front by gradual and imperceptible accretion? In Angell on Watercourses, § 59, it is said that "if a navigable lake recede gradually and insensibly, the derelict land belongs to the adjacent riparian proprietors." The learned judge's direction to the jury was in accordance with that rule.

Then as to the effect of the defendant's grant. Whatever doubt, if any, there might be as to what would be conveyed by the word "lake" in a grant, the subsequent words of the grant in this case, whereby the mines and minerals are excepted, evidence a clear intention, on the part of the Crown, to convey the soil of the lake to the defendant.

Whether the place where the assault was committed was the defendant's land or not, the assault, or at least a part of it, was entirely unjustified according to the defendant's own account of it; therefore the plaintiff would be entitled to retain the verdict for the damages assessed on the 3d count; but unless he consents to confine the verdict to that count, we think there ought to be a new trial.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

SUPREME COURT OF MAINE.[2]

SUPREME COURT OF MARYLAND.[3]

SUPREME COURT OF MISSOURI.[4]

SUPREME COURT OF NEW YORK.[5]

AGENT.

Evidence—Statement of an Agent.—The statements of an agent are admissible, to charge the principal, only when they are a part of the *res gestæ*. They are not admissible when made out of the presence of the principal, and to a third person having nothing to do with the subject-matter, and at a time when the agent was not engaged in the business to which the controversy relates: *Whiteside* v. *Margarel*, 51 Ills.

[1] From N. L. Freeman, Esq., Reporter; to appear in 51 Illinois Rep.

[2] From W. W. Virgin, Esq., Reporter; to appear in 57 Maine Rep.

[3] From J. S. Stockett, Esq., Reporter; to appear in 32 Md. Rep.

[4] From C. C. Whittlesey, Esq., late Reporter; to appear in 46 or 47 Mo. Rep.

[5] From Hon. O. L. Barbour; to appear in vol. 57 of his reports.

An agency cannot be proven by the mere statement of the alleged agent: *Id.*

Gifts, &c., from Principal to Agent—Purchases by Agent.—It is a well-settled rule of equity jurisprudence that all gifts, contracts or benefits from a principal to one occupying a fiduciary or confidential relation to him, are constructively fraudulent and void.: *Comstock et al.* v. *Comstock, Ex'r.*, 57 Barb.

The court, in such cases, acts upon the principle that if confidence is reposed it must be faithfully acted upon; if influence is acquired it must be kept free from the taint of selfish interest and conniving and overreaching bargains: *Id.*

It is for the common security of mankind that gifts procured by agents, and purchases made by them, from their principals, should be scrutinized with a close and vigilant suspicion. So of notes, bills, contracts, releases and obligations: *Id.*

Duty of Agents to Principals.—Agents are not permitted to deal with their principals, in any case except upon showing the most entire good faith. A full disclosure of all the facts and circumstances attending the transaction, and an absence of all undue influence or imposition: *Id.*

Papers obtained by Agent from his Principal—When presumptively fraudulent.—A son, while acting as agent for his mother, a lady 77 years of age, in the transaction of her business, obtained from her a receipt, contract and note, which were in his handwriting and for his benefit, she living with him at the time. The son, on an accounting before the surrogate, as executor of his mother, while claiming under the instruments, merely proved the signature of the testatrix thereto, without offering any evidence of the facts and circumstances under which they were made; of their consideration, object and purpose; of their freedom from undue influence or imposition; or of good faith: *Held*, that, without assuming the existence of actual fraud, the claimant occupying a confidential relation to his mother, as her agent, at the time the instruments purported to be executed, they were, because of that relation, presumptively fraudulent and void, as to her, or her representatives; which presumption could only be overcome by actual proof: *Id.*

AGREEMENT.

Waiver of Claim for Defects.—The plaintiff agreed to furnish to the defendants an engine, boilers, &c., to be of the best materials and subject to the approval of the defendants' engineer, and to guarantee that they should be in perfect running order. The engine, &c., were delivered, and notes given for the price; but on attempting to use the engine, one of the flues collapsed, so as to prevent any further use of it. The plaintiff repaired the flues by putting in new ones, and the engine, as repaired, was, with the boilers, approved by the engineer, accepted by the defendants, and continued to be used by them: *Held*, that the defendants, not having notified the plaintiff of their determination not to accept the engine, on discovering the defect, and having permitted him to make alterations, and continued to use the engine afterwards, this was to be deemed an acceptance of the same, and a waiver of any

claim on account of the previous defect: *Cassidy* v. *Le Fevre et al.*, 57 Barb.

