It is contended that in equity the vessel should contribute for the loss, as the deck load was used in putting her in trim for sea. That is begging the question. I cannot enter into consideration of the inducement to the contract of the parties.

The libel will be dismissed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MARYLAND.[1]

COURT OF CHANCERY OF NEW JERSEY.[2]

SUPREME COURT OF NEW YORK.[3]

SUPREME COURT OF CALIFORNIA.[4]

SUPREME COURT OF MISSOURI.[5]

AGENT.

Rights of Principles—When knowledge of the Agent is not notice to the Principal.—The appellant was employed by the agent of the appellee, to do certain work in fitting up offices for the latter, in the city of Baltimore; the work was done as required, and the offices were accepted by the appellee, and used in the prosecution of its business. When the work was nearly done, the agent of appellant applied to the agent of the appellee for some money on account; the latter thereupon gave his post dated check for $700 on Thomas & Co., bankers, in the city of Baltimore, payable to the order of the appellant, but stated, at the same time, that there was not then money enough with the bankers to pay it, but that he would be supplied with funds in time to pay it, by the treasurer of the appellee, who was then absent from town, but would return in a few days. On the faith of this statement, a receipt for the $700 was given by the agent of the appellant. On the day of the date of the check, and several times afterward, the check was presented to Thomas & Co., and payment demanded; but the same was refused on the ground that there was not money enough to the credit of the drawer. Subsequently the appellant's agent called several times at the office of the treasurer of the appellee, and was told each time that he was out of town. Shortly after the check was given the agent of the appellee drew a draft upon his principal, in favor of Thomas & Co., but being at the time largely indebted to his principal, payment was refused until he brought in a number of vouchers, including the receipt for $700, when the draft was paid; it would

1 From J. S. Stockett, Esq., Reporter, to appear in 30 Md. Rep.

2 From Chas. E. Green, Esq., to appear in Vol. 5 of his Rep.

3 From Hon. O. L. Barbour, to appear in Vol. 55 of his Rep.

4 From J. E. Hale, Esq., Reporter, to appear in 37 Cal. Reports.

5 From T. A. Post, Esq., Reporter, to appear in 45 Mo., Rep.

not have been paid, if a satisfactory amount of vouchers had not been brought in. The account of the agent of the appellee was finally closed on the books of the latter, by credits for vouchers brought in: *Held*, 1. That the appellant is not entitled to recover from the appellee the amount of the check. 2. That the knowledge of the agent of the appellee was not notice, either actual or constructive to his principal: *Brown* v. *Bankers' and Brokers' Telegraph Co.*, 30. Md.

If a creditor of the principal settles with the agent, and takes a note or other security from the latter for the amount due by the principal, although as between the parties, it is intended only as a conditional payment, yet if the creditor gives a receipt as if the money were received, or the security were an absolute payment, so that the agent is thereby enabled to settle with the principal as if the debt had been actually discharged, and the principal would otherwise be prejudiced, the debt will be deemed, as to the latter, absolutely discharged: *Id.*

BANK.

Bank Depositor–Forged Check–Clearing House–Negligence.– On the 20th of December, 1868, H presented himself at the Commercial and Farmers' National Bank, to whose officers he was unknown, and stated that he desired to open an account, and presented a check on the First National Bank for $4,600,15, purporing to have been drawn by A, dated the 18th of December, and payable to the order of H, who endorsed it, and the amount of the check was entered to his credit, as cash, and a bank-book furnished by the bank; but on the same day the teller was directed by the cashier not to allow the account to be drawn upon until the deposited check was known to be good or was paid. On the following morning this check was sent to the Clearing House, and thence was taken to the First National Bank, where it was passed as genuine by the proper officers of the bank, charged to the account of A, and credited to the Commercial and Farmers' National Bank. By the custom and usage of all the banks in the City of Baltimore, where a check is sent through the Clearing House to the bank on which it is drawn, and is not heard from before eleven o'clock of the day on which it is so sent, the bank sending it has the right to assume it was good, or had been paid, and to act accordingly. On the 22d December, H called at the bank where he had made the deposit, with his bank-book, filled up a check for $4,500, payable to his own order, and handed it for payment to the paying teller, who, after satisfying himself by inquiry of the receiving teller as to his identity, and by the examination of the books of the bank as to the state of his account, paid him the amount of his check. On the 24th December, the account of A was overdrawn to the amount of $372 on the books of the First National Bank, and the overdrawing continued until the 29th, when his account was overdrawn $2,297; after bank hours of that day A was, for the first time, informed by the bank officers of such overdrawing, when, upon an examination of his account and checks, he pronounced the check deposited by

