their breakfasts. The master then said—You refuse duty then; mind you get nothing coming to you. The men replied—We don't refuse to do duty, but we want our breakfasts. The master then ordered the second officer to go ashore and get men to furl the sail. The officer did so, but none were obtained, and the sail was not refurled until the following Monday evening. No more notice was taken of the men. By direction of the master, the men were given their meals on Sunday and slept on board, but were not called out on Monday, and on applying for breakfast were refused. The men went on shore and asked the master what he was going to do with them, to which he replied he did not know them; they had taken charge yesterday morning, and he would have nothing more to do with them. The men asked if they could go ashore; to which the master said, "I don't tell you to go ashore;" and to a request for payment, he said, "No; get it out of the ship if you can." They then brought this suit, and the claimants defended on the ground of desertion and disobedience of orders. The court (DEADY, J.) held that there was no desertion, and decreed for libellants for the estimated time of the round trip and the price of passage home to the port of shipment, but deducted one month's wages from the libellants on account of their misconduct in not obeying the order to refurl the foresail. The order, he thought, was not an extreme one, and even though they felt that it was given at the time with the intention to annoy and punish them, yet the officer had a right to have the sails furled to please his eye and in accordance with his own notions of what was seamanlike, and they should have obeyed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF CALIFORNIA.[1]

SUPREME COURT OF MAINE.[2]

COURT OF CHANCERY OF NEW JERSEY.[3]

SUPREME COURT OF NEW YORK.[4]

ADMIRALTY.

Jurisdiction.—A cause of action, to be cognisable in admiralty, whether arising out of contract, claim, service, or obligation or liability of any kind, must relate to the business of commerce and navigation: *People* v. *Steamer America*, 34 Cal.

Mode of raising issue on.—The only mode of raising issue on the jurisdiction of a state court, on the ground that the cause of action pending

[1] From J. E. Hale, Esq., Reporter; to appear in 34 Cal. Rep.

[2] From W. W. Virgin, Esq., Reporter; to appear in 55 Me. Rep.

[3] From C. E. Green, Esq., Reporter; to appear in vol. 4 of his Reports.

[4] From Hon. O. L. Barbour, Reporter; to appear in vol. 51 of his Reports.

therein belongs to maritime jurisdiction, is by presenting in the pleadings the essential facts showing such cause to relate to the business of commerce and navigation: *Id.*

Where the State is Plaintiff.—Whether a state court would not hold its jurisdiction of an action brought in the name of the People and in aid of the public revenues of the state, even though the cause of action related to the business of commerce and navigation, suggested, but not decided: *Id.*

BANKS.

Spurious Notes.—The defendant having, on the 1st day of July 1863, paid out to the plaintiff a counterfeit bill, purporting to be issued by another bank, and the plaintiff having neglected to return it for redemption until the 17th day of September following: *Held*, that if the duty rested upon the plaintiff to return the bill and notify the bank of the forgery, within a reasonable time after its discovery, the question of negligence, under the circumstances, was for the jury to decide: *Burrill* v. *The Watertown Bank and Loan Company*, 51 Barb.

Held, also, that when the plaintiff was in doubt, and had no ready means of detecting the forgery, the duty of returning the bill immediately was not absolute, although its genuineness had been questioned; and that the duty of returning forged paper, in such a case, must begin, if at all, from the time the holder has what the jury shall deem satisfactory evidence of its spuriousness: *Id.*

Where a person receiving from a bank a spurious note pays it out to a third person supposing it to be genuine, and the latter neglects for an unreasonable time, after being informed that it is counterfeit, to return it, the bank cannot avail itself of such third person's neglect to defeat the action of the one to whom it had paid out such note: *Id.*

The decision in *Flowers* v. *Todd*, 6 Hill 340, requiring a creditor who takes forged bank paper in payment of his debt to return or offer to return it to his debtor, before he can maintain an action upon his original demand, questioned: *Id.*

BILLS AND NOTES. See *Stamp.*

CORPORATION. See *Libel.*

Dissolution—Comity in Courts of another State.—The judgment of another state, decreeing a dissolution, and appointing receivers to wind up the concerns, of a corporation created by its laws, will not prevent an action commenced against such corporation here, prior to such distribution, from proceeding to judgment, unless it be shown that the corporation is utterly extinct: *Hunt* v. *Columbian Ins. Co.*, 55 Me.