Accordingly *held*, that for the delay caused by the substitution of new flues, the defendants were not entitled to recover damages: *Id.*

For disposal of Stock—Construction of.—The defendant received from the plaintiff's assignors certain shares of stock, and executed an instrument acknowledging the receipt thereof, and further saying, "which stock I am to do the best I can with, and have one-half of the proceeds:" *Held*, 1. That there was not an absolute sale of one-half of the stock to the defendant. 2. That the fair and reasonable construction of the agreement was that defendant was to receive the certificates, and within a reasonable time dispose of said stock upon the most advantageous terms which he could procure, and when that was accomplished, and the proceeds were realized, he was to receive one-half thereof as his compensation. 3. That the sale or other disposition of the stock by the defendant was a condition precedent to his acquiring any interest in such stock or the proceeds thereof; and that the proceeds of the stock did not mean the stock itself. 4. That if the defendant had sold the stock fairly at whatever price he could obtain, he would have been entitled to retain one-half of the proceeds of the sale; but that having retained the stock for more than ten years without effecting a sale thereof, he was not entitled to retain one-half of such stock as his own, but was bound to account to the plaintiff for said stock, together with the dividends he had received thereon: *Wight* v. *Wood*, 57 Barb.

Amendment.

Amount of Damages laid.—Where this court has jurisdiction of the parties and subject-matter in a writ returnable thereto, and the *ad damnum* is fixed at a sum below the jurisdiction of this court, but within the exclusive jurisdiction of the superior court, the *ad damnum* may, before trial, be increased, so as to bring the action within the jurisdiction of this court: *Merrill* v. *Curtis*, 57 Me.

Bills and Notes. See *Usury*.

Defence of want of Consideration.—Where several payees of a promissory note unite in endorsing the same to one of their number and another person, the endorsees stand in the same situation, precisely, in respect to the defence of a want of consideration, that a payee does, where the note is endorsed to him alone, by the other payees: *Saxton et al.* v. *Dodge et al.*, 57 Barb.

And as, in the latter case, the note is open to the defence of a want of consideration, without alleging notice to him of such want, so another person, by becoming a holder jointly with the payee, or one of the payees, subjects himself to the same defence: *Id.*

A payee will not be allowed to get rid of a defence by transferring a share in his obligation to another: *Id.*

By taking an interest or share only in the note, he must be held to take subject to any defence which may lawfully be interposed against his co-endorsee: *Id.*

Corporation.

Acceptance of an Act of Assembly—Acceptance of a Charter—Conditions precedent—Construction of a Contract.—Acceptance of an Act of Assembly by a corporation, may be inferred from the exercise of corporate powers, or other unequivocal acts on its part; but this presumption cannot prevail against direct proof: *Lyons* v. *O., A., and M. Railroad Co.*, 32 Md.

As a general rule, when a charter is granted, whether it be one of creation or an amendment to a pre-existing corporation, it must either be accepted or rejected as offered, and without condition; and in accepting the privileges conferred, the grantees will be required to perform the conditions imposed: *Id.*

But this rule, while applicable to subsequent conditions to be performed after the organization of the company, does not apply to conditions precedent, upon the strict performance of which the very existence and exercise of powers on the part of the corporation depend: *Id.*

Conditions precedent are anything which, by the express provisions of the statute, is made a condition to be performed on the part of the corporation before, and as a foundation of the exercise of the powers and privileges under the charter: *Id.*

An assumption to pay the debts of a company admitted to be hopelessly insolvent, rateably according to the value of its assets, is not substantially an agreement to pay its debts in full, "whether bonded or floating, ascertained or to be ascertained:" *Id.*

Criminal Law.

Confessions.—A declaration or admission, if made before the accused is conscious of being charged with, or suspected of crime, is admissible in evidence under all circumstances, however made or obtained; under oath or without, upon a judicial proceeding or otherwise. But if made afterwards, the law at once becomes cautious and hesitating. The true inquiry then is, was it voluntary? For, unless it is *entirely* voluntary, it is held to be not admissible: *Phillips* v. *The People*, 57 Barb.