tion H a forgery. Notice of the forgery was given by the First National Bank to the Commercial and Farmers' National bank, on the 31st of December, and repayment of the money demanded; but the latter denied its liability beyond the $100.15 still remaining to the credit of H. The First National Bank having refunded to A the amount of the forged check, sued the Commercial and Farmers' National Bank to recover the amount thus paid. *Held*, 1. That the law imposed upon the First National Bank the obligation of knowing the signature of A, one of its depositors, and it is, therefore, not entitled to recover from the Commercial and Farmers' National Bank the sum of $4,500 paid by the latter to H, for as between parties equally innocent and equally deceived, but where one is bound to know and to act upon its knowledge, and the other has no means of knowledge, the loss should be thrown upon the former rather than upon the latter: *Commercial and Farmers' Nat. Bank* v. *First Nat. Bank*, 30 Md.

2. That the sending of the check deposited by H through the Clearing House by the Commercial and Farmers' National Bank, and the failure to communicate to the First National Bank the fact that it was received from a stranger, was not such negligence as should throw the loss upon the former bank: *Id.*

3. That the First National Bank is entitled to a judgment for $100.15, the balance remaining in the Commercial and Farmers' National Bank to the credit of H: *Id.*

BANKRUPTCY.

Jurisdiction—State Insolvent Laws.—Under the Act of Congress entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States," approved March 2, 1867, the Federal courts have exclusive jurisdiction in all matters and proceedings in bankruptcy: *Van Nostrand* v. *Carr*, 30 Md.

The application of a party for the benefit of the Insolvent Laws of Maryland is an act of bankruptcy within the provisions of the 39th section of the Bankrupt Law of the United States: *Id.*

The insufficiency of the assets of an insolvent debtor to pay fifty per cent. of his debts, and the uncertainty of his being able to procure the written consent of a majority in number and value of his creditors, who have proved their claims, to his discharge in no way affect the jurisdiction of the Bankrupt Court; its jurisdiction is independent of the right of the party ultimately to obtain his discharge: *Id.*

State Insolvent Laws—Proceedings pending in State Courts when Bankrupt Law passed.—The statute of this State for the relief of insolvent debtors and protection of creditors (Stats. 1852, p. 69), is in conflict with the Federal Bankrupt Law, passed March 2d, 1867, and has been suspended in its operations from the time said bankrupt law went into effect: *Martin* v. *Berry*, 37 Cal.

The Federal Bankrupt Law, passed March 2d, 1867, did not go into effect so as to suspend the operations of the insolvent law of this State until June 1st, 1867: *Id.*

Where a State court has acquired jurisdiction under a State law of a case of insolvency, and is engaged in settling the debts and distributing the assets of the insolvent before or at the date at which an Act of Congress upon the same subject takes effect, the State court may nevertheless proceed with the case to its final conclusion, and its action in the matter will be as valid as if no law upon the subject had been passed by Congress: *Id.*

CERTIORARI.

Will not Lie, Except to Review Judicial Proceedings.—The action of a county court in subscribing to railroad stock and issuing bonds for payment thereof, is discretionary and not a judicial proceeding, and therefore not the subject of review by writ of *certiorari* from the Supreme Court: *Matter of Saline County Subscription*, 45 Mo.

CONTRACT.—See *Frauds, Statute of:*

Offer to Sell Land—Acceptance.—A paper signed by A, by which he agrees that B, in consideration of $1 paid, shall have for thirty days the refusal of certain land therein designated, and that he will convey the same in consideration of $20 per acre, $500 to be paid on the execution of the deed, and the balance in a mortgage on the land, with interest at six per cent., no time being named for delivering the deed, nor any time for which the mortgage shall run is not a contract, but only a refusal or offer of the lands to B at a certain price, and cannot be converted into a contract, unless accepted within the thirty days: *Potts* v. *Whitehead*, 5 C. E. Green.

