river, and then rode on horseback twenty miles to another town, where he arrived so exhausted that he fell from his horse and lay on the beach for thirty-six hours before he received aid. The town to which he went was distant twenty-six miles by water from the place where libellant was put out of the vessel, and was in the direct line of the voyage; but the captain refused to take him there on board the vessel. HOFFMAN, J, in giving judgment, said that the fact of the disease being malignant and infectious was good reason why the master should put the seaman ashore at the earliest moment consistent with his receiving proper care; but was no justification of the course pursued, especially as the captain knew that at a port, only twenty-six miles distant, and to which the vessel was to sail the next day, proper medical attention and care could be secured. Judgment was therefore entered for libellant for $2500.

CONSTITUTION OF NEW YORK—THE JUDICIARY. The new constitution, framed by the convention last year, will be submitted to the direct vote of the people for adoption or rejection in November. The Judiciary article, which is submitted to a separate vote, provides for the establishment of a Court of Appeals, to consist of seven judges, holding their office for fourteen years. The other courts remain very much as they now are, except that the terms of the judges are lengthened to fourteen years. This is a great improvement on the present wretched system, under which the highest court in the state is liable to change one-half its members yearly. The most notable feature, however, in the new constitution is a provision that in 1873 the question shall be submitted to a vote of the people whether the judges shall not thereafter be appointed by the governor. The results of making the judiciary elective, have, it thus seems, become so apparent, that the state which first made the fatal blunder is beginning to look to its correction. We regret that the convention, certainly one of the ablest and most laborious that ever sat in that state, proceeded so timidly, and did not at once, and without hesitation, declare for a return to the system of appointment to judicial office for good behavior—the only system by which the bench can permanently retain its independence or its respectability. J. T. M.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW YORK.[1]

SUPREME COURT OF PENNSYLVANIA.[2]

SUPREME COURT OF VERMONT.[3]

ATTORNEY. See *Debtor and Creditor.*

[1] From Hon. O. L. Barbour, Reporter; to appear in vol. 53 of his Reports.

[2] From P. Frazer Smith, Esq., Reporter; to appear in 58 Pa. Rep.

[3] From W. G. Veazey, Esq., Reporter; to appear in 41 Vt. Rep.

BILLS AND NOTES.

Guaranty of.—A note drawn by Henninger and for his accommodation with an endorsement in the name of Noll, was also endorsed with a *guaranty* by Eyer and was discounted by a bank. The bank sued Eyer. *Held*, that the court erred in charging that it was incumbent on the bank to prove affirmatively that the contract of guaranty was made with them: *The Northumberland County Bank* v. *Eyer*, 58 Penna.

As Noll endorsed for the accommodation of Henninger and the bank was the first holder for value, the law implied that the guaranty was made to them: *Id.*

The guaranty was not distinguishable from a general letter of credit, on which an action may be maintained in the name of the person who gives credit on the faith of it: *Id.*

A guaranty is not assignable so as to enable the assignee to sue on it in his own name: *Id.*

CONFLICT OF LAWS.

Debt contracted in Foreign Country.—A debt contracted in a foreign country, in the absence of a contrary understanding, is payable there and in the legal currency of that country: *Benners* v. *Clemens*, 58 Penna.

A judgment here, for such debt, should be in amount the value of gold in legal tender notes: *Id.*

The *lex loci contractus* must control in interpreting such contract: *Id.*

CONSTITUTIONAL LAW.

Obligation of Contracts.—When town authorities have taken the land of an individual for the purposes of a public highway, and have paid the proprietor therefor, the right to the easement becomes a vested right in the public; and the public having received the land, and the proprietor the compensation, it becomes a fixed contract between them, and the provision of the Constitution of the United States declaring "that no state shall pass any law impairing the obligation of contracts" applies: *The People ex rel. Failing* v. *The Commissioners of Highways of the town of Palatine*, 3 Barb.

After land taken for a road has been paid for by the public, it cannot be taken from the public and donated to the former owner without any consideration paid therefor, by an act of the legislature purporting to reduce the width of the highway: *Id.*

CONTRACT.