By *voluntary* is meant, proceeding from the spontaneous suggestion of the party's own mind, free from the influence of any extraneous disturbing cause: *Id.*

Where the accused, while under arrest for stealing a horse, was told by the complainant, and again, in substance, by the officer, that "*the best he* (the accused) *could do was to own it up; that this would be better for him:*" *Held*, that a confession made under this inducement of advantage if he confessed, was not a *voluntary* confession: *Id.*

Evidence.—On the trial of an indictment for stealing a horse, it is not erroneous to admit evidence of the accused taking a wagon on the same night, from another person. The taking of a wagon, to use with the stolen horse, if they were used together, is a corroborating circumstance to the main charge, and can be used as evidence for that purpose, notwithstanding it is proof of another felony, not charged in the indictment: *Id.*

Burglary, Possession of Stolen Property.—Although it is a sound proposition that mere possession, by a person, of stolen goods taken on

the occasion of a burglary, that is, possession alone, without any other facts indicative of guilt, is not *primâ facie* evidence that such person committed the burglary; yet where the prisoner was shown to have been in the vicinity of the burglary just prior to the act, and to have left there under circumstances of some suspicion; and the evidence tended to show that he was, soon thereafter, in possession of some of the property stolen from the safe at the time of the burglary; and further, that he prevaricated in regard to it, and made a false statement of the manner in which it came to his possession: *Held*, that in this condition of the case, possession of the stolen property by the prisoner, unexplained, was *primâ facie* evidence on which to convict him of burglary: *Id.*

Larceny of Promissory Notes—Evidence of genuineness and value.—On the trial of an indictment for larceny in stealing "promissory notes." a witness testified that the bills stolen "were of the currency ordinarily known as greenbacks:" *Held*, that this proof was some evidence, at least, of their genuineness, and when taken in conjunction with the further fact, to which he testified, that they were of the denomination of one hundred dollar bills of that currency, there was enough evidence also of the value to sustain a conviction: *Remsen et al.* v. *The People*, 57 Barb.

Good character.—Where the judge charged the jury that good character should not shield the prisoners if, from all the testimony, the jury believed them to be guilty; that they were to consider all the evidence, and where they had a well-reasoned doubt arising out of *all the testimony*, good character should protect the prisoners, and should insure their acquittal, if the jury had any reasonable doubt arising out of the whole testimony: *Held*, that the charge should be all taken together, and that so taken, it could not have misled the jury: *Id.*

Deed.

Effect of.—The effect of a deed delivered as an escrow, as a conveyance, and its effect as being the written evidence of a contract between the parties, to avoid the statute of frauds, should not be confounded. The questions are not identical: *Cagger Adm'x* v. *Lansing*, 57 Barb.

Desertion. See *Voter.*

Ejectment.

Legal Title—Defence.—A title by confirmation under the Act of Congress of March 3d 1807, prior to the issue of a patent by the United States, will not support or defend an action of ejectment, a legal title being in the opposite party. A defendant claiming under such confirmation must plead it in bar of the action as an equitable defence: *Lebeau* v. *Armitage*, 46 or 47 Mo.

Equity. See *Homestead; Mandamus.*

Evidence.

Admissions of a Vendor after the Sale.—The statements of a vendor of land made after the sale are not admissible for the purpose of show-

ing the transaction was fraudulent, or to prove any other fact affecting the title of the vendee: *Gridley* v. *Bingham*, 51 Ills.

Improper Evidence—Should not be admitted even with an explanation.—Where a party offers matter in evidence which is not properly admissible, the opposite party has the right to have it entirely excluded from the jury; and its admission, even with an explanation from the court to the jury as to its legal bearing, is erroneous: *Id.*

So, in an action of ejectment, where the plaintiff sought to prove statements made by the vendor of the defendant, after the sale to him, relative to facts affecting the title of the defendant, the statements were admitted against the objection of the defendant, with an explanation by the court, that such statements were not evidence against the defendant, but were evidence against his vendor: it was *held*, their admission was erroneous, notwithstanding the explanation of the court, as they would be likely to mislead the jury: *Id.*

To avoid a sale upon the ground that it was fraudulent, as to creditors, it must appear that both the vendor and vendee were parties to the fraud: *Id.*

Gift.