An acceptance of an offer in writing to convey land within a certain time, in consideration of a price named. may be communicated by mail; but it must be actually placed in the post-office, directed to the proper place; if directed to a place where the party to be bound by it only sometimes resorts, it must be proved to have been received: *Id.*

An offer in writing within a certain time to convey land, must be accepted within the time fixed: *Id.*

A contract, any material part of which remains to be settled by negotiation between the parties, will not be enforced in equity on a bill of specific performance: *Id.*

Where there was a written offer to convey land within a time fixed at a price named, of which a portion named was to be be paid on the execution of the deed, and the balance in a mortgage on the land, with interest at six per cent: *Held*, that the want of designation of any time when the great bulk of the consideration (that to be secured by mortgage) was to be paid, left a material part of contract to be settled by negotiation; and hence, even if such offer had been accepted, a decree for specific performance would not be made: *Id.*

CORPORATION.

Validity of Corporate Elections—Remedy is at Law.—The court of chancery has no jurisdiction to determine the validity of an elec-

of the directors of a private corporation, and whether certain persons claiming to be and acting as directors are such. It can, therefore, grant no relief that is merely incident to that power: *Owen* v. *Whitaker*, 5 C. E. Greene.

The only adequate remedy is in the courts of law, which have power to adjudge the office vacant, and to compel the admission of a person properly elected. The statute (Nix. Dig., 171, § 19) fully confers this power: *Id.*

Powers of Receiver.–When a receiver of the property and effects of a corporation if appointed and is qualified, he becomes, by the express terms of the statute, a trustee not only for the creditor upon whose application he was appointed, but for all the other creditors of the corporation: *Libby* v. *Rosekrans et al.*, 55 Barb.

Directions to Receiver.–And where, upon the application of such receiver, directions are given by the court as to the manner of making a sale of the property of the corporation in his hands, such directions cannot be assailed, in a collateral action, on the ground that they were, in effect, procured by a judgment creditor of the corporation who then was, and still is, a justice of the court giving the directions: *Id.*

It does not follow from that circumstance that the credit or was not authorized to apply for an order of sale, and directions as to the manner of conducting it; or that he could not draw the petition on which it was made, and the order itself, either before or after it was direc ted to be entered: *Id.*

Sale by Receiver–Setting aside.–It is no ground for setting aside a sale of the property of a corporation made by a receiver, that the creditor upon whose application the order of sale was obtained, being a justice of the court, was, by means of his official position, able to exercise any improper influence in the proceedings over the court; where it is not shown that his official position resulted in producing any different order or direction than the settled practice authorized the court to give, or than would have been given, where any other person was interested in the proceedings to be taken: *Id.*

Agreement against Public Policy.–An agreement by which a candidate for office receives from another person money to aid him in securing his election, and in consideration thereof agrees to share with such other person a portion of the proceeds and emoluments of the office when elected, is immoral, against public policy, and *malum in se*, and is totally void: *Martin* v. *Wade*, 37 Cal.

Whether a contract against public policy be executory or executed, no action can be brought, either on the contract or to recover back the consideration, or to recover judgment on a promissory note made in consideration of a chancellation of such contract: *Id.*

There can be no recission of a contract against public policy. Such contract is void at its inception, and there is nothing to rescind: *Id.*

DEBTOR AND CREDITOR.—See *Husband and Wife.*

Judgment against an Executor.—A creditor who has recovered a judgment against the executor of a surety of his debtor, may en-

force his claim by execution against the property of such executor, notwithstanding the pendency of an injunction enjoining the creditors generally of the principal debtor from proceeding against him at law.—*Reall, Executor* v. *Osbourn*, 30 Md.

An absolute judgment against an executor is conclusive of the existence of the debt and of the sufficiency of assets to pay it; and a *fieri facias* may be issued thereon and levied upon the lands of the executor, as well as upon his goods and chattels: *Id.*

Sale void for fraud as against Creditors.—Although a bill of sale of chattels to one who agrees to advance capital and the chattels, and carry on business with the capital and chattels, and employ the grantors at fixed wages, may have been intended by the latter to defraud their creditors, yet if their object was unknown to the grantee, their fraudulent intent will not affect him. Nor is it sufficient to make such transfer void, that it does actually hinder and delay creditors if such was not the object and intent of it: *Atwood* v. *Impson*, 5 C. E. Green.