It is not sufficient to show that, by the law and usage in the court of the state where such decree of dissolution is passed, such corporation is permanently dissolved, although it still has a qualified existence, capable of being a party to a judgment there: *Id.*

The legal authority of receivers, duly appointed in another state, is co-extensive with the jurisdiction of the court by which they were appointed: *Id.*

Comity does not require the S. J. Court of this state to permit receivers appointed by the court of another state to exercise privileges

detrimental to our own citizens, while pursuing appropriate legal remedies here: *Id.*

Criminal Law.

Party as Witness.—The Act of 1864, ch. 280, allowing a person charged with crime to be called as a witness at the trial, "at his own request, but not otherwise," is constitutional: *State* v. *Bartlett*, 55 Me.

The fact that he does not testify is a proper one for the consideration of the jury in determining the guilt or innocence of the accused: *Id.*

Statement of Prisoner, as evidence against him, when not voluntarily made.—Where a prisoner, accused of robbery of certain money, promised to point out the place where the money was buried, and afterwards pointed out a place at which, it was proved by other witnesses, the stolen money was found: *Held*, that such statement, when taken in connection with said fact and proof, was admissible in evidence against him, although not voluntarily made: *People* v. *Hoy Yen*, 34 Cal.

But when, in such case, in connection with such promise, the prisoner further stated, "I buried the money there:" *held*, that this was inadmissible as evidence against him: *Id.*

Damages.

Funeral Expenses.—In an action under the statute for causing by wrongful act the death of a person, funeral expenses are not recoverable, except as special damages, if recoverable at all, and must be specially pleaded: *Gay* v. *Winter*, 34 Cal.

Deed.

Alteration and Re-delivery.—A deed of warranty duly executed and delivered, but unrecorded, of one undivided half of certain lands therein described, may, by consent of the parties thereto, be altered by erasing the words "one undivided half of;" and a re-delivery of such altered deed will render it effectual to convey the whole of the premises without a re-acknowledgment: *Bassett* v. *Bassett*, 55 Me.

Reading to an illiterate Grantor.—The omission to read an instrument to an illiterate marksman renders the certificate of acknowledgment of no value as proof where the dispute is whether the paper so certified is the paper that was actually read, or whether it was correctly read to the party executing it: *Suffern* v. *Butler*, 4 C. E. Green.

Ordinarily the burden of proof is upon a party impeaching his own deed, to show that it is not his deed after it is formally proved. But where it appears beyond doubt that the grantors are illiterate marksmen, and that the deed was read to them by the grantee himself, and by him only, the burden of proof is shifted: *Id.*

Easement. See *Water Right.*

Elections.

Returns not to be rejected for Irregularity not resulting in Injury.—Election returns should not be rejected for any irregularity in the appointment of the officers of election, where it does not appear that any injurious results accrued therefrom, either by the reception of illegal

votes or the rejection of legal votes, or that either of the candidates lost or gained votes thereby: *Keller* v. *Chapman*, 34 Cal.

Counting Votes not cast.—It was manifest error for the county court, when trying a contested election case, to allow to one of the contestants votes not in fact received, although offered to and rejected by the election board; and this, whether the proffered votes were properly or improperly rejected: *Webster* v. *Byrnes*, 34 Cal.

EXECUTOR.

Suit by.—In an action of assumpsit, brought by one who sues as administrator, the general issue admits the capacity of the plaintiff. The question of the plaintiff's capacity can be raised only by plea in abatement: *Brown, Admx.*, v. *Nourse*, 55 Me.

In this state, the rule does not require that the writ should set out where, or by what authority, the administration was granted: *Id.*

Power of Court over.—When an executor is also trustee, and the matters in his charge as trustee can be separated from those confided to him as executor, this court may remove or supersede him as trustee, but in such case he will be left to execute and perform any duty devolving upon him as executor: *Leddel's Executor* v. *Starr and Wife and Others*, 4 C. E. Green.