What constitutes.—A grandmother, from time to time, during a period of five years, deposited various sums of money in the Savings Bank of Baltimore, to the credit of five grandchildren, the accounts in the bank being in the name of each, as a minor, and the deposits made subject to her order, or that of her daughter. She also kept an account in bank in her own name, the deposits being subject to the like order. About the time the grandmother began to make these deposits to the credit of her grandchildren, she declared that "she was going to put the money in bank for the children." Under the by-laws of the savings bank, guardians could deposit for the benefit of their wards, and parents for their children; and if desired at the time of deposit, subject the same to the control of such guardian or parent. The grandmother died, and shortly after her death, the daughter, who was the executrix of her mother, obtained from bank all the money that had been deposited to the credit of the grandchildren, and administered it as a part of the estate of her mother. Upon a bill filed in the name of the grandchildren against the daughter, to obtain an account of the moneys so withdrawn by her, it was *held*, that the moneys deposited by the grandmother were perfected gifts, which she had no design to countermand; and the donees were entitled to the several amounts which stood to their credit in bank, when withdrawn by the defendant, with interest thereon from the date of the withdrawal: *Gardiner* v. *Merritt*, 32 Md.

Homestead.

What constitutes Purchase-money.—A purchaser of land went into possession and occupied it as a homestead. While so in possession he procured a third person to pay the purchase-price to the vendor, promising to execute a mortgage to secure the repayment of the money as soon as he obtained a deed. He obtained the deed, but refused to execute the mortgage. Upon bill filed by the party paying the money, against the purchaser, to enforce his lien upon the land, it was *held*, that the money

paid by the complainant, having been paid by him directly to the vendor for the purpose of having the land conveyed to the purchaser, must be regarded as the purchase-money of the premises, against which the defendant could not assert a homestead exemption: *Magee* v. *Magee*, 51 Ills.

An objection to the jurisdiction of a court of chancery, on the ground that there is an adequate remedy at law, comes too late after answer filed, unless it be in a class of cases where that court could under no circumstances entertain jurisdiction: *Id.*

So where a person advances money for a purchaser of land, paying the purchase-money to the vendor, upon the promise of the purchaser to execute a mortgage when he obtained a deed, to secure the repayment of the money, but the purchaser afterwards refuses to do so, and the party so advancing the money files his bill in chancery to enforce his lien upon the land, an objection to the jurisdiction in chancery because there is an adequate remedy at law, to be availing, must be made before answer filed: *Id.*

Husband and Wife.

Married Woman—Will.—By the law of this state, a married woman is competent to dispose, by a will made without her husband's assent, of property which she was entitled to receive and hold to her sole and separate use, whether before or since the Code, if the instrument creating the separate estate be silent as to the mode of disposition; and she has also the power of devising, as if she were a *feme sole*, all the property, real and personal, which belonged to her at the time of marriage, if that took place since the adoption of the Code, and all the property which she may have acquired or received since that period, by purchase, gift, grant, devise, bequest, or in course of distribution: *Schull* v. *Murray*, 32 Md.

The will of a *feme covert*, professing to dispose of her property, must be admitted to probate in the same manner as that of any other person, capable in law of making a will; and the jurisdiction of the Orphans' Court is limited to inquiries which relate to probate alone, such as testamentary capacity, fraud, undue influence, and the due execution of the instrument: *Id.*

Upon a *caveat* to a will, the executor, not a party to the proceeding in the capacity of executor, is competent to testify upon his own offer, and in his own behalf, as caveatee: *Id.*

Married Woman—Separate Estate.—A married woman possessed of a separate estate, executing a note with her husband, will be presumed to intend binding such estate; but where she purchases other lands and joins with her husband in giving a note and deed of trust securing the purchase-money, such presumption will not be made, and the property mortgaged only will be held liable for the debt created for its purchase: *Kimm* v. *Weiffert and Wife*, 46 or 47 Mo.

Liability of Husband for Wife's Torts.—Where government bonds, deposited with the defendants by the plaintiff, with express instructions not to deliver them to any person except upon his written order, were subsequently obtained from them by the plaintiff's wife fraudulently,

by means of a forged order purporting to be signed by him: *Held*, that the plaintiff being legally responsible for the fraud of his wife, he could not recover from the defendants the value of the bonds: *Kowing* v. *Manley et al.*, 57 Barb.

