Would it not be trifling with the plain sense of words to say that there is a lien under the trust deed and a lien under the execution, but the claim which by law is made superior to either as a charge upon the goods is no lien? We hold in this case that the creditors in the trust have a lien. How can we hold that the landlord, whose claim under the law is superior to theirs, has no lien?

It seems to us, therefore, that Haxall & Co. had a valid lien for the arrears of rent due and for so much rent to become due under the lease as will make the whole amount secured equal to a year's rent. And we think that this lien is given by the statute independently of proceedings by distress warrant or attachment, which we regard as remedies superseded by the effect and operation of the Bankrupt Act: *Burket* v *Bonde*, 3 Dana 209; *Henchett* v. *Kimpson*, 2 Wils. 140.

In this case we do not pass upon the claims of Haxall & Co. upon the assignee for rent beyond the year during which the lien for the rent is given. We are inclined to think that he was entitled to the occupancy during the unexpired term; and that for the rent becoming due during that period Haxall & Co. would be entitled to prove their claim against the bankrupt as general creditors.

The decree of the District Court will be reversed and a decree entered in conformity with the principles of this opinion.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF GEORGIA.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME COURT OF MISSOURI.[3]
SUPREME COURT OF NEW YORK.[4]
SUPREME COURT OF VERMONT.[5]

ADMIRALITY.

Lien under State Laws—Jurisdiction of United States Courts—Where executions were issued in favor of the officers and employees

1 From J. H. Thomas, Esq.; to appear in 39 or 40 Ga. Rep.
2 From Hon. N. L. Freeman, Reporter; to appear in 51 Ill. Rep.
3 From T. A. Post, Esq., Reporter; to appear in 46 Mo. Rep.
4 From Hon. O. L. Barbour; to appear in vol. 56 of his reports.
5 From W. G. Veazey, Esq., Reporter; to appear in 42 Vt. Rep.

of a steamboat, for debts due to them, against the persons owing such debts, and also against the boat, after a demand on the owners or their agent for payment, and a refusal to pay, as provided by the 1968th and 1969th sections of the Code of Georgia, which executions were levied on the boat and sold by the sheriff: *Held*, that the execution under which the boat was sold having been issued against *the persons* owning the boat, as well as against the boat after demand and refusal to pay the debt, and not against the boat *alone*, that it was not such a proceeding to enforce a *maritime lien against the boat*, as would give to the District Courts of the United States *exclusive* jurisdiction under the Act of Congress of 1789: *Merritt* v. *Morgan et al.*, 39 or 40 Ga.

ATTACHMENT.

Officer—Damages.—An officer proceeding to attach a store of goods, on writs placed in his hands for service, may enter and take the goods and remain as long as is reasonably necessary to make a proper attachment; but would be liable to damages for an unnecessary expulsion and continued exclusion of the owner: *Perry* v. *Carr*, 42 Vt.

The plaintiff declared against the defendant in trespass for breaking and entering his store, and forcibly expelling him therefrom and keeping him out for twenty days. The defendant in his plea alleged that the goods belonged to D, and that he entered to attach them on writs against D, and was obliged to expel the plaintiff forcibly, and to keep him out for said time in order to attach the goods and safely keep them until he could remove them. The plaintiff traversed the plea. It turned out that the goods were D's as to his creditors, so that the defendant had the right to go into the store for the purpose of attaching them on the writs he held, and remain as long as was reasonably necessary to make a proper attachment. But the evidence did not tend to show that it was necessary for the defendant to eject the plaintiff, and exclude him in the manner and for the time stated and proved, in order to make a proper attachment: *Held*, that upon this state of the evidence relating to the issue joined by the pleadings, the plaintiff was entitled to have the court instruct the jury that he was in any event entitled to recover such damages as they might find he suffered by reason of the forcible expulsion, and exclusion therefrom for said time: *Id.*

BANKRUPTCY.