Knowledge by the purchaser that the seller is embarrassed and largely in debt, and that if no one would buy his goods, his creditors would get their debts out of them will not affect the validity of the sale, provided the object in purchasing was not to delay or hinder creditors, but only to make a good bargain, or to procure something of which the purchaser was in want: *Id.*

A sale, in making which the object of the debtor is to hinder, delay or in any way put off his creditors, is void if made to any one having knowledge of such intent, and this knowledge need not be by actual positive information or notice, but will be inferred from the knowledge by the purchaser, of facts and circumstances sufficient to raise such suspicions as should put him on inquiry: *Id.*

Payment.—Money deposited by a debtor voluntarily with a third person or in a bank, for the benefit of his creditor, without authority of the creditor, is not payment of a debt. The creditor is not bound to send or draw for it unless he accepts it as payment: *Freeholders of Middlesex* v. *Thomas*, 5 C. E. Green.

A mortgagor borrowed money and gave a second mortgage, agreeing with the lender to use part of the money to pay off a first mortgage, which was held by the board of chosen freeholder. His attorney notified the county collector, who had the custody of the first mortgage, that he had deposited the money in bank, and the collector receipted the bond and canceled the mortgage of record.

In ten days afterward the bank stopped payment, and the money not having been drawn the officer canceled the receipt, and appended a memorandum to the record that the cancellation was entered by mistake: *Held*, that the transaction was not a payment. The first mortgage remained a valid security, and might be enforced in a suit for foreclosure: *Id.*

A check or promissory note, either of the debtor or a third person, received for a debt, is not payment if not itself paid, except in cases where it is positively agreed to be received as payment: *Id.*

Accepting a check or draft implies an undertaking of due diligence in presenting it for payment, and if the drawer sustains loss for want of such diligence, it will be held to operate as payment: *Id.*

A written receipt is not conclusive, but proof is admissible that the payment for which it was given was not actually received: *Id.*

EXECUTION.

Act March 23, 1863—Fresh Levies after Return Day—Effect of.—Where an execution was levied, prior to the return day thereof, on certain property, it would not continue in force, under the Act of March 23, 1863 (Sess. Acts 1863, p. 20, § 2), for the purpose of a fresh and independent levy on other property after the return day of the execution. Under that act the execution would afterward be dead for all purposes, except the preservation of rights which attached prior to the return day by virtue of the antecedent levy: *Donald* v. *Gronefield*, 45 Mo.

FIXTURE.

Removal of—Agreement Concerning.—Where a building is erected by one person on the land of another by his permission, upon an agreement or understanding that it may be removed at the pleasure of the builder, it does not become a part of the real estate, but continues to be a personal chattel and the property of the person who erected it: *Goodman* v. *Hann. and St. Jos. R. R. Co.*, 45 Mo.

Where the landlord, before the expiration of the term, enjoins the tenant from removing the chattels or fixtures, the tenant will be allowed a reasonable time after the dissolution of the injunction within which to demand and remove the same: *Id.*

FORCIBLE ENTRY AND DETAINER.

Construction of Words "disseizin" and "Lawfully Possessed" —Possession of Part of Premises—Landlory and Tenant.—A claimed title to certain lands by virtue of the possession of B, his grantor, but never had possession himself: *Held*, That section 36, chap. 187, Gen. Stat. 1865, concerning suits for forcible entry and detainer, by heirs, devisees, grantees, etc., of persons dispossessed under the statute, was not intended to apply to such cases. The heirs, etc., have no greater rights than the ancestor, if living, or the vendor, if he had not sold, could have had. The defendant must still be found guilty of actual dispossession. The object of the statute was not to change the rights or liabilities of the parties but when they had accrued, to provide that they should not lapse by death or sale: *McCartney's Adm.* v. *Alderson*, 45 Mo.

The statute concerning forcible entry and detainer (Gen. Stat. 1865, ch. 187) is a possessory action merely. The term "disseizin," as therein used, implies actual dispossession. The term "lawfully possessed" does not involve an inquiry into the lawfulness of the possession as regards title, but only in regard to the mode of obtaining it, and is equivalent to "peaceably possessed."