The rule of the common law on this subject is not changed or affected by the legislation in this state giving to married women the control of their property. While the recent statutes relieve them from many of the disabilities formerly resulting from the marital relation, they do not discharge the husband from the liabilities which that relation imposed on him for the torts of his wife: *Id.*

INSURANCE.

Construction of a Policy of Insurance against Fire.—By a policy of insurance dated the 11th of November 1867, and executed by the company and delivered to the insured on that day, it was declared that the company, in consideration of $160, to be actually paid to it by the insured, within fifteen days from the date of the policy, did insure B. against loss or damage by fire to the amount of $4000 on his property therein described; and in the clause that followed the description of the property, it was set forth that the company promised and agreed to make good unto the insured, his executors, &c., all such immediate loss or damage, not exceeding, &c., as should happen by fire to the property described, during one year, to wit, from the 11th of November 1867 (at 12 o'clock at noon), until the 11th day of November 1868 (at 12 o'clock at noon), the said loss or damage to be estimated, &c. By a condition in the policy it was provided that the company should not be held liable under the policy, or under any renewal thereof, until the premium in full therefor was actually paid; and by a further condition it was mutually agreed that if the premium on the policy was not paid within fifteen days from its date, the policy should be null and void; and it was further agreed that the policy was made and accepted in reference to the terms and conditions therein set forth. A portion of the property insured was totally destroyed by fire, and the balance damaged by fire and water, within fifteen days of the execution and delivery of the policy; proper preliminary proof of the loss was furnished to the company. After the fire, and within fifteen days from the date of the policy, the premium was tendered to the company by the insured, but not accepted. An action was brought to recover on the policy. *Held*, that the actual payment of the premium within fifteen days from the date of the policy was a condition precedent to the attaching of the risk, and as the property was destroyed before the tender of payment within the time limited, there was nothing upon which the risk could attach, and the company, therefore, was not liable for the loss: *Bradley* v. *Potomac Fire Ins. Co.*, 32 Md.

Construction of Policy.—A policy of insurance against loss by fire, taken out by a railroad company, described a portion of the property insured as follows: "$2250 on two Murphy & Allison passenger cars, say $1125 on each, one of them being used as a baggage and passenger car, *contained in* the car-house marked No. 1; and $3000 on locomotive engine J. H. Nicholson, *contained in* the engine-house marked No.

2." After the insurance, one of the Murphy & Allison cars was entirely destroyed, and the engine greatly damaged by fire, while on the line of the railroad, making a regular trip. Upon an action brought by the railroad company against the insurance company for the injury thus done to the car and engine, it was *held,* that the words "*contained in*" were not intended merely to describe the car and engine covered by the policy, but were designed to limit the risk of the insurance company to the time during which the car and engine were actually in the car and engine houses, and that having been injured when out of the car and engine houses, no recovery could be had on the policy: *Annapolis and Elkridge Railroad Co.* v. *Baltimore Fire Ins. Co.,* 32 Md.

Policy—Memorandum on Margin—Construction.—The body of a policy on a cargo of molasses provided that the company were "not liable for leakage on molasses . . . unless occasioned by stranding or collision." The margin contained the following memoranda: "On molasses . . . if by shifting of cargo owing to stress of weather, any casks become stove or broken, and the staves started by each other, so as to lose their entire contents, and the same amount to fifteen per cent. on the quantity laden (being five per cent. over ordinary leakage), the said excess of five per cent. or over on the quantity shipped to be paid for by the company; but this company not liable for leakage arising from causes other than as above mentioned." *Held,* 1. That the company were not liable for any loss by leakage unless occasioned by stranding; nor, 2. For any loss by shifting of the cargo unless it amounts to fifteen per cent. of the whole quantity laden: *McLaughlin* v. *Atlantic Mut. Ins. Co.,* 57 Me.

Such memoranda upon the margin of a policy are a part of the contract of insurance: *Id.*

Joint Debtors.

Action against.—To maintain assumpsit for goods sold and delivered against two defendants, the plaintiff must show a joint promise by the defendants: *Fuller* v. *Miller and Another,* 57 Me.

Proof that the goods were delivered upon the credit of one of the defendants as original promissor is not sufficient to bind both: *Id.*

Limitations, Statute of.