Assignee's Title—Property attached on Mesne Process.—It appears from the record in this case that F. was declared a bankrupt in the District Court of South Carolina, about the 1st of January, 1869, that R. & Co. had obtained a judgment against F., in the District Court of South Carolina, for a debt due them by F., the bankrupt, on the 21st of August, 1864; that R. & Co. sued out an attachment in this State (Georgia), against F., the bankrupt, based upon the judgment obtained against him in the District Court of South Carolina, which was levied by a garnishment served upon B. & M. as garnishees. The attachment was taken out on the 7th of

December, 1868, and served upon the garnishees the same day, about one month prior to the time F. was declared a bankrupt. M., the assignee of the bankrupt, moved the court to dissolve the attachment on the ground that the same had been taken out within four months prior to the time F. was declared a bankrupt. The court sustained the motion and dissolved the attachment: *Held*, that the judgment obtained in the District Court of South Carolina could not be enforced in the State of Georgia, except by suit thereon at common law, or by process of attachment; and that in either case, the proceedings instituted to enforce the judgment in the courts of this State (Georgia), was *mesne process*; and that inasmuch as the 14th section of the Bankrupt Act of 1867 declares that the title to the property of the bankrupt shall vest in the assignee, although the same is then attached on *mesne process*, as the property of the debtor, and shall dissolve any such attachment made within four months next preceding the commencement of said proceeding; that there was no error in the judgment of the court below ordering said attachment to be dissolved: *Randell & Co* v. *McClain, Assignee*, 39 or 40 Ga.

Common Carriers.

Liability for Baggage of Passsengers.—Where a passenger upon the defendant's railroad, having his valise checked to a particular station, on the arrival of the cars at that place left the valise in the open depot, after seeing it placed where baggage was usually kept during the day, in the charge of an employee of the company, without giving any directions, or making any arrangement respecting it, and did not present his check, or call for his valise, until nearly twenty-four hours afterward: *Held*, that he was guilty of negligence; and that the company was not liable for the loss of the valise by theft during the interval: *Holdridge* v. *The Utica and Black River Railroad Company*, 56 Barb.

Confederate States.

Property Seized by the United States during the War—Owner's Claim for Redress.—The State is not liable for contracts made, or other acts done, or property seized by the officers commanding the Federal armies, or by persons appointed by them during the occupation of her territory, prior or subsequent to the surrender, till a provisional governor had been appointed for her by the President of the United States, and he had entered upon the discharge of the duties of his office: *Wallace* v. *Alford*, 39 or 40 Ga.

The title to personal property taken by authority of the United States for public use vests in the United States, and if such property, after it was seized, was used for the repair of the Western and Atlantic Railroad for military purposes, the person from whom it was taken must look to the United States, and not the State, for compensation, unless the State has subsequently assumed the responsibility: *Id*

CONTRACT.—See *Stamp.*

New Contract Based on Former One—Novation.—When D was indebted to F for slaves bought of him, and F was indebted to T for land; and by mutual agreement of the three D gave his note to T—the amount of the several debts being the same—this is a novation. The debts from D to F, and from F to T are at an end by the new contract between D and T, and the consideration of this contract is on the part of T the satisfaction of his debt on F, and on the part of D the satisfaction of his debt to F: *Deever* v. *Aikin*, 39 or 40 Ga.

Where D held a note on B and C, as joint promissors, which note was given for slaves, and in full discharge and satisfaction of said note, A took a note for the same amount on B as principal and D as security; this was a novation—the original debt ceased to exist, and the consideration of the note on B and D was not slaves, but satisfaction of the note on B and C: *Grisham* v. *Morrow*, 39 or 40 Ga.

Validity—Previous Agreement by Parol.—Where a contract of purchase and sale is made in writing, which is void, as for instance, for want of proper stamp, the purchaser cannot be compelled to carry out the verbal agreement which resulted in the written instrument; nor can it be done where, originally, there was no need of the writing, because such a contract might be made by parol: *Davy* v. *Morgan*, 56 Barb.

Although a contract may be good by parol, yet if the parties choose to make it in writing, when it is so made it is the only contract; and if that is void, all that preceded it by parol is void also. All the verbal arrangements pass into the writing, and if that does not change the title to the property, it remains in the vendor, unless the contract is performed: *Id.*

CRIMINAL LAW.

Accomplices.—Although the testimony of accomplices, uncorroborated, should be received with great caution, yet if the jury find a verdict of guilty upon such evidence, the court cannot for that reason set it aside: *The People* v. *Lawton*, 66 Barb.

Burglary—Indictment—Evidence.—Under an indictment for burglary, the prisoner may be convicted of an *attempt* to commit the crime charged in it: *Id.*

Evidence competent upon the question of guilty, or not guilty, of the burglary charged, is competent to prove the attempt to commit it: *Id.*

DEEDS.