In actions under this statute, proof of title in plaintiff, with payment of taxes and acts of ownership merely, is not evidence of peaceable possession: *Id.*

The possession of a portion of the premises in dispute carries the possession of the whole, if the title covers the whole: *Id.*

The landlord has no such possession as will enable him to complain of a disseizin of his tenant: *Id.*

Deed as Evidence of Possession.—Where in a forcible entry action the plaintiff, after introducing evidence tending to show an actual possession of the demanded premises by one C up to the time of the alleged forcible entry, introduced in evidence against the defendant's objection thereto, a deed to the premises from C to plaintiff, dated one month prior to said entry the apparent possession of the premises by C was the possession of plaintiff: *Held*, First, that there was no error in admitting the deed; and second, that the fact sought to be established by the deed might properly have been proven by parol evidence: *Morgan* v. *Higgins*, 37 Cal.

In forcible entry actions, evidence concerning the possession of the *locus in quo* must be relevant—must, to be relevant, be such as to connect the party asserting the same with the actual possession at the time of the alleged forcible entry: *Id.*

Entry by night—Demand of Possession.—The third section of the Forcible Entry and Detainer Act of April 2d, 1866, which makes persons entering lands or tenements in the night time, or during the absence of the owner, and refusing to surrender possession on demand, guilty of forcible detainer, is not unconstitutional: *Mecham* v. *McKay*, 37 Cal.

The demand and refusal of possession required by the third section of the Forcible Entry and Detainer Act must be made after the entry of the defendant.: *Id.*

The refusal, by the defendant in unlawful detainer to permit the plaintiff to cut through the brick walls of the room, the possession of which is in controversy, is not evidence of a refusal to deliver up possession of the room, if that refusal was given for the purpose of preventing an injury to the walls: *Id.*

Frauds, Statute of.

Contract to find Purchaser of Land.—A contract by which P agrees that if H will, within a fixed time, find a purchaser of P's land at two hundred dollars per acre, P will sell and convey the land to the purchaser, and that H may have for his services all that can be obtained from the purchaser over two hundred dollars per acre, is not a contract for the sale of any land or interest in land, within the meaning of the eighth section of the statute of frauds: *Heyn* v. *Philips*, 37 Cal.

Such contract is one of employment merely, and if H finds a purchaser and P refuses to sell, H may recover from P for his services what the purchaser was willing to pay over the price: *Id.*

Husband and Wife.

Separate Estate of Wife—How Charged with her Debts.—The debts of a married woman holding an estate secured to her separate use by the Act of 1852, when contracted by for the benefit of her separate estate, or for her own use on the credit of that estate, will be charged by a court of equity, upon the separate estate, and payment enforced out of it: *Armstrong* v. *Ross*, 5 C. E. Green.

But such debts are not a lien upon her separate estate until made a lien by a decree of a court of equity, and the lien arises by virtue of the decree: *Id.*

A married woman cannot charge her separate estate, held under the Act of 1852, by an appointment in writing, as she could formerly charge estates held by trustees for her, subject to her appointment; but can only convey or charge it by deed executed with her husband, and duly acknowledged upon a separate examination, except in cases where her husband is insane, or in State prison, or living separate from her by judicial decree: *Id.*

The deed or mortgage of a married woman for lands in this State, though duly acknowledged, if made without her husband is void: *Id.*

Independent of the statutory provisions, an estate can be devised or given to a married woman for her separate use, directly, without the intervention of trustees; and in that case, the husband will, in equity, be considered a trustee for the wife as to any estate which might, by law, vest in him. But in such case the wife could not convey lands so devised to her separate use without her husband joining in the deed, or without the acknowledgment required by a married woman: *Id.*

Wife's Earnings as against Creditors.—Although a husband may give to the wife her services and earnings as against his creditors, when she carries on a separate business, without his assistance, with her own means and on her own account, yet in all cases where a business is carried on by a husband and wife in co-operation, and the labor and skill of the husband are contributed and united with those of the wife, the business will be considered as that of the husband and not that of the wife, and the proceeds will not be protected for her as against his creditors: *National Bank of the Metropolis* v. *Sprague*, 5 C. E. Green.

