ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MASSACHUSETTS.[1]

SUPREME COURT OF NEW YORK.[2]

SUPREME COURT OF VERMONT.[3]

ADMINISTRATOR.

Suit in his own Name for Goods sold by him as Administrator—Set-off of Debt due by his Intestate.—An administrator may sue to recover the price of property belonging to the estate of his intestate, and sold by himself personally, without naming himself as administrator, or joining his co-administrator: *Aiken* v. *Bridgman*, 37 Vt.

In such a case the defendant could not plead in off-set a claim in his favor against the estate of the plaintiff's intestate: *Id.*

AGREEMENT.

Work and Labor.—D. agreed to perform certain work and labor in shifting or removing the track of a railroad "under the direction and to the satisfaction of L. the city surveyor," whose certificate that the work had been performed was to entitle D. to payment. D. having completed the greater part of the work was stopped at a certain point by L., who drove a stake, and directed that no work should be done beyond that: *Held*, that L. had power, under the contract, to give that direction; and that having been given, it furnished D. with a sufficient excuse for non-performance of the remainder of the labor. And that it therefore became unnecessary to procure the certificate of L. that the contract had been entirely performed, as a prerequisite to D.'s recovery: *Devlin* v. *The Second Avenue Railroad Company*, 44 Barb.

ASSUMPSIT.

Issue of Scrip by the State on one Basis, and Sale by Contractors on another—Suit to recover Excess.—The Commonwealth undertook to aid a railroad corporation by the issue of scrip upon certain terms and conditions, for the sum of $2,000,000, payable in thirty years from date, "which may be expressed in the currency of Great Britain and payable to the bearer in London, or issued in federal currency, payable in Boston, as the directors of the corporation may elect when they shall apply for each issue of the scrip." The corporation agreed with contractors that the whole of the state scrip that might be issued should be exclusively appropriated to work done or to be done, in compliance with the terms and conditions of the legislative act authorizing the loan of state credit, and that the same should be promptly handed to the contractors. The corporation accordingly from time to time gave orders for

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[1] From Charles Allen, Esq., Reporter, to appear in vol. 10 of his Reports.

[2] From Hon. O. L. Barbour, Reporter; to appear in vol. 44 of his Reports.

[3] From W. G. Veazey, Esq., Reporter; to appear in 37 Vermont Reports.

the delivery of the scrip to the contractors, who elected to receive it in the currency of Great Britain, and in ascertaining the amounts each pound sterling was reckoned at $4.44, and the scrip was issued on that basis, upon orders of the governor and council and certificates of the state engineer, which were expressed in dollars. During all this time the equivalent in this market for a pound sterling was about $4.91. The contractors sold the scrip for less than its par value: *Held*, that the Commonwealth might maintain an action for money had and received against the contractors, to recover back the excess received by them upon the sale of the scrip, over the amount at which it was reckoned when it was issued: *Commonwealth* v. *Herman Haupt*, 10 Allen.

If a contract is made to give obligations for a certain sum of money, which at the election of the party who is to receive it may be expressed in the currency of Great Britain, and no standard is agreed upon by the parties at which the pound sterling shall be reckoned, it should be reckoned at $4.84: *Id.*

Bills and Notes.

Failure of Consideration.—As between the original parties to a promissory note, a defence of a total or a partial failure of consideration is admissible: *Sawyer et al.* v. *Chambers et al.*, 44 Barb.

So in an action by the indorsees against the indorsers, evidence to show that the whole consideration of the note, or the greater part of it, has failed; that the note was given on account of goods which the plaintiffs had agreed to sell to the makers; that only a small portion of such goods have been delivered; and that the amounts so delivered have been paid for, is admissible: *Id.*

An accommodation indorser has a right to set up any defence of which the maker could avail himself: *Id.*

Contract.

In Restraint of Trade.—Upon consideration that the plaintiff, a dentist, would keep himself supplied with mineral teeth by purchases of the defendant, the latter agreed not to sell such teeth to any other person in the place where the plaintiff resided: *Held*, that the contract being only in partial restraint of trade, was not illegal: *Clark, Adm'r.*, v. *Crosby*, 37 Vt.