In Restraint of Trade.—Contracts restraining the exercise of a trade, &c., in particular localities, when there is reasonable ground for the restriction, are valid: *McClurg's Appeal*, 58 Penna.

An agreement for a valuable consideration not to practise medicine within 12 miles of a particular locality is not unreasonable, and the exercise of the profession within the prescribed limit may be restrained by injunction: *Id.*

The court will not inquire into the *adequacy* of the consideration: *Id.*

CORPORATION.

Dissolution.—Where the complaint, in an action by the people

against the corporation for its dissolution, alleged that the corporation was insolvent 13 years before; that it then surrendered its property to its creditors; that it had remained insolvent ever since; had ever since neglected to pay its notes and other evidences of debt, and entirely suspended its ordinary and lawful business; and that another corporation with the same general object had, under the authority of the state, organized and was in actual operation in its place and stead; which facts were not denied in the answer, although the alleged forfeiture was attempted to be excused: *Held*, that it was a proper case for a judgment of forfeiture, dissolving the corporation, and restraining defendants, who were charged with usurping and attempting to exercise its franchise, from further exercising the same, &c.: *The People* v. *The Northern Railroad Co. et al.*, 53 Barb.

Held also, that the fact of insolvency and suspension of business being admitted in the answer, the law admitted no excuse for the forfeiture, nor was any explanation available: *Id.*

Right to use Streets of a City—Subject to Regulations by the City.—A grant to a corporation to carry passengers in cars over the streets of a city does not necessarily involve exemption from liability to municipal regulation. The right is neither greater nor less than a natural person possesses: *The Frankford and Philadelphia Passenger Railway Co.* v. *The City of Philadelphia*, 58 Penna.

When a corporation is authorized to carry on a specified business within a municipal corporation, it is intended that the business shall be conducted under the restrictions, &c., which govern others transacting the same business: *Id.*

A reasonable regulation of the use of a privilege is not a denial of the right: *Id.*

Corporations chartered to do business in a city are to be regarded as inhabitants of the city and, unless exempted, are subject to its ordinances: *Id.*

Liability to restrictions, &c., is involved in the designation of the place where the corporation's business is to be carried on: *Id.*

The right to construct and own a railway neither enlarges nor diminishes the right to run cars and carry passengers: *Id.*

An ordinance of Philadelphia requiring passenger cars to be numbered, to be licensed on paying a stipulated sum for each car, is a police regulation: *Id.*

Such ordinance may be enacted under the Act of April 15th 1850, authorizing the councils to pass ordinances for the regulation of omnibuses, &c.: *Id.*

Whether the ordinance could be enacted under the general power to councils to ordain such ordinances, &c., as shall be necessary for the government and welfare of the city, *dubitatur*: *Id.*

Forfeiture of Charter.—It is no cause of forfeiture of a charter from Pennsylvania that the same corporation has obtained a charter from another state: *The Commonwealth ex rel. The Attorney-General* v. *The Pittsburgh and Connellsville Railroad Co.*, 58 Penna.

A corporation chartered by one state cannot transfer its allegiance by accepting a charter from another. It does not thus throw off its original

obligation, nor can it shelter itself under its new relation from any violation of its duties under its old one: *Id.*

All the rights of the Commonwealth against her own corporation will be enforced, without regard to immunities claimed from process beyond her territories and within the jurisdiction of another state: *Id.*

A corporation which undertakes to drag its sovereign to a foreign examination, before the bar of the tribunals of another state, violates its first and paramount duty and subjects itself to the extremest consequences: *Id.*

The Circuit Court of the United States is not the court of another sovereign to one of the states: *Id.*

A Pennsylvania corporation was incorporated also by Maryland, and as a Maryland corporation commenced suit against the Pennsylvania corporation to declare an Act of Assembly void. *Held*, that the corporation violated no duty to Pennsylvania: *Id.*

No mere intention of a corporation to violate its duty is a cause of forfeiture: *Id.*

The legislature is not the final judge of whether the *casus judicis*, upon which the authority to repeal a charter is based, has accrued: *Id.*

Covenant.