Recitals as Evidence.—A recital in a deed that the parties making it are heirs at law of a former owner, is no evidence of the fact recited, except as against parties to the deed and their privies: *Yahhoola River and C. Creek Mining Co.* v. *Isby*, 39 or 40 Ga.

EJECTMENT.

Growing Crop.—A plaintiff in ejectment, who has judgment in his favor, is entitled to be placed in possession of the premises, including the growing crop, if any, as against the defendant, and those holding under him; *provided*, he has not recovered as *mesne profits* the rent for that year: *Gardner* v. *Kersy et al.*, 39 or 40 Ga.

A plaintiff in ejectment, who has recovered rents as *mesne profits* for the year in which the recovery is had, is not entitled to the crop of that year. While he is entitled to the possession of the premises, he is bound to allow the tenant ingress and egress to gather and carry away the crop. If he has recovered rent for a part of the year, and the crop is growing, but not gathered, the tenant is entitled to his *pro rata* part of the crop. But if no rent is recovered for the year, the growing crop goes with the land: *Id.*

If the plaintiff, who has recovered the rent for the year, takes possession of the premises, and appropriates the crop, or refuses to permit the tenant to gather it, the tenant has a right at law to recover the value of the crop: *Id.*

EQUITY.—See *Evidence.*

Sale of Slave.—When a judgment has been obtained in a common law court upon a warranty for the sale of a slave alleged to be unsound, and a bill was filed to open and set aside said judgment on the ground that it was a contract for the sale of a slave: *Held*, that a general demurrer to said bill for want of equity was properly sustained: *Renfroe* v. *McDaniel*, 39 or 40 Ga.

Bill to Marshal Assets.—A court of equity will not entertain a bill to marshal assets, on the sole ground that there are numerous claims against the estate, or that the estate is insolvent, or that the claims are charged to be complicated. There must be claims of doubtful right to be settled, or danger of serious injustice, or other complications, in which the law, under the ordinary legal tribunals, is incompetent to do adequate justice, and this must appear from the facts set forth, before a court of equity will interfere: *Bryan* v. *Hickson*, 39 or 40 Ga.

EVIDENCE.—See *Deed.*

Record.—A copy of a verdict in an equity cause, unaccompanied by the bill, answer and other parts of the record, is not evidence: *Mitchell* v. *Mitchell*, 39 or 40 Ga.

EXECUTOR.—See *Sale.*

FRAUDS, STATUTE OF.

Debt of Another.—The plaintiff, a physician, attended the defendant's daughter, twenty-two years old, being sent for by her while sick at defendant's house, and on the occasion of the first visit, after examining her and prescribing for her, the defendant said to him that he wished him to attend her and do all he could for her, but be as reasonable in his charges as he could, for he supposed he should have to pay the bills, and on a subsequent visit repeated the same

in substance, and on other occasions made other expressions while the account was accruing, recognizing his liability and acknowledging that he employed the plaintiff. The plaintiff made all his charges to the defendant, and it was understood by both plaintiff and defendant, while the account was accruing, that the defendant was to pay it. *Held*, that these facts were sufficient to create a direct original indebtedness from the defendant to the plaintiff: *Eddy* v. *Davidson*, 42 Vt.

It being a direct original indebtedness, not collateral, it is not within the statute of frauds, though the services were solely for the benefit of a third person, and that known to the plaintiff: *Id.*

The fact that the daughter expected to pay the plaintiff by the aid of her brothers and sisters, which was not communicated to the plaintiff, would not affect the defendant's liability: *Id.*

The defendant's promise cannot be brought within the statute by showing that the facts create a liability on the part of the daughter to the plaintiff, as it would only show a direct joint indebtedness of the defendant and his daughter, to which the statute does not apply: *Id.*

GUARANTY.

What constitutes.—Where a merchant sells goods to another, upon an arrangement that a third party is to collect the account and pay the same to the merchant, for which, as collector, he is to receive a commission of ten per cent., and such third party is furnished with duplicate bills of account, which are made out in the name of the purchaser, and across the face of the bills retained by the merchant, such third party writes the word "accepted," to which he affixes his signature, in an action by the merchant, against him, for the amount of the bills so accepted, and remaining unpaid, *it was held*, that the credit so given was given to the purchaser, and that the word "accepted," written on an account, does not import a guaranty of its payment by the person making the indorsement, and that under such an agreement he could only be held to reasonable care and diligence in the performance of the undertaking, and not liable as guarantor: *Hatch* v. *Antrim*, 51 Ills.

