priate and proper way to ascertain the value of the thing at the time, and if, as appeared, there was no market price for warps at that time and that they were an article not usually sold at auction, it does not lie with the defendants to complain; for, having had ample notice of the sale, they might have attended it and protected themselves by buying the warps if the price they brought was below their value.

The report of the referee should be affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

COURT OF CHANCERY OF NEW JERSEY.[3]

SUPREME COURT OF NEW YORK.[4]

SUPREME COURT OF PENNSYLVANIA.[5]

SUPREME COURT OF VERMONT.[6]

ATTORNEY.

Disbarment—Causes for.—An act highly discreditable but not infamous and not connected with an attorney's duties, will not give the court jurisdiction to strike him from the roll: *Dickens' Case*, 67 Pa.

An attempt to make an opposing attorney drunk to obtain an advantage of him in the trial of a cause, is good ground for striking an attorney from the roll: *Id.*

AGENT. See *Usury*.

Payment to Agent.—It is well settled that a debtor is authorized to pay an agent any sum which is due upon a security which has been intrusted to the agent by the holder, for the purpose of collecting any part of it; as where the agent has been authorized to receive the interest only, but receives the principal: *Doubleday* v. *Kress*, 60 Barb.

Indeed the authorities go to the extent of holding a payment valid, made to an agent who is merely intrusted with the possession of the security, without express authority to receive or collect any part of it. The ostensible authority attributed to a party to whom is intrusted an instrument to secure the payment of money, is to receive payment according to its terms. Per TALCOTT, J.: *Id.*

The principal is, as to third persons not having any notice of a limitation, bound by the ostensible authority of the agent, and cannot avail himself of secret limitations upon the authority and repudiate the agency,

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[1] From J. Wm. Wallace, Esq., Reporter; to appear in vol. 12 of his Reports.

[2] From Hon. N. L. Freeman, Reporter; to appear in 54 Ills. Reports.

[3] From C. E. Green, Esq.; to appear in vol. 7 of his Reports.

[4] From Hon. O. L. Barbour; to appear in vol. 60 of his Reports.

[5] From P. F. Smith, Esq., Reporter; to appear in 67 Penna. State Reports.

[6] From W. G. Veazey, Esq., Reporter; to appear in 43 Vt. Reports.

where innocent third persons have in good faith acted upon the ostensible authority conferred by the principal: *Id.*

The plaintiff held a note for $800 and interest, payable to her own order at the office of W., made by the defendant. When it fell due, the plaintiff, without endorsing the note, handed it to M. to present for payment. M. accordingly presented the note at the place of payment, together with a forged order upon W., purporting to be signed by the plaintiff, requesting W. to pay her money to M. The principal and interest was thereupon paid by W., and the note delivered up and cancelled, and M. absconded with the money. *Held* that the payment was clearly valid both upon authority and principle, and discharged the note: *Id.*

BANKRUPTCY. See *Replevin.*

Insolvency—Preference to Creditor in Fraud of Bankrupt Act.—By insolvency, as used in the Bankrupt Act when applied to traders and merchants, is meant inability of a party to pay his debts as they become due in the ordinary course of business: *Toof et al.* v. *Martin, Assignee, &c.*, 12 Wall.

The transfer by a debtor of a large portion of his property while he is insolvent to one creditor, without making provision for an equal distribution of its proceeds to all his creditors, necessarily operates as a preference to him, and must be taken as conclusive evidence that a preference was intended, unless the debtor can show that he was at the time ignorant of his insolvency, and that his affairs were such that he could reasonably expect to pay all his debts. The burden of proof is upon him in such a case, and not upon the assignee or contestant in bankruptcy: *Id.*

A creditor has reasonable cause to believe a debtor, who is a trader, to be insolvent when such a state of facts is brought to the creditor's notice respecting the affairs and pecuniary condition of the debtor as would lead a prudent business man to the conclusion that he is unable to meet his obligations as they mature in the ordinary course of business: *Id.*

A transfer by an insolvent debtor with a view to secure his property, or any part of it, to one creditor, and thus prevent an equal distribution among all his creditors, is a transfer in fraud of the Bankrupt Act: *Id.*

BILLS AND NOTES.