In proper cases this court will enjoin an executor from proceeding further in the execution of his duties as executor, and will appoint a receiver, and direct him to pay over the estate in his hands to the receiver to be administered under the direction of the court, but in such case he is not removed or superseded as executor: *Id.*

Generally, a receiver will only be appointed on bill filed for that purpose, and rarely before answer, except under provisions by particular statutes. He will be appointed on petition only in the cases of infants whose position as wards of the court gives them the right to apply by petitition, or in cases similarly situated: *Id.*

A receiver will not be appointed as against a complainant upon the application of a defendant: *Id.*

EXPRESS COMPANIES. See *Stamp.*

Liability as Common Carriers.—An express company is to be regarded as a common carrier, and its responsibility for the safe delivery of property intrusted to it is the same as that of a carrier. It cannot by a notice, or by an exception in a receipt, which is not shown to have come to the knowledge of the shipper or holder, exempt itself from liability in whole or in part, if goods are lost through its negligence: *Belger* v. *Dinsmore, Pres't, &c.*, 51 Barb.

Nor will proof, even, that such notice was brought to the knowledge of the owner, be sufficient to relieve the carrier's liability; but an express contract must be proven: *Id.*

Receipt limiting Liability.—An express company, sued for the value of a trunk and its contents, which it had undertaken to transport, gave in evidence a receipt given at the time of receiving such trunk, in which the liability of the company was limited to the sum of $50. There was no evidence that knowledge of the contents of the receipt ever came to

or was brought home to the plaintiff. *Held*, that a refusal by the court to submit to the jury the question whether there was any evidence of a contract between the parties, and a ruling that the receipt was a binding contract between the parties, and limited the defendant's liability to $50 and interest, for which sum, with interest, a verdict was directed, were erroneous: *Id.*

FRAUD.

Concealment of Facts by Purchaser of Land.—If a purchaser of land represent to the vendor that a certain mortgage is an encumbrance on the land, when it is known to him but not to the vendor that the mortgage was not as to him an encumbrance, and pays on that account so much less for the land, this is a fraud on the vendor, and such purchaser will be compelled to pay to the vendor that amount with interest: *Winans* v. *Winans*, 4 C. E. Green.

Facts set up in an answer as a justification of a misrepresentation admitted to be untrue must be proved by the defendant; the burden of proof is on him: *Id.*

HUSBAND AND WIFE.

What is Conversion of Wife's Property by Husband.—The erection of buildings by the husband on the leasehold lands of his wife, and collecting the rents, is not such disposition of them as will take away the wife's right of survivorship, and enable the husband to dispose of the leasehold estate by will: *Riley's Administrator* v. *Riley*, 4 C. E. Green.

An actual disposition by sale, lease or mortgage, or contract for such object, is necessary to take away the wife's right of survivorship in a leasehold estate. A mortgage or a sale of part, or a lease of part, or for a less term, only bars the wife *pro tanto:* her right of survivorship remains in the equity of redemption, and the residue of the premises or term: *Id.*

LIBEL.

Liability of Corporation for Acts of its Directors.—The directors of a corporation are its chosen representatives, and constitute the corporation, to all purposes of dealing with others. What they do within the scope of the objects and purposes of the corporation, the corporation does. If they do an injury to another, though it necessarily involves in its commission a malicious intent, the corporation must be deemed, by imputation, to be guilty of the wrong, and answerable for it, as an individual would be in such case: *Maynard* v. *Firemen's Fund Insurance Company*, 34 Cal.

A corporation is liable for acts done by its agents *in delicto* as well as *in contractu*, in the course of its business and their employment; and the corporation is responsible therefor, as an individual is responsible under similar circumstances: *Id.*

A corporation aggregate has the capacity to compose and publish a libel, and by reason thereof, when done, becomes liable to an action for damages by the person of and concerning whom the words are composed and published: *Id.*

LICENSE. See *Water Right.*

LIMITATIONS, STATUTE OF.

Suit in one State on Note barred in another.—The Statute of Limitations is no bar to an action in this state, upon a promissory note made in another state, when the defendant has not resided here since the note was given: *Brown* v. *Nourse,* 55 Me.

MALICIOUS PROSECUTION.