GUARDIAN AND WARD.

Action by Guardian.—A general guardian appointed by the surrogate can maintain an action in his own name, as such guardian, to recover a debt due to his wards: *Thomas* v. *Bennett*, 56 Barb.

Thus he may bring an action to compel the defendant to pay money due from him, which he received in pursuance of an express contract made between him and the guardian, for the benefit of the ward, and which he was to pay over to the guardian: *Id.*

HOMESTEAD.

Use of Property—Absence of Owner.—Under the Homestead Act of 1849 (Comp. Sts., ch. 65, § 6), a homestead is exempt from attachment on a bebt which accrued *after* the purchase and record

of the deed, but *before* the housekeeper took possession and occupied, he being in the possession and occupancy when the attachment was put on: *West River Bank* v. *Gale*, 42 Vt.

Where a homestead consisted of a small parcel of land with a house and barn upon it on one side of a highway, and a blacksmith's shop and water privilege on the opposite side, the whole worth less than $500, and in the use and occupancy of the housekeeper, but the shop not used for the purpose for which it was built, and it not appearing that the water privilege had ever been used, it was *held* that the shop and water privilege were a part of the homestead, and exempt as such: *Id.*

The same rule would probably hold if the housekeeper had been a blacksmith by trade and used the shop in his business: *Id.*

Where a housekeeper left his homestead with the intention of returning to it after a temporary sojourn elsewhere for a specific purpose, but his absence was protracted by an accident longer than he originally contemplated, but he did not change his purpose to return, but carried into effect, as soon as he recovered from his injuries sufficiently to be removed to his home, it was *held* that the homestead was exempt during the time of such absence. (Gen. Sts., ch. 68, § 1): *Id.*

Husband and Wife.

Marriage—Probate Court—Jurisdiction.—L., while insane, was married to S., and continued insane till his death, leaving S. surviving him: *Held*, that although their marriage could have been avoided by proceedings in the Supreme Court, it was a marriage in fact, and they were husband and wife, and that S. was entitled to a distributive share in the estate of L., who died without issue, as his widow, under section 1, chapter 56, of the general statutes: *Wiser* v. *Lockwood's Estate*, 42 Vt.

The existence of the marriage, as a fact, having been established, the Probate Court had no jurisdiction to try its validity, or power to treat it as a nulity: *Id.*

The reference of this suit conferred no greater jurisdiction upon the referee over the subject matter of the suit than the court itself had; and he could no more try the validity of the marriage than the Probate Court or the county court: *Id.*

S., while the widow of L., and a minor, executed a quit-claim deed of all her interest in the estate of L. to A., for which she received $100: *Held*, that such deed was voidable, and that her inability and neglect to return the consideration received by her did not affect her right to avoid it: *Id.*

Marriage Contracts.—Ante-nuptial contracts, in consideration of marriage to be solemnized, like wills, should be liberally construed to carry into effect the intention of the parties: *Ardis* v. *Printup et. al.*, 39 or 40 Ga.

The rules of grammatical construction usually govern, but to effectuate the intention they may be disregarded and conjunctions substituted for each other: *Id.*

An express trust may depend for its operation upon a future event, and is then a contingent trust: *Id.*

Separate Business of Wife.—Where a married woman, living with her husband, commenced business in her own name without his consent, and the husband did not share in the profits of the business, but carried on a separate business of his own, from which the family expenses were defrayed, it was held that he was not liable for a bill of goods sold to the wife on credit for her business: *Tuttle* v. *Hoag*, 46 Mo.

Evidence of Divorced Wife in a Suit by her Former Husband.—A divorced wife is incompetent to testify in behalf of her former husband, in a suit brought by him against her seducer: *Rea* v. *Tucker*, 51 Ills.