Refusal of Party to continue the Contract—Measure of Damages.—The defendant contracted with the plaintiffs for a quantity of potatoes, to be delivered during the winter as called for by the defendant. Before they were all purchased by the plaintiffs, the defendant notified them by letter not to purchase any more potatoes until they should hear from him. This order was never countermanded: *Held*, that this letter was in effect a refusal to receive any more potatoes upon the contract than the plaintiffs had on hand, or had purchased when they received the letter: *Danforth* v. *Walker*, 37 Vt.

Held, that the rule of damages for the breach of the contract on the part of the defendant, as to the requisite quantity to be purchased by the plaintiffs when they received said letter, would be the difference between the price the defendant had stipulated to pay, and what it would have cost the plaintiffs to procure and deliver the potatoes according to the contract: *Id.*

Corporation.

Right of City to purchase a Railroad Property does not give right to interfere with the regulation of the Rate of Fares previous to the Purchase.—A provision in the charter of a street railway company that at any time after the expiration of ten years from the opening of any part of the road for use, a city may purchase of the corporation so much of the corporate property as lies within its own limits, at a specified price, does not give to the city any such interest or right as to enable it to maintain a bill in equity to restrain the corporation from raising passenger fares upon their road, in violation of conditions expressly assented to by the corporation, and imposed upon them by the mayor and aldermen of the city when granting to them the power to locate and build a new line of their railway through additional streets, if they are guilty of no fraudulent intent to destroy or depreciate the value of the corporate property; although the value of their franchise and property will be thereby diminished, and the portion of their railway constructed under such authority will perhaps be exposed to forfeiture. Nor can the mayor and aldermen of the city maintain such bill: *City of Cambridge* v. *Cambridge Railroad Co. et al.*, 10 Allen.

County Court.

Jurisdiction.—When the damages are open, or depend upon an estimate or appraisal, or the valuation of property, a motion to dismiss the suit for want of jurisdiction is addressed to, and rests in, the discretion of the County Court, and the decision of that court upon that question cannot be revised in the Supreme Court: *Clark, Adm'r.*, v. *Crosby*, 37 Vt.

Criminal Law.

Confessions—Evidence.—The respondent, under the influence of inducements held out by the officer and an assistant who made the arrest, made confessions to the latter. Five hours later, and on being told by the state's attorney that he must not expect any favor in consequence of a confession; that he was under no obligation to make one unless he chose to; he made a second confession: *Held*, that the second confession was admissible as evidence, and it will not be presumed to have been made under the influence of the previous inducements: *State* v. *Carr et al.*, 37 Vt.

Debtor and Creditor.

Assignments of Property by Debtors; Commission for Collecting Accounts.—Where three assignments of property and accounts were executed, at different dates, by debtors to a creditor, to secure the payment of separate debts incurred at different times, it was *held*, that they were not to be construed as one transaction, and as amounting to a general assignment for the benefit of creditors, and as such, void because they did not provide for paying all the debts of the assignors: *Wynkoop* v. *Shardlow et al.*, 44 Barb.

A commission of 20 per cent. for the collection of assigned accounts, consisting of small bills of book-accounts, which cause much trouble and loss of time in their collection, is not unreasonable: *Id.*

Discovery.

Of Books and Papers.—An application for discovery of books and papers must specially state what information is wanted, and that the books or papers referred to contain such entries; and this must be stated upon positive affirmation, and not on information and belief: *Walker* v. *The Granite Bank*, 44 Barb.

An order directing not only the deposit of certain specified books, covering a period of five years, but also "all other books of the defendants which contain any accounts or entries showing," &c., is extending the right of a party to examine his adversary's books much beyond what was contemplated bv the law or what has ever been sanctioned by the courts: *Id.*

Evidence.

Second Trial—Parol Evidence as to the Grounds of former Judgment.—If the demandant in a real action has failed, and judgment has been rendered against him for the sole reason that his grantor was disseised at the time of delivering the deed to him, and he has subsequently fortified his title in this respect, he may, in a new action against the same party to recover the same premises, prove by parol evidence that the former judgment was rendered solely upon that ground. although there was another ground of defence, concerning which evidence was offered on both sides: *Perkins* v. *Parker et al.*, 10 Allen.