Fraudulent Note—Right of Bonâ fide Holder.—Moss signed a note payable to Benton or bearer, which was a fraud on Moss. Phelan bought it from a holder *bonâ fide* for value, and without notice of the fraud. *Held*, that he could recover from Moss: *Phelan* v. *Moss*, 67 Pa.

A holder of a negotiable note *bonâ fide* for value, without notice, can recover it, notwithstanding he took it under circumstances which ought to excite the suspicion of a prudent man: *Id.*

In order to destroy such holder's title, it must be shown that he took the note *malâ fide*: *Id.*

The doctrine as to the title of the holder of a note, fraudulent as between the original parties, discussed, and the authorities examined in this case: *Id.*

Gill v. *Cubitt*, 3 B. & C. 466, not law in Pennsylvania; *Beltzhoover* v. *Blackstock*, 3 Watts 20, criticised: *Id.*

Fraudulent Alteration not apparent on Face.—Garrard signed a printed note, in the blank of which was written "one hundred," leaving a blank space between that and "dollars," which was in print; this, after delivery, was filled with "fifty" in the same hand, and nothing in the appearance to raise a suspicion that it was not all right. *Held*, that Garrard was liable for the face of the note to a *bonâ fide* holder for value: *Garrard* v. *Haddan*, 67 Pa.

If the blank had been scored, or the alteration in any way perceptible, a purchaser would have taken it at his own risk: *Id.*

If one by his acts, or silence, or negligence, misleads another, or affects a transaction whereby an innocent party suffers, the blameable party must bear the loss: *Id.*

Fraud and Circumvention—What Constitutes.—Where a party signed a promissory note, and alleged, not that he did not know he was signing such a note, but merely that, by the terms of an instrument attached to the note when it was executed, it was only to be paid on a contingency which did not occur, and that this instrument was wrongfully detached from the note after its execution: *Held*, these facts did not constitute fraud in obtaining the execution of the note, but fraud perpetrated after its execution, and therefore not availing as a defence against an assignee before maturity: *Elliott* v. *Levings*, 54 Ills.

It is no defence to a promissory note, against an innocent assignee, that the note, when delivered, was left in blank as to the time of payment, and this blank was afterwards improperly filled by the payee: *Id.*

Obtained by Menace of Arrest, &c.—In order to avoid an act on the ground of menace of arrest or imprisonment, it must appear that the menace was of an unlawful inprisonment, and that the party was put in fear of such imprisonment, and was induced by such fear to do the act in question: *Knapp* v. *Hyde*, 60 Barb.

It is not such menace as will avoid an act, if the party is only menaced by a *lawful* imprisonment: *Id.*

Where the defendant, at the time of making a promissory note, was not under arrest or imprisonment, but was at his residence in this state, where he had committed no criminal offence for which he could be arrested or imprisoned, having made, at most, as was alleged by the payee, only some fraudulent representations in respect to the value of land upon which he had a mortgage that he had sold to the payee of the note; which sale, and the representations that induced it, were made in the state of Illinois: it was *held*, that as there was no ground for the defendant's arrest, in either state, on a criminal charge, or for his being taken to Illinois in any criminal proceeding for such fraud, a threat of such an arrest constituted no defence to an action upon the note: *Id.*

COLLATERAL SECURITY. See *Mortgage.*

COMMON CARRIER.

Diligence—Acts of Public Enemy.—During the civil war the defendant was proprietor of a stage and express line upon the overland route to California. The stage was attacked by Indians and robbed of its contents, amongst which was a safe containing money of the plaintiff below. The judge charged the jury, in determining what was the duty

of the express agent at that time, to inquire what a cool, self-possessed, prudent, careful man would have done with his own property under the same circumstances; that it was the defendant's duty to provide such a man for this hazardous business. *Held*, that the charge was not erroneous; that it only required of the defendant what might be called ordinary care and diligence under the special circumstances of the case: *Holladay* v. *Kennard*, 12 Wall.

What is ordinary negligence depends on the employment. Where skill and capacity are required to accomplish an undertaking, it would be negligence not to employ persons having those qualifications: *Id.*

When goods in the hands of a common carrier are threatened to be destroyed or seized by a public enemy, he is bound to use due diligence to prevent such destruction or seizure: *Id.*

It is not necessary that he should be guilty of fraud or collusion with the enemy, or wilful negligence, to make him liable; ordinary negligence is sufficient: *Id.*

Grounds for refusing to receive Goods, if they exist, should be stated at the Time—Surgical Instruments of Army Surgeon.—The obligations and liabilities of a common carrier are not dependent upon contract, though they may be modified and limited by contract; they are imposed by the law, from the public nature of his employment: *Hannibal Railroad* v. *Swift*, 12 Wall.