Estoppel.—A person, arrested on a special writ, subsequently and for the purpose of procuring his discharge, paying under protest a portion of the sum claimed in the writ, is not thereby estopped from showing, in the trial of an action for malicious prosecution, the want of probable cause in the original suit: *Morton* v. *Young,* 55 Me.

MORTGAGE. See *Vessel.*

Right of Tenant for Years to redeem.—A tenant for years who offers to pay off a mortgage-debt has the right to redeem. Like a second mortgagee or judgment-creditor having a right to redeem, he has not perhaps strictly the right to demand a written assignment of the bond and mortgage, but he stands by redemption in the place of the mortgagee, and will be subrogated to his rights against the mortgagor and the reversioner. He has the right to have the bond and mortgage delivered to him uncancelled, which, in such a case, is in equity, and may be at law, a complete assignment: *Hamilton* v. *Dobbs,* 4 C. E. Green.

PARTNERSHIP.

Account.—A partner bound to account, must give a clear, distinct, and intelligible statement of the results of the business, referring also to particular books, and to the page if necessary, so that a party entitled thereto may inquire into and investigate its correctness. A reference to the books of the concern generally, and to former accounts, is not sufficient: *Gordon's Adm.* v. *Hammell,* 4 C. E. Green.

RAILROAD COMPANY.

Tender of Fare.—In actions for a breach of duty by a railroad company in not conveying a passenger, it is not necessary for plaintiff to allege in complaint a strict legal tender of his fare: *Tarbell* v. *Central Pacific Railroad Co.,* 34 Cal.

It is sufficient to allege that plaintiff was ready and willing and offered to pay such sum of money as the defendant was legally entitled to charge. The transportation and payment of the fare are contemporaneous acts: *Id.*

If the passenger is ready and willing and offers to pay the legal fare when demanded by the conductor of the train, the railroad company is bound to carry him, provided there is room in the cars and the passenger is a fit person to be admitted: *Id.*

Rule of Damages for Injuries to Land by diversion of Water.—In an action to recover damages for injuries done to the plaintiff's premises by the diversion of a stream from its channel by the defendant, in constructing a culvert, the legal rule of damages has no reference to the cost of removing a bar of gravel carried there by a flood. The measure of damages, in that class of cases, is the depreciation in the value of the plaintiff's premises occasioned by the injury resulting from the

defendant's acts: *Easterbrook* v. *The Erie Railroad Company*, 51 Barb.

In a case where the deposit is comparatively extensive, and the cost of removing it would probably equal if not greatly exceed the value of the soil covered by it, the rule contemplates that the material deposited by the flood is to remain upon the land; and one of the items of damage is the depreciation in the value of the land in consequence of its remaining. The owner of the land is therefore under no obligation to remove the gravel so deposited by reason of his having received compensation for his damages from the wrongdoer; nor does he incur any peril, in a legal sense, by suffering it to remain: *Id.*

Hence his neglect to remove such gravel bar will not preclude an action by him for damages done by a subsequent flood, in consequence of the improper and unskilful location and construction of the culvert by the defendants; although such gravel bar may have had some effect in deflecting the course of the flood. The case will be the same in that respect as if the flood had been thus diverted by the natural formation of the surface of the plaintiff's land, or as if the bar had been deposited there before the culvert was made: *Id.*

Records.

Of Public Office of another State.—The records in public offices of other states of matters which are not judicial proceedings, may be proved by a sworn copy or by certificate, according to the Act of Congress. But when received, their effect is the same as in the state of which they were records. That effect must be shown by proving the law of such state upon the subject; it cannot be presumed: *Condit* v. *Blackwell*, 4 C. E. Green.

Stamps.

On Express Company's Receipt.—A receipt, such as is usually given by express companies for goods delivered to them for transportation, is not subject to any stamp duty, but is covered by the exception in the Act of Congress of 1865: *Belger* v. *Dinsmore, Pres't, &c.*, 51 Barb.

Stamp on Note.—An internal revenue stamp is no part of the note, and a demurrer will not lie to a complaint which fails to aver that the note was duly stamped: *Hallock* v. *Jaudin*, 34 Cal.