The fruits of the wife's labor and skill, under such circumstances, are not her separate property within the terms or intention of the act for the better securing the property of married women: *Id.*

Even if that act gave a wife the capacity to accept a gift of property from her husband, she could not be allowed to retain such gift as against his creditors, when made under circumstances which would prevent it from being sustained in favor of a stranger: *Id.*

A conveyance taken in the name of the wife, of property purchased with means of her husband when in embarrassed circumstances, in order to screen it from his creditors, will be set aside as against future creditors: *Id.*

A married woman, who had no separate property, and had never carried on any separate business, made a power of attorney to her

husband to carry on, in her name, a hotel. The husband was, at the time, extensively engaged in similar enterprises, and had become embarrassed. The husband negotiated and executed, in the name of his wife, acting as her attorney, articles of copartnership with S, for conducting the hotel intended. Land and buildings for such hotel were subsequently purchased, and the deed for them was taken in the individual names of the wife and of S, her partner. A part of the first installment of the purchase-money was paid from money alleged to have been borrowed by the wife for the purpose and part by the husband from his own means. The complainants advanced money to the husband to be used in fitting up the hotel, upon the faith of his representations to them that he was the purchaser of a half interest in it. They now file a bill praying that the wife may be decreed to hold the title to said property as trustee for her husband, and convert it so as to be held subject to their remedy at law: *Held*, that the circumstances proved an intent on the part of the husband and wife to take the title in her name for the purpose of delaying and defrauding his creditors, and that her complainants were therefore entitled to the relief prayed: *Id*

JUDGMENT.

Modes of Correcting Errors in.–The law provides but two modes of correcting errors in legal proceedings: one by *motion*, where the error is one of form, arising out of a failure to conform to the settled rules of practice of the court; the other by *appeal*, where the errors consist in the omission of the court itself to properly observe and apply the law affecting the rights involved in controversy, in making the adjudication upon them: *Libby* v. *Rosekrans et al.*, 55 Barb.

Where, in actions upon contracts for the sale and purchase of land the judgments ascertained the amounts prospectively to become due to the plaintiffs, respectively for principal and interest, at the several times when the same were agreed to be paid by the defendant, and then directed that in case the same should, at those periods, remain udpaid, then the plaintiffs should have judgments for their recovery and executions of their collections: *Held*, that there was not only nothing improper in this disposition of the cases, but that, on the contrary, the correct practice relating to them was pursued: *Id.*

Held, also, that even if the directions contained in such judgments were unwarranted by the law applicable to such cases, the error could not be corrected by means of an independent action against the plaintiffs in such judgments, brought by a stockholder in the corporation which was the defendant therein: *Id.*

LIMITATIONS.

Administrator's Bond–Construction of Statute.–An action on an administrator's bond has ten years to run from the date of the accruing of the action. (R. C. 1855, ch. 103. Art. II. § 2.) Section 9. ch. 11,9 Gen. Stat. 1865, amending section 3, Art. II., of the Practice

Act of 1849, Sess. Acts 1849, p. 74), was intended to enlarge the range of the ten years' limitation, as applied to personal actions, so as to include actions upon written instruments, where the payments contemplated by the obligation were to arise indirectly and collaterally as well as directly. Section 48, Art. 1, ch. 2, R. C. 1855, (Gen. Stat. 1865, ch. 120, § 49), limiting actions against the sureties of administrators to seven years, is restrictive in its character and was framed upon the evident hypothesis that the general limitation act provided a longer time in which such suits could be brought: *Martin* v. *Knapp*, 45 Mo.

Master and Servant.

Masters' Liability for Unskillfulness of Servant.—If a servant does, without special orders, an act of such a nature that he is justified in doing it, as between him and his master, without an express order, the master is liable for damages sustained by an individual in consequence of the act being done in an unskillful manner: *Gilmartin* v. *The Mayor, &c., of the City of New York*, 55 Barb

Thus, where the defendant's gardener, in attempting to take down a liberty-pole, in a public park, which had become dangerous, did it so unskilfully that it was precipitated against a telegraph pole, which was thereby broken off and cast against the plaintiff's daughter, causing her death:—*Held*, that the defendants were liable, although the gardener had received no express orders to remove the pole from the officer having charge of the public parks: *Id.*

Negligence.