If a common carrier of passengers and of goods and merchandise, have reasonable ground for refusing to receive and carry persons applying for passage, and their baggage and other property, he is bound to insist at the time upon such grounds if desirous of avoiding responsibility. If not thus insisting he receives the passengers and their baggage and other property, his liability is the same as though no ground for refusal existed: *Id.*

The liability of a common carrier of goods and merchandise attaches when the property passes, with his assent, into his possession, and is not affected by the carriage in which it is transported, or the fact that the carriage is loaded by the owner. The common carrier is an insurer of the property carried, and upon him the duty rests to see that the packing and conveyance are such as to secure its safety: *Id.*

It is not a ground for limiting the responsibility of a common carrier, where no interference is attempted with his control of the property carried, that the owner of the property accompanies it and keeps watch for its safety: *Id.*

Where a railroad company receives for transportation, in cars which accompany its passenger trains, property of a passenger other than his baggage, in relation to which no fraud or concealment is practised or attempted upon its employees, it assumes with reference to the property the liability of a common carrier of merchandise: *Id.*

Surgical instruments, in the case of a surgeon in the army travelling with troops, constitute part of his baggage: *Id.*

Constitutional Law.

Taxation on Tonnage.—Although taxes levied as on *property* by a state upon vessels owned by its citizens, and based on a valuation of the same, are not prohibited by the Federal Constitution, yet taxes cannot

be imposed on them by the state "at so much per ton of the registered tonnage." Such taxes are within the prohibition that "no state shall, without the consent of Congress, lay any duty of tonnage:" *Cox* v. *The Collector*, 12 Wall.

Nor is the case varied by the fact that the vessels were not only owned by citizens of the state, but exclusively engaged in trade between places within the state.: *Id.*

CURRENCY. See *Municipal Corporation.*

DEBTOR AND CREDITOR. See *Bankruptcy; Insurance; Replevin.*

Preference by Insolvent Debtor—Agreement of Creditors to give Time.—A number of executions had been issued against Wilson; the plaintiffs agreed to stay for four months, and with other creditors (not being all) agreed to give him time, and "in case of executions issued on any of said claims it is hereby stipulated that the above-named execution-creditors shall have priority whatever the order of their being issued." This meant, that in case of executions being issued on the claims of any of the signers to the agreement, the executions then issued should have priority, but as between the executions issued, in case of insufficiency the fund raised should be distributed *pro ratâ*. The signers were bound in good faith to carry it out: *Loucheim Brothers' Appeal*, 67 Pa.

Wilson owed Loucheim $1600, but stated it in the agreement and to the other creditors at $830; and to induce Loucheim to sign, gave him a judgment for $800 as part of the debt, payable in thirty days. This was a fraud on the other signers, and Loucheim's judgment as to them was void: *Id.*

It was not void as to creditors not signing: *Id.*

Loucheim having issued execution on his judgment, was trustee *ex maleficio* for the signers, in respect to any advantage obtained by it: *Id.*

McCord, one of the original execution-creditors, and a signer, issued execution prematurely after Loucheim; there being no provision for forfeiture in such case, he also was trustee for the other signers: *Id.*

Robinson, not one of the signers, issued execution after McCord; he had no claim to the fund till after the other two were satisfied: *Id.*

Loucheim's acts were not a fraud on Robinson: *Id.*

The fund raised on the executions was to be distributed amongst the execution-creditors who signed the agreement *pro ratâ*: *Id.*

Wilcox v. *Waln*, 10 S. & R. 380; *Manufacturers' and Mechanics' Bank* v. *Bank of Pennsylvania*, 7 W. & S. 335, adopted: *Id.*

Creditor's Bill—Who may maintain it.—A surety who had paid a judgment recovered against himself and his principal, joined with other creditors, after the death of the principal debtor, in a bill in chancery to set aside a conveyance made by him in his lifetime, for the purpose, as was alleged, of defrauding his creditors: *Held*, such surety stood in the position of a simple-contract creditor, not having obtained a judgment against his principal in his lifetime, or obtained an allowance of the claim against his estate, and therefore was not in a position to maintain a bill of that character: *Mugge* v. *Ewing et al.*, 54 Ills.