In order to defeat a recovery on an unstamped note, it must appear that the stamp has been fraudulently omitted: *Id.*

Stream. See *Railroad Company. Water Right.*

Surety.

Signing of Note does not make Joint Liability.—Two or more persons severally signing a promissory note as sureties do not thereby incur a joint liability: *Bunker* v. *Tufts*, 55 Me.

Such sureties cannot maintain a joint action on the case against a person who subsequently "aids or assists" their principal "in a fraudulent transfer or concealment of his property, to secure it from creditors," although, after such conveyance, they became joint creditors by the joint payment of said note: *Id.*

When several sureties pay the debt of their principal, and there is no

evidence of a partnership or joint interest, or of payment from a joint fund, the presumption of law is that each paid his proportion of the debt: *Id.*

TENANT FOR LIFE. See *Trust.*

TOW-BOATS.

Owners not Carriers.—The owners of a steamboat employed in the business of towing boats for hire are not common carriers, and hence not insurers. But they are liable if guilty of gross carelessness, if not for a failure to exercise ordinary care in the management of the steamer and the boats towed: *Wooden* v. *Austin*, 51 Barb.

Liability of Owners.—A provision in a contract for towing that the boat shall be towed "at the risk of the master and owner" of such boat, refers to the perils of navigation simply, and cannot properly be construed to excuse the negligence of the proprietors of the towing vessel, or those in charge thereof: *Id.*

Parties undertaking to tow a boat from one place to another are bound to do so, unless prevented by causes to which at least gross negligence on their part does not contribute: *Id.*

The defendants agreed to tow the plaintiff's boat from Albany to New York. After proceeding three or four miles the defendant's hawser broke, and set the plaintiff's boat, with others, adrift, which floated down the river some 14 miles, without any attempt to regain it. There was no explanation offered in respect to the strength of the hawser, or the immediate cause of its breaking, or in regard to the management of the steamer, or why an effort was not made to again take the plaintiff's boat in tow; although there was evidence to the effect that there was no difficulty in the steamer taking the entire tow through to New York. In an action against the defendants for damages occasioned by their negligence: *Held*, that the plaintiff was improperly nonsuited: *Id.*

TROVER. See *Vessel.*

What is Conversion.—A person is guilty of a conversion who sells the property of another, without authority from the owner, notwithstanding he acts as the agent or servant of one claiming to be the owner, and is ignorant of his principal's want of title: *Kimball, Exec'x.*, v. *Billings*, 55 Me.

And it is no defence to an action of trover that the property sold was government bonds payable to bearer, provided the principal was not the *bonâ fide* purchaser.

TRUST.

Capital and Income of Stock Dividends.—Where trust-funds, of which the income, interest, or profits are given to one person for life, and the principal bequeathed over upon the death of the life tenant, are invested either by the trustee or at the death of the testator in stock or shares of an incorporated company, the value of which consists in part of an accumulated surplus or undivided earnings laid up by the company, such additional value is part of the capital. This, as well as the par value of the shares, must be kept by the trustee intact for the benefit of the remainder-man; but the earnings on such capital, as well as upon the par value of the shares, belong to the life tenant: *Van Doren* v. *Van Doren's Trustee*, 4 C. E. Green.

When an extra dividend is declared out of the earnings or profits of such company, such extra dividend belongs to the life tenant, unless part of it was earnings carried to account of accumulated profits or surplus earnings at the death of the testator or at the time of the investment, if made since his death, in which case so much must be considered as part of the capital: *Id.*

Vendor and Purchaser.

Forfeiture.—When the time for payment of the purchase-money has been extended with the assent of the vendor, and no certain time fixed when payment will be required, the vendor cannot afterwards forfeit the contract by requiring immediate payment; but the vendee is entitled to a reasonable time, after notice, to make his payment: *Cythe* v. *La Fontain*, 51 Barb.

It *seems* that the vendor may deprive himself of the right to exact a forfeiture, by afterwards refusing to accept payment upon another and untenable ground: *Id.*

Rescinding Contract.—On a sale of a quantity of wood, the purchaser, after he had drawn away a portion, discovered that the quality of a part of the wood was different from what the contract called for: *Held*, that he could not rescind the contract of sale, except by restoring, or offering to restore, what he had received under it: *Woodruff* v. *Peterson*, 51 Barb.