In a suit for damages brought by the husband against another, for a criminal intimacy with the wife of the former, it is admissible for the defendant to prove the adulterous conduct of the husband, in *mitigation* of damages, but such evidence is not admissible in *bar* of the action: *Id.*

So, also, is it admissible for the defendant to prove in mitigation, of damages, that the wife of the plaintiff had been guilty of adultery with other persons before her connection with the defendant: *Id.*

In an action by a former husband against the seducer of his divorced wife, for damages resulting therefrom, evidence of collusion between the husband and wife in bringing the suit is not admissible in bar of such action. But if the offense of the defendant had been the result of collusion between the plaintiff and his wife, or of connivance on the part of the plaintiff, evidence of such collusion would bar the action: *Id.*

Mandamus.

Of the Pleadings.—An alternative writ of mandamus stands in the place of a declaration in an ordinary action at law, and must show a case *prima facie* good, and, as in ordinary cases, a demurrer thereto brings before the court the whole merits of the case, as therein presented: *People ex rel. McCagg* v. *Chicago*, 51 Ills.

A writ of mandamus will only be awarded in a case where the party applying for it shall show a clear right to have the thing sought by it done, and by the persons or body sought to be coerced: *Id.*

Mechanics' Lien.

Account.—A statement of a balance of account, without disclosing the debits and credits, from which the balance results, is not a sufficient compliance with the law of mechanics' lien, which requires the claimant of a lien "to file a just and just true account" of his demand: *McWilliams* v. *Allen*, 46 Mo.

Municipal Corporations.

By whom Taxes may be Imposed.—The Act of February 8, 1869, fixing the boundaries of Lincoln Park, in the city of Chicago, and

providing for its improvement, in providing means for paying for land to be taken for the park, requires the mayor, comptroller and clerk of the city, to issue bonds on the requirement of the park commissioners created by the act, and this requirement upon those city officers is absolute, not submitting the question of creating such a debt to the people of the city, or to its corporate authorities. This act confers no express power upon the park commissioners to levy and collect taxes for the payment of the bonds, but it is equivalent thereto,as resort must be had to taxation for their payment, and it seems it would be difficult to sustain that portion of the act, on the mere question of the exercise of the taxing power, the park commissioners not being a corporate authority of the city, and to no other authority than such corporate authority can the legislature delegate the powor to impose corporate taxation, under sec. 5 of art. 9 of our Constitution, which provides that the corporate authorities of cities, ect., may be invested with power to assess and collect taxes for corporate purposes: *The People ex rel.* v. *Mayor of Chicago*, 51 Ills.

To what extent this constitutional provision is a limitation upon the power of local taxation directly by the legislature itself, is not a question in this case, but it seems there may be cases where the legislature, without the consent of the corporate authorities, might impose taxes, local in their character, if required by the general good government of the State, because such taxes would not be merely and only for corporate purposes: *Id.*

While it is conceded that municipal corporations, which exist only for puplic purposes, are subject at all times to the control of the legislature creating them, and have in their franchises no vested right, and whose powers and privileges the creating power may alter, modify or abolish at pleasure, yet that power cannot be so used as to compel such a corporation to incur a debt without its consent—to issue its bonds against its will, for the erection of a public park, or for any other improvement: *Id.*

So, under the act referred to, in relation to the establishment and maintenance of Lincoln Park, in the city of Chicago, requiring the city officers to issue the bonds of the city, on the simple requirement of the park commissioners, the court will not compel the issuing of the bonds at the instance of the park commissioners, and without the consent of the proper authorities of the city: *Id.*

Should the common council, however, clothed as it is by the charter, with power over the subject in reference to which the bonds are to be applied, pass an ordinance directing the officers named in the act to issue them, the courts might interfere and compel them by mandamus to do the required act: *Id.*

Power of the Legislature to Create Special Taxation Districts for Municipal Purposes.—While section 5 of article 9 of the constitution, which provides that the corporate authorities of counties, townships, school districts, cities, towns and villages, may be vested with power to asses and collect taxes for corporate purposes, must be construed as a limitation upon the power of the legislature to authorize any

other than corporate authorities to assess and collect local taxes, and as limiting the objects of local taxation to corporate purposes, yet, it does not confine the legislature to any particular corporate authorities, or to any then known instrumentalities of that character. There is no prohibition against the creation by the legislature, of every conceivable description of corporate authority, and, when created, to endow them with all the faculties and attributes of other pre-existing corporate authorities: *People ex rel. Wilson* v. *Salomon*, 51 Ills.