EASEMENT.

Extent of—No Easement in one's own Land.—A devise of a building

and lot to A. on condition that he will permit B. "to carry on the business of a druggist on that part of the premises then occupied by him for his business of a druggist (being part of the first floor of said building) so long as he should desire to use it for that purpose," created no easements in the adjoining lot, for the use of a hydrant, and for passage over said lot in favor of B., though he had been allowed these privileges in the testator's lifetime! *Stanford* v. *Lyon and Wife*, 7 C. E. Green.

The devise as to B. being only the privilege reserved of carrying on the druggist's business in the parts occupied by him at testator's death, is simply the right to occupy: *Id.*

The owners of lands can have no easement in or over his adjoining lands, and where he sells one parcel, the right to enjoy privileges and conveniences which he, when owner of both, enjoyed in the other, does not pass to the purchaser: *Id.*

EXECUTIVE. See *Governor*.

GOVERNOR.

Subpœna to, as Witness—Production of Official Papers—Court will presume no Contempt.—Every person, whatever his office or dignity, is bound to appear and testify in courts of justice when required to do so by proper process, unless he has a lawful excuse. The dignity of the office, or the mere fact of official position, is not of itself an excuse, and whether the official engagements are a sufficient excuse must be determined from the circumstances of each case: *Thompson* v. *German Valley Railroad Co.*, 7 C. E. Green.

The governor will not be compelled to produce in court any paper or document in his possession; he will be allowed to withhold it, or any part of it, if in his opinion his official duty requires him to do so: *Id.*

The governor cannot be examined as to his reasons for not signing an Act of the Legislature, nor as to his action in any respect regarding it. But he is bound to appear and testify as to the time an act was delivered to him: *Id.*

But an order to testify is an unusual, if not unheard-of, practice, and ought not to be made against the Executive of the state: *Id.*

In the case of the Executive, the court would hardly entertain proceedings to compel him to testify by adjudging him in contempt. It will be presumed that the chief magistrate intends no contempt: *Id.*

If the governor, without sufficient or lawful reason, refuses to appear and testify, he is, like all other citizens, liable to respond in damages to any party injured by his refusal: *Id.*

HIGHWAY.

Damages—Insurance.—A town, liable for damages occasioned by the insufficiency of a highway, is not entitled to have deducted the amount received by the plaintiff from an insurance company on account of the injuries for which he claims to recover against the town: *Harding* v. *Town of Townshend*, 43 Vt.

HUSBAND AND WIFE.

Wife's Chattels in possession of Husband.—Mrs. Davis bought a horse in West Virginia (where the common law as to husband and wife prevailed), to be paid for from her share of her father's estate in Pennsyl-

vania. Her note for the purchase-money was taken to the vendor by her husband, and the horse delivered to him; being in his possession in Pennsylvania, it was sold, under an execution against him, to the creditor; the wife afterwards paid the note from her separate estate. *Held*, that the horse had become the property of the husband on its delivery to him, and was liable to be seized for his debt: *Davis et ux.* v. *Zimmerman*, 67 Pa.

The mere delivery of the horse to the husband for the wife, without any act or declaration by him, was not a waiver of his marital rights nor evidence of his assent from which the jury could find it: *Id.*

The case was to be determined by the rules of the common law: *Id.*

Separate Property of Wife.—Where a married woman had purchased a lot of ground with money obtained from a person other than her husband, and a house erected thereon was paid for in the same way, it was *held*, upon the facts, that personal property for which the house and lot were exchanged was the separate property of the wife, although the transaction was negotiated by her husband, and such personal property was not subject to levy and sale for his debts: *Elder* v. *Cordray*, 54 Ills.

Ante-nuptial Contracts—Statute of Frauds—Trover.—In several Vermont cases the *legal* title of the wife is recognised in a court of law, as existing against the effect of coverture, by reason of an understanding between the husband and wife after marriage, rather implied than expressed, that certain property, which would otherwise belong to the husband, should remain and be the sole and separate property of the wife: *Child* v. *Pearl*, 43 Vt.