Breach.—The covenant to warrant and defend against all persons claming the premises granted, by, from or under, certain persons named, is a covenant to warrant and defend against persons having valid claims, not pretences of claims without legal foundation and right: *Gleason* v. *Smith*, 41 Vt.

Debtor and Creditor. See *Stamp.*

Attachment of Judgment.—Fulmer & Co. held a policy of insurance against fire—a fire having occurred they brought suit on the policy: the attorney of Fulmer & Co. marked on the appearance-docket the suit for the use of Slate. Rowland recovered a judgment against the firm, and issued an attachment-execution making the insurance company garnishees. Slate was admitted to defend: the company made no defence. *Held*, that evidence was admissible to show, that making the judgment for the use of Slate was without authority of Fulmer & Co., and that it was to secure the individual debt of one partner: *Rowland* v. *Slate and Moyer*, 58 Penna.

An attorney at law has no authority as such to sell or assign the claim of his client: *Id.*

The entry made by the attorney was not part of the record: *Id.*

An assignment is not a judicial act but a matter *in pais*: *Id.*

Ejectment.

Demand of Possession.—To maintain ejectment, it must appear that there has been a disseisin of the plaintiff, as well as a wrongful possession by the defendant: *Chamberlin* v. *Donahue*, 41 Vt.

If the defendant is in possession with the plaintiff's permission and acquiesence, without claim of ownership or refusal to yield the possession, a demand of possession or request to quit in reasonable time is necessary in order to render the defendant's occupancy wrongful, and as constituting an ouster of the plaintiff: *Id.*

Entry by License.—To maintain ejectment, the plaintiff must establish that he is the owner of the premises in question, and lawfully entitled to the immediate possession of the same, and that the defendant was, at the time of the commencement of the action, in actual possession of said premises, and unlawfully and wrongfully withholds such possession from the plaintiff: *Pierce* v. *Tuttle*, 53 Barb.

An entry under a contract to purchase, is an entry by leave and license which, while it remains unrevoked, protects such possession as against an action of ejectment. A vendor cannot eject his own vendee who has entered by license, or under an express agreement giving him such possession; until such license is rescinded, or such agreement broken on the part of the vendee: *Id.*

But if the vendee is in default in making any of the payments, or in performing any of the conditions or covenants specified in the contract of sale, ejectment may be brought by the vendor, without any notice to quit or demand of possession: *Id.*

If the vendor, on the day appointed, offers to perform on his part, and tenders a deed for that purpose, but the vendee does not pay the purchase money or offer to do so, but refuses to receive the deed, this puts the latter in default; and the legal consequence of such default is, that it revokes the vendee's license to occupy the premises, and makes his occupation thereafter wrongful. The vendor may thereupon bring ejectment without giving any notice to quit: *Id.*

Eminent Domain.

The right of eminent domain, in the state, does not authorize the taking of property belonging to the public as a highway, and donating it to an individual: *The People ex rel. Failing* v. *The Commissioners of Highways of the town of Palatine*, 53 Barb.

Evidence.

Acts of Officers of United States—Certificates from Departments.—The official character of persons acting in the capacity of mustering officers of the government during the rebellion, known to the whole community and recognised by the public at large, is *primâ facie* to be assumed: *Chapman Township* v. *Herrold*, 58 Penna.

In an issue to determine whether the treasurer of a township was entitled to credit for bounties paid by him to volunteers, the mustering officers can prove their own acts and official papers, and persons who saw and heard the mustering officers taking in recruits and giving their official papers evidencing it, can give the evidence of these facts: *Id.*

The papers thus evidenced may be submitted to the jury: *Id.*

Certificates from the War Department of the mustering in of recruits are in no sense records importing absolute verity: *Id.*

Boundary Line—Declarations of Deceased Person.—The declarations of a deceased person as to the location of a disputed boundary, otherwise admissible, are not rendered inadmissible by the fact that they were made off the land, and because the line referred to was not actually pointed out or shown: *Powers* v. *Smith*, 41 Vt.