Of Character— When admissible in Civil Cases.—Evidence of general good character is not admissible as a defence in civil cases, except where the question of character is directly in issue and material to the amount of damages—as in slander and seduction—even though the plaintiff's testimony virtually charges the defendant with the crime of embezzlement: *Wright* v. *McKee*, 37 Vt.

Wife of Nominal Plaintiff.—The plaintiff, being an infant, commenced and prosecuted his action by his father as his natural guardian, who was not a party to the subject-matter of the litigation: *Held*, that the guardian's wife was a competent witness: *Bonett* v. *Stowell*, 37 Vt.

Husband and Wife.

Purchase of Property by a Married Woman with her own means.—If a married woman purchases personal property with her own means, or upon her own credit exclusively, and takes the conveyance to herself, for her own use, the property becomes her separate property, and is not liable for her husband's debts; although in making the conveyance there is no express statement, in writing or otherwise, that it is to be held as her separate property: *Spaulding* v. *Day*, 10 Allen.

Conveyance by Wife without joining Husband.—Under stat. 1845, c. 208, a married woman to whom real estate had been conveyed, without words expressing that it was to be held by her to her sole and separate use, could not make a valid conveyance thereof without her husband's joining as a grantor; and a deed not so executed cannot be reformed in equity: *Jewett and Another* v. *Davis and Others*, 10 Allen.

INNKEEPERS.

Liability for Valuables not deposited in the Safe.—Under the Act of 1855, which provides that whenever the proprietor of a hotel shall provide a safe for the safe keeping of money, jewels, and ornaments, and shall post a notice thereof conspicuously in the rooms of the hotel, if a guest "shall neglect to deposit such money, jewels, or ornaments in such safe, the proprietor of such hotel shall not be liable for any loss of such money, &c., sustained by such guest by theft or otherwise;" a hotel-keeper who has posted such a notice is liable for losses occurring only when he has the actual possession and custody of the articles by their being placed in a safe provided: *Bendelson* v. *French*, 44 Barb.

Whilst the property is out of the safe it is to be regarded as within the personal care and custody of the guest, and not of the hotel-keeper, and the latter, during that time, is relieved from responsibility: *Id.*

Where the plaintiff, a guest in a hotel, offered a package of jewelry to the book-keeper, requesting him to put it in the safe, but making no statement of the contents, and the book-keeper made no inquiry, but told the plaintiff there was no necessity for putting the package in the safe; to take it to his room; that it would be just as safe there; whereupon the plaintiff took the package to his room, and placed it in his trunk, where it was stolen: *Held*, that the keeper of the hotel was not liable, by reason of the omission of the plaintiff to disclose the contents of the package to the clerk: *Id.*

LUNATIC.

Insane Party—Competency to testify—Admission of other Party to testify—Recovery from Guardian of Insane Person for Expenses.—Although a party to an action is insane, yet if he is competent to testify the other party may be admitted to testify in his own favor, under Gen. Stat. c. 131, § 14: *Kendall* v. *May*, 10 Allen.

The finding of an auditor that an insane party to an action is competent to testify, and his admission of the other party to testify in his own favor, can only be controverted upon a hearing before the judge; and such hearing can only be had upon a motion addressed to the judge, prior to the trial before the jury: *Id.*

If the guardian of an insane person has been removed and no new guardian appointed, one who at his request takes such insane person on a journey for pleasure out of the Commonwealth may recover of him the expenses thereof, provided that the jury find that they were reasonable and proper under the circumstances: *Id.*

One who has long had the care of an insane person, and provided for his table, and has been on several occasions, and for a considerable period of time, in another family while he was afterwards boarding there, may testify to an opinion as to the value of boarding and taking care of him in the latter place: *Id.*

MORTGAGE.

Advancements after Breach of Condition—Equity.—If after the breach of the condition of a mortgage of land further advancements are made by the mortgagee to the mortgagor, under an oral agreement that the mortgage shall stand as security for them, a court of equity