A parol agreement by the husband, made before marriage, that property belonging to his wife while *sole* should remain hers, would operate to prevent the title being divested from her by the operation of law on the taking place of the marriage; and she being divorced may obtain trover for it against a purchaser from the husband: *Id.*

The Statute of Frauds is no shield for the defendant, because the action is based on a title that was always in the plaintiff, not on an executory *ante-nuptial* contract. The agreement became executed and its effect realized at once upon the fact of marriage, in that the right of property was not transferred to the husband by such marriage: *Id.*

Infant.

Testimony in Chancery—By whom to be taken.—Guardians ad litem—Cannot consent.—Testimony in a suit in chancery appeared to have been taken by a person without any appointment of record for the purpose. *Held*, he had no power to take it, and, as against an infant defendant, it was rejected: *Fischer* v. *Fischer*, 54 Ills.

An infant defendant in chancery cannot consent, nor can his guardian *ad litem* for him, to the taking of testimony before a person not properly authorized to take it. A guardian *ad litem* cannot admit away any of the rights of an infant or bind him by consent to an act which may be prejudicial to the infant: *Id.*

A bill in chancery was filed against an infant, for the purpose of having the title of certain land which had become vested in the infant by inheritance from his father, who had died, declared to be held in trust for the complainant, on the allegation that the land was purchased and

paid for by complainant, but by the procurement of third persons, was conveyed to the father of the infant defendant, without the knowledge or consent of the grantee or of the complainant. *Held*, the complainant was not a competent witness in his own behalf. He was incompetent at common law, and was not within any of the exceptions of the Act of 1867: *Id.*

INSURANCE. See *Highway.*

Execution Debtor and Creditor.—A person having acquired title by levy of execution on premises insured to the execution-debtor is not entitled to the proceeds of the policy in case of loss by fire: *Plimpton* v. *Farmers' Mutual Fire Ins. Co.*, 43 Vt.

Semble. The mortgagee has in general no claim, either in law or equity, upon the proceeds of a policy effected by the mortgagor in his own name on the mortgaged premises, without any agreement to keep the premises insured, unless the policy be assigned to him: *Id.*

Application—When a part of the Contract.—Where a policy of insurance against fire referred to the *application*, "for a more full and particular description and forming a part of this policy," and declared that the policy was made and accepted in reference to the terms and conditions therein contained and thereto annexed, which were declared to be a part of the contract: *Held*, that by force of such reference, the application was made a part of the contract: *Shoemaker* v. *Glens Falls Ins. Co.*, 60 Barb.

JURY.

Criminal Law—Bystander communicating with a Juror during a Trial.—The mere fact that a bystander hands a slip of paper or speaks to a juror, during the progress of the trial of a capital case, without reference to the character of the communication, and without misconduct on the part of the juror, cannot be regarded as ground for a new trial, on the theory that the juror's mind was thereby diverted from the case: *Martin* v. *People*, 54 Ills.

So where a bystander, during the progress of a trial of a party on the charge of murder, handed to one of the jurors five dollars which he owed him, and for no other purpose than the payment of the debt, it was *held*, while there was an impropriety in approaching a juror for any purpose, under such circumstances, without first obtaining the leave of the court and the consent of the parties, yet, as the transaction was entirely innocent in its character, and no harm to the prisoner resulted, it was not ground for a new trial: *Id.*

LIMITATIONS, STATUTE OF. See *Pleading.*

MORTGAGE. See *Usury.*

Married Woman—Acts of Husband—Collateral Security.—A mortgage that has been satisfied and delivered up to the mortgagee without being cancelled, may be again delivered as a valid security by the mortgagor, and such new delivery gives it new vitality against the mortgagor, but not as against intervening encumbrancers: *Underhill* v. *Atwater*, 7 C. E. Green.

The mortgage of a married woman given as collateral security for the debts contracted by the brother of her husband in continuing and preserving the former business of her husband for his benefit, is satisfied

and discharged by the release of the brother from such debts. It cannot be pledged by her husband for another purpose without her authority: *Id.*

But when the brother was discharged from his debts on condition that the assets of the business should be assigned by him in payment of them, and that the creditor should retain the mortgage as security for the payment of the debts so assigned, such retention of the mortgage is for the purpose for which it was given—collateral security for the debts of the husband's brother, and the husband would have power to continue the mortgage for that purpose without further consent of his wife, were it not that by this arrangement she could no longer call upon the brother for whom alone she was surety: *Id.*

Although no express power is given to use or pledge a mortgage for a particular purpose, such power may be inferred from the circumstances of the case, the situation of the parties, and the general object for which the mortgage was given: *Id.*

A complainant to whom a mortgage has been assigned as security for a specific debt can only have a decree for that debt, although pending the foreclosure suit, the whole mortgage is absolutely assigned to him. His remedy for the residue may be by supplemental bill or petition for the surplus: *Id.*

Municipal Corporation.