The question was which of two lines fourteen rods apart was the true range line. One survey of 5th division lots was made in 1806, and one

in 1808, and one of these lines was run in one and one in the other of said years, and the one run in 1808 was conceded to be the true line. In 1830, G., then an old man, since deceased, an original proprietor, and one of the committee appointed to procure the survey of 1808, and who made the report, as recorded, and for awhile, at an early day, the custodian of the proprietors' records and plans, living three or four miles from the 5th division lots, and having one in same range as defendants' lot assigned to him as one of the proprietors, told the witness while at G.'s house to make a copy of the plan of surveys made by direction of the proprietors, that when he should survey in the 5th division he would find the range lines between the lots, and that the west line was the true one: *Held*, that this declaration was admissible: *Id.*

EXECUTION.

Levy not satisfaction of Judgment.—The holder of a promissory note sued the maker and obtained judgment, upon which execution was issued and goods supposed to be the property of the maker levied on; sale was prevented by an interpleader. *Held*, that the levy was not a satisfaction of the judgment, and no defence to an action against the endorser of the note: *Rice* v. *Groff*, 58 Penna.

Trustee Process—Promissory Note.—The principle is well settled in this state, that a man cannot be made liable by a trustee process, for notes or securities which he holds for the benefit, and as agent, of another: *Smith adm.* v. *Wiley*, 41 Vt.

But where A gave his notes to B for the amount of B's claim against C, and took a deed from C of certain lands, under an agreement to sell them when he could advantageously, and apply the avails to pay A the amount of his notes to B, and the balance, if any, to be paid to C or for his benefit, and, after making some proper expenditures on said lands, A sold the same for a greater sum than the amount of his claim thereon, and took pay partly in notes secured by mortgage, both running to himself, which he held as his own property, and not as agent of C, which notes were good for their amounts, but had not been paid at the time of A's disclosure as trustee, it was *held*, that A was chargeable as trustee of C for the excess in the sale of said lands above A's said liabilities and expenditures, which he had paid, and which amounted to more than the cash he had received for said lands: *Id.*

Process—Service—Trustee—Motion to dismiss.—Where real estate is attached and the defendant does not reside in this state, and has no tenant, agent or attorney in this state, the act of the officer serving the writ, in leaving a copy in the office where by law a deed of such estate is required to be recorded, with a description of the property attached, for the purpose of making the attachment and creating a lien thereon, does not constitute notice to the defendant, but, in such cases, the statute, (General Statutes ch. 83, § 37,) requires another copy, having the officers' return thereon, to be left with the town clerk for the defendant, in order to complete the service and constitute notice to the defendant: *Washburn* v. *N. Y. and V. Mining Co., and Allen, Trustee*, 41 Vt.

There can be no judgment against a trustee, unless there is first a

judgment against the principal defendant, and where it is apparent that such judgment cannot be rendered, as in case of want of service upon the principal defendant, and he does not appear and submit to the jurisdiction of the court, the trustee ought not to be kept in court and the action will be dismissed on his motion: *Id.*

If the principal defendant waives the want of service upon him, or defects in the form of the proceedings, then the trustee cannot take advantage of such defects, or want of service: *Id.*

Executors and Administrators.

Power to create Charges upon Estate.—An executor or administrator in this state, as a trustee of the estate, may create a charge upon it for expenses attending his administration, which he is authorized to incur in the proper discharge of his trust. Thus he may render the estate liable by contracting for suitable head-stones to be placed at the grave of the deceased, when there are sufficient assets properly applicable to that purpose: *Ferrin* v. *Myrick*, 53 Barb.

An executor or administrator by ordering such articles as a part of the funeral expenses, makes himself personally liable for them; but if he pay them himself, the estate is liable over to him for the amount: *Id.*

Frauds, Statute of.

See *Husband and Wife.*

Gold Coin.

See *Conflict of Laws.*

Guaranty.

See *Bills and Notes.*

After a guarantor of rent has become fixed and liable for rent in arrear, such liability can only be discharged by payment, release, or other satisfaction. It will not be discharged by a surrender of the unexpired term and the possession of the demised premises, by the lessees, without the knowledge or consent of the guarantor, upon an agreement that the lessor will release his claim for rent yet to accrue, but that such surrender shall not affect his claim for rent already due. Johnson, J., dissented: *Kingsbury* v. *Williams*, 53 Barb.