So, several towns may be united in one district for the special purpose of establishing and maintaining a public park, and the corporate authority of the district so created, in respect to the special object of its creation, may be vested in commissioners specially created for the purposes, and in whom the power may be vested, of assessing and collecting taxes, for the special corporate purpose, within the new corporate district: *Id.*

But this power in the legislature is subject to this limitation, that a local burthen of that character cannot be imposed upon the people of the district so created, without their consent; and it seems the assent of a majority of each of the towns to be affected, would be essential: *Id*

So, under the Act of February 24, 1869, providing for the location and maintenance of a park for the towns of South Chicago, Hyde Park and Lake, those towns were erected into a park district, and the people of the towns affected by the Act having, by a vote, accepted its provisions, the board of park commissioners thereby created, to whom was committed the entire control of the park, became a municipal corporation, in whom it was competent for the legislature to vest the power to assess and collect taxes within the park district so created, for the special corporate purpose of its creation, and such is the effect of that portion of the Act which requires the county clerk of the county in which that district is situated, on the estimate of the park commissioners, to place the amount required, within certain limits, in the tax warrants for the towns embraced in the district: *Id.*

Negligence.

Grass and Weeds upon a Railroad Track.—In an action against a railroad company to recover for injury resulting to premises adjoining a railroad, by reason of fire communicated because of dry grass and weeds accumulating upon the right of way, the question of comparative negligence on the part of the plaintiff and the company, in respect to the accumulation of such combustible material, is a question of fact properly left to the jury: *Illinois Central R. C.* v. *Nunn*, 51 Ills.

Novation.—See *Contract.*

Partnerships.

Execution against Interest of one Partner.—The interest of one partner in the partnership property, is not subject to levy and sale,

under an attachment. It can only be reached at law, by process of garnishment: *Patterson* v. *Trumbull*, 39 or 40 Ga.

Usury—Estoppel by Act of one Partner.—Where one partner borrowed money in the name of the firm, and promised to pay usurious interest, the other partner cannot set up the illegality of the contract, and thereby defeat the right of the creditor to recover back from the partnership his principal and legal interest. Under our law the contract is illegal to the extent of the usurious interest only: *Dillon* v. *McRae*, 39 or 40 Ga.

Joint Crop–Division of Profits.–Where two persons make a crop together, and the corn made is gathered, shucked, and separated in equal parts, and placed in different cribs on the place, and each of the parties has a key to a distinct crib, with leave to feed his stock therefrom: *Held*, that this is not such a division of the corn as put each cropper in possession of his part in his own right, and a possessory warrant will not lie between them for said corn, until a formal division is made, or there is a formal settlement of the debts and affairs of the partnership: *Usury* v. *Rainwater*, 39 or 40 Ga.

Of Sutlers–Construction of Act of Congress, March 19, 1862.–The Act of Congress of March 19, 1862, providing for the appointment of one sutler for each regiment, and that the person so appointed shall be the sole sutler, and shall not underlet his privileges, and prohibiting any army officer from being in any manner interested in his stock or trade, was not intended to prohibit a partnership between a sutler and any person beside an army officer, in the prosecution of such business: *Wolcott* v. *Gibson*, 51 Ills.

PATENT.

Assignment of.—An assignment of a patent cannot be made by parol. In order to be legal, it must be in writing: *Davy* v. *Morgan*, 56 Barb.

RAILROAD.—See *Negligence.*

Trespasser–Ordinary Care and Diligence.–It is settled law in this State that the obligation upon railroad companies to build a fence along their roads only extends to the owner or rightful occupier of the adjoining fields, and not to mere trespassers thereon: *Bemis* v. *C. & P. R. R. Co.*, 42 Vt.

When an animal is wrongfully on a railroad track as a train is approaching, the first and paramount duty of the company and servants when the animal is discovered, is to attend to the safety of the passengers and the property on the train, or otherwise on the track, and as to such the law demands the exercise of the highest degree of care and diligence. The next object of attention in such cases is the safety of their own property. And while discharging these duties they are bound to exercise ordinary care to avoid injury to the trespasser. Therefore ordinary care and diligence in regard to the trespasser would be such degree of care and diligence as would be consistent with such higher obligations: *Id.*

Where an engineer runs a train with ordinary care and vigilance, and watches the track in advance as much as he can consistently with his other duties, he discharges all obligation which the company is under to one whose animal is on the track, through the wrongful act or neglect of the owner, unless the safety of the passengers and interests of the company require or allow the train to be stopped or its speed checked: *Id.*

When proper care and vigilance are being exercised in respect to all other interests, neither the mere fact that the speed of the train was not checked while it was approaching the animal, nor the mere fact that the engineer did not see it until so near it that he could not avoid the accident, tends to show any want of care as to the animal: *Id.*

The question whether the engineer should stop the train, check or increase its speed, if in his power, would depend upon what the safety of the passengers and train required, and whatever is required in this respect, under the circumstances, would be allowable as to property wrongfully on the track: *Id.*

SALE.