Mutual Accounts.—While the operation of the Statute of Limitations is prevented by the running of mutual accounts, if some of the items be within the period of limitation, the accounts, to have such effect, must appear to be open and current, and show a reciprocity of dealing. Mere payments on account, made by one party for which credit is given by the other, will not constitute mutual accounts: *Webster* v. *Byrnes,* 32 Md.

Mandamus.

The writ of *mandamus* cannot properly be granted to a party applying therefor, who has previously, for the same causes of complaint, instituted proceedings in equity, under which full, complete, and specific relief may be afforded him: *Hardcastle* v. *Maryland and Delaware Railroad Co.,* 32 Md.

NEGLIGENCE. See *Railroad.*

PARTITION.

Voluntary Partition among Coparceners—Sale—Vendor's Lien—Owelty of Partition.—Certain real estate descended to four children from their mother, was by agreement partitioned and allotted to and among three of them only, the fourth, in consideration of a certain sum in gross, to be paid to her by each of the other heirs, agreeing to surrender to them all her interest in the several parts of the real estate allotted to them respectively. At the time of making the division and allotment, all the heirs entered into mutual covenants of ratification, whereby they declared themselves satisfied and content with the division and allotment made, and agreed to abide by and carry the same into full effect. At the same time, one of the heirs taking the real estate, executed to his sister his penal bond, without surety, for the payment of the sum agreed on, with interest, in consideration of the surrender of her fourth part of the real estate. This money was not paid, and there was no conveyance from the sister to the brother of her interest in the part of the real estate allotted to him. He subsequently became insolvent, being indebted to various persons besides his sister; to some by judgment, and to one by mortgage of the real estate allotted to him; this estate having been sold by the trustees in insolvency, and the proceeds of sale being in court for distribution among creditors, the sister exhibited her claim, and insisted that it constituted a lien not only on the one fourth interest surrendered to her brother, but on the whole of that part of the real estate allotted to him by the award of partition; and that such lien had priority and preference of the mortgage and judgment creditors of the insolvent. *Held*, that the surrender of the entire interest of the sister in the estate, descended to her and others, for a stipulated price in gross, constituted a sale and nothing more; and she was entitled to a vendor's lien, restricted, however, to the one-fourth part of the estate allotted to her brother in the partition: *Thomas* v. *Farmers' Bank*, 32 Md.

The claim of a parcener who takes no part of the estate descended, but surrenders all her interest therein to her coparceners for a stipulated price, to be paid her, not as a rent issuing out of the estate, but a sum in gross to be secured by bond or otherwise, bears no resemblance to a charge for owelty of partition: *Id.*

PARTNERSHIP.

Partnership Property—Right of one Partner to become the Owner.—One member of a partnership firm cannot become the individual owner of the partnership property, without the consent, and against the wishes, of the other member: *Comstock* v. *Buchanan*, 57 Barb.

Although one partner may sell the property of the firm, and give a good title to a third party, he cannot sell to himself: *Id.*

Where stock belonging to a partnership firm was surrendered by one of the partners without the knowledge or consent of his partner, to the company, he representing to the secretary that he had authority from, and the consent of, his partner to do so, and procured new scrip to be issued to himself, in lieu thereof: *Held*, that the transfer was fraudulent and void; and that an assignee of the partner not consenting to

the transfer could maintain an action to have the stock restored, and the title thereto placed in the name and under the control of the rightful owners, subject to such equities as existed against it at the time of the sale to him: *Id.*

QUO WARRANTO.

Information.—An information in the nature of a *quo warranto* to determine the right to the office as between rival claimants, must set forth all the facts which show that the relator is entitled to the office; it is not sufficient to show that the person holding the office is disqualified: *State ex rel. Kempf* v. *Boal*, 46 or 47 Mo.

RAILROAD.

Negligence—Passengers standing upon Platform.—One of a large funeral party who took passage upon a train to go a distance of twelve miles, was standing upon the steps of the platform of one of the cars holding on to the railing, when the conductor came along collecting fare. In making change for a bank note which the passenger paid for his fare, the wind carried away the paper as it was passing from the hand of the conductor to that of the passenger. The latter, in attempting to regain it, and as he was then standing on the edge of the platform, or on the steps, lost his foothold and fell against an embankment, was thrown back under the cars and killed. The cars were quite full, but there was standing room in all of them. In an action against the company, under the statute, to recover damages for the death of the deceased, it was *held*, it was the negligence of the deceased, not that of the company, which caused his death, and there could be no recovery: *Quinn* v. *The Ills. Cen. Railroad Co.*, 51 Ills.