Recoupment by Purchaser.—On an executory contract of sale, the vendee, if he keeps the article, may, *it seems*, recoup his damages, in case of fraud, but not for breach of contract: *Id.*

Fraudulent Representation.—An unconditional delivery of goods without payment, at a cash sale, does not pass the title, and bind the sale as to a purchaser upon false and fraudulent misrepresentations: *Hicks & Hathaway* v. *Campbell and Others*, 4 C. E. Green.

Vessel.

Registration and Mortgage of.—By virtue of the Constitution of the United States, Congress has the exclusive power to provide where the evidences of title of registered and enrolled vessels, in certain cases, shall be recorded: *Wood* v. *Stockwell*, 55 Me.

The state legislature has no authority, directly or indirectly, to add to or dispense with the requirements of section 1 of the Act of Congress of July 29th 1850, entitled an "Act to provide for recording the conveyances of vessels:" *Id.*

R. S. c. 91, § 1, providing for the registration of chattel mortgages, does not apply to property in vessels which are duly registered or enrolled according to the laws of the United States: *Id.*

The plaintiff, as mortgagee of one-eighth of a vessel, demanded it of the assignee of the mortgagor, who refused to comply, denying title in the plaintiff, and claiming title in himself. The defendant, both before and after the demand, received one-eighth of the net earnings and had paid one-eighth of the repairs. In trover: *Held*,

1. That the foregoing facts constitute a conversion.

2. That the amount paid for repairs should not be deducted in mitigation of damages: *Id.*

WASTE.

What constitutes.—Although the common-law doctrine of waste is not, in its strictness, applicable to the condition of things in this country, yet such a cutting of trees or timber, by a tenant, as will work a permanent injury to the freehold or inheritance, in the absence of any specific leave or license to cut such trees or timber, is waste, for which an action will lie, in equity, for the prevention of such injury, by injunction, before it is committed, or at law, for the recovery of damages, by the remainder-man, after the injury is done: *McCay et al.* v. *Wait*, 51 Barb.

Whether the cutting of trees and timber, in any case, is such an injury to the inheritance, or not, is necessarily a question of fact for the jury, or the court, when the action is tried by the court without a jury: *Id.*

WATER RIGHT.

Can only pass by Deed—License.—A right to divert the water of a river (owned on either side and to the middle, and subject to no public right), is an incorporeal hereditament, and can pass only by instrument under seal: *Veghte* v. *The Raritan Water-Power Co.*, 4 C. E. Green.

The charter of a water-power company authorizing the company to divert the water of a river, upon the written consent of the landowners, does not dispense with the necessity of a deed or conveyance of the right in the form required by law. It confers the power, but not the title. Such consent is only a license: *Id.*

In general, a license at law will create no estate in the lands of the licensor, but will justify or excuse any act done under it. It is revocable even when given for a consideration, and after it has been executed. But, in such cases, where the revocation would be a fraud, courts of equity give a remedy either by restraining the revocation, or by construing the license as an agreement to give the right, and compelling specific performance by deed, as of a contract in part executed: *Id.*

But a license to a person to do or erect something on his own land by which a right or easement of the licensor may be affected, if once executed, cannot be revoked: *Id.*

The effect of a license to do an act on the land of the licensee can only extinguish such easement as may be abandoned, that is, easements or rights acquired by grant or prescription, and in no case affects easements or incorporeal hereditaments which are by law annexed to the land of the licensor, such as the right to running water passing over his land in a natural stream or watercourse: *Id.*

An easement will not be extinguished by mere non-user for twenty years, unaccompanied by acts showing an intention of abandonment. In such cases, adverse possession, as well as non-user, is necessary to effect the extinguishment: *Id.*

Damage from Ditches.—Where K. owned a ditch which passed over the land of R., he was bound to so use it as not to injure R.'s land, and this irrespective of the question as to which had the older right or title; and if, through any fault or neglect of K., in not properly managing and keeping his ditch in repair, the water overflowed or broke through the banks, and destroyed or damaged the land of R., by