Such a case is not within the principle which discharges a surety upon the ground of a variation of the contract without his consent; the remedies of the guarantor being in no way impaired or delayed by the surrender: *Id.*

Guardian and Ward.

Liability of Guardian who deals with Trust Money as his own.—A guardian received stocks as part of his ward's estate, sold them and kept his accounts as if he had the stocks. *Held*, that he was chargeable with the stocks at the highest rate they attained after the conversion: *Lamb's Appeal*, 58 Penna.

The guardian charged with expenses of audit, &c., and denied commissions in this case: *Id.*

Husband and Wife.

Witness—Evidence—Statute of Frauds.—The plaintiff married the defendant's daughter, and the defendant claimed, that, after their mar-

riage, the plaintiff agreed to pay him for some articles of clothing which he had bought for his daughter before her marriage, with the understanding that she was to pay for them. This action of book account in which these articles of clothing were the items in dispute, was brought after the death of the plaintiff's wife: *Held*, that the defendant was a competent witness, the issue being upon the plaintiff's agreement with the defendant, not upon the deceased wife's agreement, though the latter was a material fact, bearing on the plaintiff's liability and defendant's right of recovery: *Cole* v. *Shurtleff and Trustee*, 41 Vt.

The design of the statute, Gen. St. Sec. 24, page 327, is to exclude a party from testifying when the other party to the contract in issue and on trial is dead, and when in the action such deceased party is represented by an executor or administrator, and contemplates a suit or proceeding, the determination of which may affect the estate of the deceased party: *Id.*

A naked parol promise of a husband made prior or during coverture, to pay an ante-nuptial debt of his wife, she not having been discharged or released from its payment, is within the statute of frauds, and cannot be enforced by action: *Id.*

The liability of a husband for the ante-nuptial debts of the wife, can only be enforced during coverture by a joint action against both. It terminates on the death of the wife, unless enforced during coverture by the recovery of a judgment: *Id.*

A parol promise of the husband during coverture to pay such debts made only in consideration of his existing liability, creates no new legal liability on him, but leaves such debts and the parties as they were before: *Id.*

A promise generally to pay on request what the promiser was liable to pay on request in another right, is without consideration and invalid: *Id.*

LEGAL TENDER NOTES. See *Conflict of Laws.*

MUNICIPAL CORPORATION. See *Corporation.*

PARENT AND CHILD.

Contract—Soldier's Pay and Bounty.—The plaintiff was the son of the defendant, and testified that while a minor he went out to work and his father told him he might have all he earned; that he afterwards enlisted in the army, while still a minor, with his father's consent and promise that whatever money he sent home should be his, the plaintiff's, and he would pay it to him, and testified in detail the amount he sent his father, and when, &c. The defendant claimed that the testimony of the plaintiff, if truthful, established only a state of facts from which the jury were at liberty to infer, or not to infer, such a relation as would entitle the plaintiff to recover; but the court instructed the jury that if they found the plaintiff's account of the matter, as stated in his testimony, was true, then their verdict should be for the plaintiff. *Held* that in this there was no error: *Ayer* v. *Ayer*, 41 Vt.

PARTNERSHIP.

Dissolution.—One partner may at any time withdraw and cause a

technical dissolution of the firm, subject to liability to his partners if the act be wrongful: *Slemmer's Appeal*, 58 Penna.

On the subject of dissolving partnerships, a large discretion is vested in courts of equity. Dissolution will not be decreed on slight grounds: *Id.*

Where a partnership can no longer be continued with comfort and advantage to all concerned, the court will consider not only the express contract of partnership, but also the duties and obligations implied in every partnership contract: *Id.*

Where a valuable business has grown up by the labors and contributions of all, the court should be careful to preserve it, and put all the partners on a fair and equal footing to compete for it: *Id.*

To appoint a receiver, direct a sale of the whole, and a winding up of the business, would destroy its value without benefiting either party: *Id.*

PATENT.

Suits relating to Patents in State Courts.—Where the question of the validity of a patent is directly involved the jurisdiction of the United States courts is exclusive: state courts have no cognisance either at law or in equity: *Henry T. Slemmer's Appeal*, 58 Penna.