While it is negligence on the part of a railroad company, for which they should be held strictly accountable, not to furnish comfortable sitting accommodations for their ordinary number of passengers, or even for an extraordinary number, upon due notice, yet the same strictness should not be applied when a train is unexpectedly crowded by a large party going only a few miles: *Id.*

And even if it was the duty of the conductor, in this case, to have advised the deceased to enter the car from the platform, at least while paying his fare, his failure to do so was as nothing when compared with the gross negligence of the deceased: *Id.*

RECORD.

Notice.—The failure of the recorder of deeds to enter in his index the names of the parties to a deed properly recorded, does not prevent the recording from operating as a notice to all subsequent purchasers: *Bishop* v. *Schneider*, 46 or 47 Mo.

Purchaser for Value without Notice.—A party claiming title against a prior deed as a purchaser in good faith without notice, must prove, not only his purchase and want of notice, but that he has paid the value before receipt of notice: *Id.*

SET-OFF.

What may be set off.—The right to set off one demand against

another is wholly regulated by statute. A claim in set-off, to be available, must be due and payable when the plaintiff's action was begun; and the fact that the plaintiff has assigned his property for the benefit of his creditors, does not modify or change the rights of the parties: *Robinson* v. *Safford*, 57 Me.

A mere liability as endorser, existing at the time when, but not discharged till after, the plaintiff commenced his action, is not allowable in set-off: *Id.*

Otherwise, money received by the plaintiff for his authorized transfor of the defendant's shares of stock in a corporation prior to the commencement of the action: *Id.*

Also, for amounts of drafts drawn by the defendant for the accommodation of the plaintiff, and paid by the former prior to the commencement of the action: *Id.*

Also, for amount paid by the defendant prior to the commencement of the action, to redeem his shares of stock in a corporation, pledged by the plaintiff under a power of attorney from the defendant, to a savings bank as collateral for money loaned to the plaintiff: *Id.*

Also, for items paid prior to the commencement of the action, for protest: *Id.*

Stamps.

Proof of intent in omitting.—An objection to a deed, that it is not stamped as required by the Act of Congress, is unavailing, unless the party objecting proves that the omission of stamps was with intent to evade the statute: *Cagger, Administratrix,* v. *Lenning*, 57 Barb.

Trespass.

Trespass to the Person—What constitutes.—Where a party under arrest, upon a charge of larceny, was taken from his place of confinement to the outskirts of the town in the night time, by those having the prisoner in charge, and one of the number, placing his hand upon the prisoner's shoulder, produced a rope and required him to confess the larceny, it was *held*, that such persons were guilty of an aggravated trespass, for which they must respond in damages: *Stallings* v. *Owens*, 51 Ills.

Whether the rope was or was not placed about the prisoner's neck, and whether he was or was not suspended to a tree for the purpose of compelling a confession of a crime, and whether or not he suffered personal injury, are questions which do not go to the existence, but to the degree of the injury: *Id.*

Exemplary Damages in an Action for seizing and selling the Property of one Person upon an Execution against another.—Where the property of one person is seized upon an execution against another, and sold, and the proceeds applied upon the debt, in an action of trespass *de bonis asportatis* by the owner of the property against the officer and plaintiff in the execution, in the absence of malice or abuse of process, or a desire to do injury, the damages should be compensatory only: *Beveridge et al.* v. *Rawson*, 51 Ills.

The mere fact that the property was taken against the repeated remonstrances of the owner, and his warning to the defendants that the property belonged to him, would not, of itself, show that the seizure and

sale were malicious, and to instruct a jury that the existence of such fact is sufficient to authorize the finding of exemplary damages, would be erroneous: *Id.*

USURY.

What constitutes, under Act of 1857.—Under the interest law of 1857, a promissory note bearing twelve per cent. interest per annum, is usurious. That act prohibits the taking of any greater rate than ten per cent. per annum, upon any kind of contract or for any species of consideration: *Hamill* v. *Mason et al.*, 51 Ills.

