., Esq., lately Reporter; to appear in Vol. X. of his Reports.

time of the fraudulent conversion he intends to restore the amount, and has property sufficient to secure its restoration: *Id.*

Upon the trial of an indictment for embezzlement, other previous acts of a similar character, enumerated with the one charged in the indictment in a paper drawn up by the defendant as a statement of all sums taken by him, are admissible in evidence to show the intent with which the act charged was committed: *Id.*

It is not necessary, in order to constitute embezzlement, that there should be a demand of the money alleged to have been embezzled, or a denial of its receipt, or any false account given of it, or false statement or entry concerning it, or refusal to account for it: *Id.*

Evidence—Confessions.—A treasurer of a railroad corporation, who had embezzled their funds, called upon a friend of his, who was a surety upon his official bond and stockholder in the corporation, for advice; and he urged him to go to the directors, and make a clean breast of it, and told him that it would be for his interest to make a full confession; but said nothing, in terms, of a prosecution; told him that the disgrace was in doing wrong, not in suffering punishment for it, and he had better stay and meet the punishment; and (as he testified) "advised him as a friend, a son." The next day they went together to see one of the directors, who, on this stockholder suggesting that he had influence with the other directors, and could prevent a prosecution, stopped him, saying that he could and would make no promises, did not know what his own power or duty was, but would do all he rightfully and properly could to prevent his arrest and prosecution, and that he must confide wholly in him and his discretion. *Held*, that confessions made after these conversations were admissible in evidence against him: *Id.*

Exceptions—Habeas Corpus.—Exceptions do not lie to the discharge of a prisoner on *habeas corpus* by a single judge: *Wyeth* vs. *Richardson*

Insolvent Debtors—Partnership—Interest.—Where a partnership and its members are in insolvency under one commission, and the separate estate of one partner is more than enough to pay his separate debts, the surplus of that estate over such debts is to be added to the partnership estate, and applied to the payment of joint debts, before paying interest on the separate debts: *Thomas* vs. *Minot.*

Fire Insurance— Consequence of Fire.—Insurance against fire was effected on goods "contained in a granite store"; one of the walls gave way, and half of the store and the whole of the adjoining building fell; before there was time to remove the goods, fire broke out in that building *Held*, that the insurers were liable for damage from fire, and from water used to extinguish it, to goods not displaced or injured by the fall: *Lewis* vs. *Springfield Fire and Marine Insurance Company.*

Life Insurance—Payment of Premium falling due on Sunday.—Under a policy of life insurance, to "terminate in case the premium charged shall not be paid in advance on or before the day at noon on which the same shall become due and payable," if the day of payment falls on Sunday, the premium is not payable until Monday, even if the assured dies on Sunday afternoon: *Hammond* vs. *American Mutual Life Insurance Company.*

Marine Insurance—Constructive total Loss.—Under an open policy of insurance in common form, containing the usual memorandum clause, and also this clause, "partial loss on sheet iron, iron wire, brazier's rods, iron hoops, and tin plates is excepted," the insurers are liable for a constructive total loss of tin plates; and if a number of boxes of tin plates, shipped and valued as one parcel, is damaged by the stranding of the ship, carried to the nearest market and there sold for less than half its valuation in the policy, deducting the necessary expenses of the transportation and sale, and duly abandoned, it is a constructive total loss: *Kettell* vs. *Alliance Insurance Company.*

Judgment against a City for Damages, how far Evidence in Action by City against Tenant.—A verdict and judgment against a city, in an action for personal injuries occasioned by a defect within the limits of a highway, are conclusive evidence in a subsequent action by the city against a tenant of the land (who had notice of the pendency of the former action and of the city's intention to hold him responsible for all damages recovered therein, and had opportunity to furnish evidence, and testified at the trial, although he was not requested to and did not take upon himself the defence of that action) that the highway was defective, that the person was injured there, while using due care, and of the amount of the injury; but not of the tenant's liability to keep the place in repair, nor of his having neglected to do so, nor of such negligence having been the sole cause of the injury: *City of Boston* vs. *Worthington.*

Master and Servant—Liability of Master for Injury to Servant.—In an action by a servant against his master for injuries sustained from the explosion of a steam-boiler used in his business, the plaintiff introduced evidence without objection that there was no such fusible safety plug on the boiler, as was required by statute; and the presiding Judge excluded evidence of a custom among engineers not to use such a plug; and instructed the jury that if the defendant knowingly used the boiler without the plug, and the want of it caused the accident, the plaintiff was entitled to recover; and refused to instruct them that if the defendant used all the appliances for safety, that were ordinarily used in such establishments as his, he was not liable in respect to this boiler, although he did not use the fusible plug. *Held*, that the defendant had no ground of exception: *Cayzer* vs. *Taylor*.