When patent rights come into question collaterally, their validity may be inquired into by state courts: *Id.*

State courts can, either at law or in equity, enforce a contract or trust whose subject is a patent, if the validity of the patent is not directly in question, and may pass upon that when it arises *ex necessitate*, as in defence to an action on a contract: *Id.*

A joint patent taken out on the sole invention of one, or a sole patent on an invention of more than one, is void: *Id.*

Equity cannot decree an assignment of a patent on the ground, that the plaintiff and not the patentee is the original inventor: *Id.*

Mere suggestions or assistance from others will not invalidate the right of the patentee. To effect this the suggestions must furnish *all* the information to enable the alleged inventor to construct the improvement or use the new process completely and perfectly: *Id.*

It is not necessary to invalidate the right of the patentee that every minute thing about the invention should be communicated, but the substance must be: *Id.*

In a joint invention, each party should invent or discover something essential to the whole result: *Id.*

A patent is the reward granted by the public for the skill and ingenuity of the inventor: no one else can have the exclusive right; and he may assign it after the patent has issued: *Id.*

Within the limits prescribed by law, the inventor may grant the use of his invention before the patent is issued, provided he does not thereby forfeit his right or abandon his discovery to the public: *Id.*

If one employed by another, whilst receiving wages, experiments at the expense of his employer, constructs an invention, and permits his employer to use it, without compensation paid or demanded, and then obtains a patent, a license to the employer to use the patent will be presumed: *Id.*

PAYMENT.

Note of a Third Person.—An agreement by a creditor to take the

note of a third person in payment of his debt, with the actual transfer of the same, and a written acknowledgment that it is so taken without recourse on account of the creditor's claim, furnish sufficient grounds for the jury to find that the note was taken at the risk of the creditor. If so, the receipt of the note is a payment of the claim, and an extinguishment of the right of action thereon: *Roberts* v. *Fisher et al.*, 53 Barb.

Pleading.

Assignment—Chose in Action—Consideration.—In an action by the assignee of a *chose in action* not negotiable, against the maker, upon a special promise to the plaintiff to pay him as assignee, the particular consideration for the transfer as between the plaintiff and the assignor need not be alleged in the declaration; it is enough if it is averred that by the transfer the plaintiff became the sole owner. Whether the transfer was by purchase for a valuable consideration, or by way of a gift, is immaterial to the validity of the defendant's promise, if thereby the plaintiff became the absolute owner: *Smiley* v. *Stevens*, 41 Vt.

Stamp.

Judgment on Unstamped Bond.—A judgment entered upon a bond not stamped is not void, and if erroneous, can be reached only by the defendant not by a creditor: *Ritter* v. *Brendlinger*, 58 Penna.

An assignee for the benefit of creditors takes the debtor's estate as a volunteer, his title must give way to a judgment, and unless by charging fraud, he cannot intervene to stay rightful proceedings on the judgment: *Id.*

Stay of Proceedings.

A motion for a stay of proceedings in an action, on the ground that another suit is pending which embraces the same matters, will not be granted where the parties to the two actions are not the same, and it does not appear that the entire relief demanded and sought in the one action could be awarded in the other: *The People* v. *The Northern Railroad Co. et al.* 53 Barb.

Where the material allegations of the complaint in an action by the people against a corporation for its dissolution, are not denied by the answer, and it thus stands admitted of record that the corporation has forfeited and surrendered its charter and franchise, it would not be a proper exercise of judicial authority to stay the proceedings on the ground of another action pending, in which the corporation is plaintiff, the effect of which would be to prevent the entering of the judgment required by law to be awarded, and to permit the corporation to continue in the use of its corporate rights: *Id.*

Tax.

Set off against Creditor of the Tax Payer—Tax—Contract—Trustee Process.—Where the town summoned as trustee, was owing the defendant $112 for professional services, and at the same time there was a town tax against the defendant unpaid of $131.88, it was *held* that the town was not entitled to apply said tax upon said debt and thus avoid being held under the trustee process: *Johnson* v. *Howard, and Town of Thetford, Trustee*, 41 Vt.