Such a case is not controlled by that of *McGill* v. *Ware*, 4 Scam. 21, in which it was held, that the taking of a legal rate of interest in advance, by deducting it from the sum loaned, was not usurious. But that case was decided upon the authority of cases in other courts upon statutes that declared a forfeiture of the whole debt, for usury, and in this state, at that time, there was a forfeiture of three-fold the usury reserved; and it is doubted whether such a rule would have obtained had the forfeiture been no more than the interest: *Id.*

The statute against usury may be availed of under the general issue, where the fact of usury appears from the contract and the declaration: *Id.*

Where an assignee before maturity receives a promissory note which discloses upon its face the fact that usurious interest is reserved, he is bound to take notice thereof, and will hold the note subject to that defence: *Id.*

VENDOR AND PURCHASER. See *Homestead; Partition.*

Reservation by the Vendor—What constitutes.—A party sold his interest in a tract of land, the legal title of which was in another, and an agreement in writing was entered into between the vendor and purchaser, by the terms of which the former was to have a certain time in which to remove some wine plants growing upon the premises. The person holding the legal title was authorized verbally by the vendor to convey to the purchaser on the payment of a certain sum of money to which the land was subject. The payment being made, the holder of the legal title, at the request of the purchaser, conveyed the land to the wife of the latter, the deed containing no clause of reservation of the wine plants. *Held*, that the written reservation was operative according to its terms, and secured to the vendor the right to remove the plants within the time agreed upon. The fact that the deed contained no reservation was immaterial, as it was not made by the vendor, nor did he authorize it to be made without the reservation: *Ring* v. *Billings et al.*, 51 Ills.

Quære, whether the vendor, in such case, could set up his written reservation against a subsequent deed made by himself not containing a reservation: *Id.*

The wife of the purchaser, to whom the conveyance was made, occupied no better position in respect to the reservation, than he would have held as grantee, since she was a volunteer, and had, moreover, full notice of the fact that the reservation was made: *Id.*

The written reservation made the plants, as between the vendor and

purchaser, and the wife of the latter, personal property; as much so as if they had been taken from the ground: *Id.*

Statute of Frauds.—Where a purchaser of land, after paying a portion of the consideration and promising to pay the rest, fails to do so, he cannot, on being sued for the balance of the consideration, set up his own breach of promise as a defence to the action, in this, that because he did not perform, the statute of frauds applies; where he, by reason of the vendor's performance, is in possession and is enjoying the benefit of the estate purchased: *Cagger Administratrix* v. *Lenning*, 57 Barb.

Trover—Conversion—The vendor, within the time limited for the purpose, sought to remove the plants according to the reservation, but the grantee, the wife of the purchaser, the latter being absent, forbade him to take them. *Held*, in an action of trover by the vendor against the husband and wife, in answer to the objection that no conversion by the former was shown, that inasmuch as the purchaser insisted the deed should be made to his wife, and from her refusal of the plants, the jury might infer he had the deed thus made to escape the obligation of his agreement, and that in regard to the plants she acted under his authority: *Id.*

It might, moreover, well be held, that the mere fact of procuring the deed to be made to his wife, followed as this was by her claiming the plants, was, in itself, a technical conversion on his part, and as he thereby placed in his wife the title of the land where the plants were growing, she was the proper person on whom to make the demand: *Id.*

VOTER.

Desertion from Military Service.—No citizen of this state can be deprived of the right of suffrage under the Act of Congress of March 2d 1865, c. 79, § 21, until after conviction and sentence by a court-martial of the United States: *State* v. *Symonds*, 57 Me.

An indictment for illegal voting at an election of state officers based upon a disqualification by reason of desertion from the army of the United States, must specifically set forth the crime of desertion: *Id.*

Evidence of the defendant's admission of the crime of desertion is not admissible in support of an indictment for illegal voting, not containing any allegation of desertion: *Id.*

Nor is the unauthenticated roll of the company to which he belonged: *Id.*

WILL.

Promise to make—Specific Performance.—An agreement to dispose of property by will in a particular way, if made upon a sufficient consideration, is valid and binding; and where the contract has been partially performed, equity will enforce a specific performance of the contract, although not made in writing, if the failure works a fraud upon the other party: *Gupton and Wife* v. *Gupton*, 46 or 47 Mo

Parties seeking to establish—What must be proved.—A party seeking to establish a will, must prove the testator was of disposing mind and memory at the time he made it, and this cannot be shown merely by proof that he was so at some anterior period: *Holloway* v. *Galloway*, 51 Ills.