Ordinary care must be measured by the character and risks and exposures of the business; and the degree required is higher where life or limb is endangered, or a large amount of property is involved, than in other cases: *Id.*

A master is responsible to his servant for injuries occasioned by the negligence of an incompetent fellow-servant, knowingly or negligently employed by the master: *Id.*

A master is liable to his servant for injuries resulting from a defect in his machinery, although the negligence of a fellow-servant contributes to the accident: *Id.*

Promissory Note—Presentment.—The presentment of a promissory note at the place of its date is sufficient, in the absence of proof that the holder at its maturity knew that the maker resided elsewhere: *Smith* vs. *Philbrick*.

Ships, Registry of, where to be made.—Under the United States Statute of 1850, c. 27, requiring every mortgage or conveyance of any vessel or part of a vessel to "be recorded in the office of the collector of customs where such vessel is registered or enrolled," the record must be made in the district of the last registry and enrolment, though not the home port of the vessel; and a mortgage not so recorded conveys no title as against an attaching creditor of the mortgagor, although his attachment is not made until after the mortgagee has taken possession for breach of condition of his mortgage: *Potter* vs. *Fish*.

SUPREME COURT OF NEW YORK.[1]

Divorce—Adultery of Plaintiff.—In an action by a husband against his wife for a divorce, on the ground of adultery, the defendant cannot set up, by way of counter-claim, the adultery of the plaintiff, so as to entitle her to a divorce against him, if the charge is proved: *R. F. H.* vs. *S. H.*

Alteration of Promissory Note.—Where a note, payable with interest generally, and executed by a surety, was, after the execution thereof, by agreement between the principal and the payee, but without the knowledge or assent of the surety, altered, by an addition thereto, making the interest payable *semi-annually: Held*, that this was a material alteration, which rendered the instrument void as against the surety: *Dewey* vs *Reed.*

Grantor and Grantee—Deed.—A creditor will not be allowed to suffer a deed to stand as conclusive evidence of the grantee's ownership of the land, and seize by attachment or execution the fruits of such land, produced by the industry of the grantee, as the personal property of the grantor, and contest the validity of the conveyance of the land, in an action brought against him for such taking: *Garbutt* vs. *Smith.*

Chattel Mortgage—Rights of Purchaser—Compromise of Claims.—Where one bids off, at a sheriff's sale on execution, property of the judgment-debtor, embraced in a chattel mortgage previously executed by the debtor—the sale being subject to such mortgage—and subsequently purchases and takes an assignment of the mortgage, this will not operate as a payment or satisfaction of the mortgage. And if the mortgage has not been paid nor foreclosed, nor any power contained in it exercised, at the time of its transfer, it will be a valid subsisting, unsatisfied mortgage; and no fraud can be imputed to the assignee in representing that it is unpaid: *Brown* vs. *Rich.*

The purchaser, in such a case, can either pay off the chattel mortgage, and thus protect his purchase under the execution, or purchase it, and take an assignment, and protect himself in that manner: *Id.*

Where R. & H. asserted a claim to B.'s horse, under a chattel mortgage, which claim B. at first disputed, but finally compromised the claim

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

by buying the mortgage and giving his note for the amount agreed upon, which he voluntarily paid at maturity: *Held*, that even if it had turned out that the mortgage was not a valid subsisting mortgage, B. would have had no right of action, to recover back the money paid upon his note: *Id.*

Habeas Corpus—Commitments under Authority of the United States.—Judges of the State Courts have no power to issue a writ of *habeas corpus*, or to continue proceedings under it when issued, in cases of commitment or detainer under the authority of the United States: *Matter of Hopson.*

Thus, where the return to a writ of *habeas corpus* alleged that the defendant had been duly appointed Provost-Marshal for the 21st district of New York, under the Act of Congress of March 3d 1863; that the prisoner was arrested as a deserter from the army, by him, as marshal, and was held in accordance with the Act, to be delivered to the nearest military command or post, and that he was then held "under the authority of the United States:" *Held*, that the return was sufficient in law, and that the defendant was not bound to bring the body of the prisoner before the Justice, on the ground that a state Court or Judge had no jurisdiction to inquire into the fact alleged in the return, that the prisoner was a deserter: *Id.*

Map—Deeds bounding upon a Park.—Where the owner of a tract of land lying in a city caused the same to be plotted out and subdivided into lots, and a map thereof to be made and filed and recorded, on which was an open space, bounded on three sides by said lots, and on one side opening into a public street, such open space being designated on said map as "Park;" and the owner subsequently sold and conveyed to different persons all the lots adjoining said open space, describing them by their numbers, and by reference to said map: *Held*, that the owner, when he laid out his tract of land, intended the open space to be a *park*, and not a mere *street* or passage-way leading by and to the abutting lots. And that the conveyances of those lots, in which such lots were bounded on said "Park," did not carry the grantees to the centre, to the centre of the open space or park, but only to the exterior lines thereof: *Perrin* vs. *The New York Central Railroad Company.*

Agreement—Performance of Condition.—A subscription-paper for the erection of an institution of learning, provided that the moneys subscribed should be paid to the treasurer of a board of trustees which might be elected by the Wayne County Baptist Association, at a convention then