Allegation of Negligence, Sufficiency of.—In a suit for damages against a railroad company for killing a cow, the allegation that the act was done carelessly and negligently was sufficient, and showed a good cause of action: *McPheters* v. *Hann and St Jos. R. R. Co.*, 45 Mo.

Damages—Railroad Companies—Injuries—Towns—Public Crossings.—Where an injury, caused by a railroad train, occurred at a public crossing in the streets of a town, no recovery could be had without proof of actual negligence.

The doctrine that the owner of cattle is obliged to keep them on his own premises, and that if they stray therefrom they are trespassers, and the owner is guilty of negligence, has never been the law of this State: *Id.*

Semble, that in law there is no difference between negligence and gross negligence, the latter being nothing more than the former, with the addition of a vituperative epithet: *Id.*

Partnership.

Partnership as to Third Persons—Province of the Jury.—Where a party by his conduct held himself out as a partner of another, in a transaction affecting a third person, who had reasonable grounds to believe that he was such partner, and so trusted the

firm, and had no knowledge to the contrary, they will be clearly held partners as to such third person: *Thomas* v. *Green*, 30 Md.

Whether a person held himself out as a partner, is a fact to be ascertained by the jury from all the evidence in the case: *Id.*

Remedy against Estate of Deceased Partner.—The rule that the creditors of a copartnership will not be permitted to reach the individual estate of a deceased partner until all the separate creditors are satisfied, applies only to cases founded on the relation of debtor and creditor, and cannot interfere with the remedy against any individual, or his estate, as a wrong-doer: *Morgan et al.* v. *Skidore. Ex'r*, 55 Barb.

Lien on Individual Property of one Partner for Partnership Debt—Preference.—The rule of courts of equity and bankruptcy, when partnership assets are to be administered there, that they must be applied to the partnership debts before any part can be appropriated for the partners, or to pay their individual debts does not operate to defeat a lien fairly and lawfully created by the partners upon partnership assets in favor of individual creditors, before proceeding for a judicial administration where commenced: *Nat. Bank of Metropolis* v. *Sprague*, 5 C. E. Green.

Partners have the power, while the partnership assets remain under their control, to appropriate any portion of them to pay or secure their individual debts. A mortgage given by them to secure individual debts fairly due, is not rendered void by the mere fact that it operates to give individual debts a preference over demands against the firm; nor will such mortgage be set aside for that reason, by a court of equity, unless, perhaps, when created in contemplation of insolvency, to give an improper preference: *Id.*

If, in any case, one who has loaned money upon the credit of an individual partner, could have established a demand thereof against the firm, by proof that the money was borrowed and used for the benefit of the firm, the right to do so is lost by proceeding, with knowledge of the facts, to the recovery of judgment and the issuing of execution against the individual partner: *Id.*

The only interest in property of the firm which can be reached by virtue of a creditor's bill, founded upon such a judgment and execution, is the share of the individual partner against whom the judgment is rendered, in the assets, after payment of all partnership debts: *Id.*

An execution on a judgment against partners for a partnership debt, may be levied upon the individual property of either partner, although the partnership property is sufficient to make the debt: *Id.*

PRACTICE.

Orders—How Corrected.—If an order, directing the receiver of a corporation as to the manner in which he shall proceed in giving notice of and conducting a sale of real estate, is irregular or improvident, its correction should be sought by a motion before the court that made it. An independent action will not lie for that purpose, even though the plaintiff was not a party to the proceed-

ing in which the order was made. Such an order cannot be questioned in a collateral action brought by a stockholder of a corporation whose property is sold: *Libby* v. *Rosekranz et al.*, 55 Barb.

RAILROAD.

Damages for Injury—Forcible Ejection of Person from the car.—In a suit brought by a boy sixteen years old for damages for injury sustained by being forciby expelled from a railroad car, if the testimony tends to show that the plaintiff is told he cannot ride, and that he is ordered by the conductor, with a show of force, to get off the car, a non-suit should not be granted upon the ground that the careiessness and negligence of the plaintiff contributed to his injury: *Kline* v *C. P. R. R. Co*, 37 Cal.