By Administrators.—Sale by administrators and executors, when it is not otherwise provided by will, of any property of the estate except annual crops carried to market, must be at public outcry to the highest bidder, and a purchaser is bound to see that the administrator or executor is apparently proceeding under the prescribed forms: *Neat* v. *Patton*, 39 or 40 Ga.

To constitute a legal private sale, by an executor or administrator, of annual crops, they must be actually carried to market and sold; they cannot be sold on the plantation: *Id.*

A mere direction in a will that the executor, as soon as practicable, pay the debts, does not of itself authorize the executor to sell, much less to sell at private sale, the effects of the estate coming into his hands: *Id.*

Title of Purchaser—Tender of Payment.—When property sold is to be delivered on payment of the purchase-money, and the vendee tenders it, in compliance with the contract, the title to the property vests in the purchaser. The rules relative to tender in its legal sense as applicable to a debt, do not apply to an offer to pay for goods purshased: *Phillips* v. *Williams*, 39 or 40 Ga.

STAMP.

Agreement.—Where an agreement never had any revenue stamp affixed to it, and when it was offered in evidence and objected to on that ground, there was no offer to show that the proper stamp was omitted by mistake, inadvertence or ignorance, or any other excuse given for the omission, and no offer was made to then affix the stamp; it was *held*, that the agreement was invalid, and was therefore properly excluded: *Davy* v. *Morgan*, 56 Barb.

STATUTES.

Rules of Construction.—Revenue and duty acts are not penal acts and to be construed strictly; nor are they, on the other hand, acts in favor of private rights and liberty, and therefore to be construed with extraordinary liberality. They are to be construed according to the true import and meaning of their terms; and the legislative intention, when ascertained, is to be the guide in interpreting them: *Davy* v. *Morgan*, 56 Barb.

TRESPASS.

Injunction against.—A trespass upon real estate will not be injoined upon a bill which fails to allege that the defendant is insolvent, or that the trespass is of such a character that it cannot be adequately compensated by damages: *Weigel* v. *Walsh*, 46 Mo.

TROVER.

Costs.—The plaintiff's oxen were stolen and taken to the defendant, and being found in his possession in the State of New York, were demanded and refused. The plaintiff then resorted to legal process to regain possession, and succeeded, but incurred expense therein: *Held*, that he is not entitled to recover such expense, as part of his damages for the conversion, in a subsequent action: *Harris* v. *Eldred*, 42 Vt.

Conversion.—The plaintiff being the owner of a quantity of saw logs lying upon the land of the defendant, went to take them away, when he was forbidden to do so by the defendant, who threatened to sue him if he did, and who afterward sold a part of them to another person: *Held*, that this amounted to a conversion of the whole of them by the defendant: *Sherman* v. *Way*, 56 Barb

VENDOR AND PURCHASER.—See *Sale.*

Warranty—Fraudulent Representations.—When land is conveyed by deed, parol evidence is inadmissible to prove a warranty as to the quantity: *Cabot* v. *Christie*, 42 Vt.

A mutual and material mistake by the parties to the deed, as to the quantity of land, is not a ground for relief at law, but in chancery: *Id.*

If the purchase of the land was induced by a false and fraudulent representation as to the quantity of land, the grantee may sustain an action on the case against the grantor for the fraud: *Id.*

If the vendor of the land, in order to induce the sale represented that he had personal knowledge as to the quantity of land, being at the same time aware that he had not such knowledge, his representation was fraudulent, although he did not state the quantity of land larger than he believed it. It was an imposition and fraud for him to pass off his belief as knowledge: *Id.*

So, too, if the incorrect representation was absolute and intended to be understood, and actually understood, as a statement upon