If a boy, sixteen years of age, leaps from a railroad car while in motion, in obedience to the command of the conductor, accompanied by a show of force, the court cannot say judicially that the act of the boy was voluntary, but should leave it to the jury to say whether under all the circumstances, the conduct of the conductor did not amount to compulsion: *Id.*

Although a person gets upon a railroad car wrongfully and as a trespasser, for the purpose of riding without paying his fare, yet the conductor, if he resolves to exercise his right to remove him, must do so prudently, and in such a manner as not to endanger his personal safety. If he do not exercise this prudence, and injury result, the company cannot absolve itself from liability on the ground that the wrong was mutual: *Id.*

If, in such a case, the conductor sees the person attempting to get on the car, he may use force to prevent him, and no liability will result from injury; but if the person is once fairly on the car, care must be exercised in his removal: *Id.*

The rule that the plaintiff cannot recover damages if his own wrong, as well as that of the defendant, conduced to the injury, is confined to cases where the plaintiff's wrong or negligence has immediately or proximately contributed to the result: *Id.*

It is within the scope of the general authority of a railroad conductor to remove persons from the cars who get on wrongfully; but if, in so doing, he does not exercise care and caution, but acts maliciously, and injury results, the company is liable: *Id.*

A railroad conductor is not acting outside of his authority in admitting on its cars all persons properly seeking admission as passengers, or including all who do not come as passengers, or are not fit to be admitted, and the company is liable for his wrongful performance of either: *Id.*

STAMPS.

Waiver of Protest on a note.—The waiver, by an indorser of a promissory note of presentation, demand notice of non-payment, and protest, written upon the back of the note, need not be stamped in order to be valid: *Pacific Bank* v. *De Ro*, 37 Cal.

SHERIFF.

Bond, Liability on—Section 30, *Chapter* 63, *R. C.*, 1855.—The obligor of a bond of indemnity given under section 30, ch. 63, B.

C., 1855 is liable thereon to the sheriff as well as to persons claiming the property: *Stewart* v. *Thomas*, 45 Mo.

Execution—Indemnity Bond, suit on, by Sheriff—Notice to Plaintiff in Execution.—Where judgment is rendered against a sheriff on his bond for an unlawful levy, and he afterward sues plaintiff in the execution on his bond of indemnity (R. C. 1855, ch. 63, § 30), the latter may make any defense which could have been made in the original suit against the sheriff. Notice with opportunity of making the defense, should have been given the plaintiff in the execution at the time of the first suit. Otherwise the judgment is but *prima facie* evidence of his liability on the bond: *Id.*

TAX SALE.

Title of Purchaser—Caveat Emptor.—A purchaser of a house and lot in the city of Baltimore, sold by the city collector for non-payment of an assessment levied thereon, for opening the street upon which it was located, paid the purchase-money, received from the collector a deed for the property, and entered into possession; subsequently he was ejected by the owners, upon the ground that the collector had omitted to give the notice, as required by ordinance, of such sales, and was obliged to pay costs and *mesne* profits. He thereupon brought an action to recover damages from the city collector: *Held*, that the purchaser was bound to inquire whether the city collector, in selling the property, acted in conformity with the law authorizing the sale; and coming strictly and rigidly within the rule of "*caveat emptor*," he is not entitled to recover: *Hamilton* v. *Valiant*, 30 Md.

TAX TITLE.

What Title Conveyed.—A tax collector's deed which purports to convey to the purchaser "all the right, title and estate" of the State of Missouri in and to the premises, and does not purport to convey anything more, can pass no title to the purchaser: *Einstein* v. *Guy*, 45 Mo.

TENANT IN COMMON.

Use and Occupation—Repairs.—One tenant in common, who solely occupies the common property, cannot be held liable to his co-tenants for use and occupation, unless there has been an actual ouster of his co-tenants: *Israel* v. *Israel*, 30 Md.

A tenant in common, occupying the common property, will not be allowed for expenses which were incurred not for the preservation of the property, but rather to gratify his taste and contribute to his convenience: *Id.*

UNINCORPORATED SOCIETY.

Right to Sue.—The members of a voluntary incorporated association are entitled, as individuals having a common interest, to sue in regard to matters pertaining to or affecting their interests: *Mears and others* v. *Moulton*, 30 Md.