Issue of Small Bills as Currency.—The issue of small notes by the city of Richmond in April 1861 designed to circulate as currency, was in violation of the then existing statutes of the state, and the notes when issued were thus void: *Thomas* v. *City of Richmond*, 12 Wall.

Neither a provision in the city charter which gave to it "all the rights, franchises, capacities, and powers appertaining to municipal corporations," nor a provision which authorized it "to contract loans and cause to be issued certificates of debt or bonds," gave an authority to the city to issue small notes for currency: *Id.*

In a community in which it is against public policy, as well as express law, for any person or body corporate to issue small bills to circulate as currency, it is certainly not one of the implied powers of a municipal corporation to issue such bills: *Id.*

Certain acts passed March 19th 1862, and March 29th 1862, by a body styling itself the legislature of the state of Virginia, which acts pretended to make valid and recoverable in law the said notes so issued by the city, did not do so; the acts having been passed by a legislature not recognised by the United States, and in aid of the rebellion: *Id.*

Where a plaintiff is not *in pari delicto* with the defendant, actions are sustained to recover back money or other consideration received for obligations of the defendant, though the obligations themselves, being against law, cannot be sued on: *Id.*

But, in the case of municipal and other public corporations, issuing small bills as currency, this rule will not apply; the issuing of such bills by such a corporation without authority is not only contrary to positive law, but, being *ultra vires* is an abuse of the public franchises which have been conferred upon it; and the receiver of the bills being chargeable with notice of the wrong, is *in pari delicto* with the officers, and has no remedy, even for money had and received, against the corporation upon which he has aided in inflicting the wrong: *Id.*

NUISANCE.

Rendering a House Uncomfortable—Injunction—Principles on which Equity Proceeds in such Cases.—Filling the air around a dwelling-house with dense smoke and soot or cinders, or with noxious or offensive vapors or odors, or with annoying noises, to such a degree as will render living in the house uncomfortable to persons of ordinary sensitiveness on those matters, is a nuisance and unlawful injury, which will be restrained by injunction: *Duncan* v. *Hayes*, 7 C. E. Green.

If the title of the complainant is not disputed and the injury is clear, it is not necessary that the fact of nuisance should be first established by a verdict at law: *Id.*

It is well settled that a court of equity will not restrain by injunction any lawful business, or the erection of any building or works for such business, because it is supposed or alleged that such business will be a nuisance to a dwelling-house near it, it must be clear that the business will be a nuisance, and that it cannot be carried on so as not to be such: *Id.*

Where the building or machinery is of itself no nuisance, the erection will generally not be stopped, but the defendant allowed to go on with it at the risk of not being permitted to use them in any way so as to cause a nuisance: *Id.*

As to the business itself, if it is not clearly shown that it will be a nuisance in the way it is meant to be carried on, the court will not restrain it, but will compel the complainant to wait for his protection until it is in operation, and it can be shown without doubt, whether it is a nuisance or not: *Id.*

No lawful occupation will be restrained or interfered with, unless it will actually interfere with the comfortable enjoyment of life, and it appears beyond any reasonable doubt that it will so interfere: *Id.*

In a doubtful case, where the injury by prohibiting the business is great and certain, and the injury to the complainant when it may occur can be speedily remedied by an injunction applied for after the fact of nuisance is ascertained by experiment, the defendant after being warned of the peril, will, in general, be allowed to proceed at his own risk, until the complainant is actually injured: *Id.*

That the business proposed to be carried on by the defendant would injure the prestige of the complainant's house, make it less desirable for the better class of boarders who frequent it, and thus lessen her profits, is no good ground for an injunction: *Id.*

Increased risk from fire, and the consequent large rates of insurance, are no ground for injunction: *Id.*

PARTITION. See *Tenant in Common.*

Suit in Equity for Accounting—Construction of Will.—On partition in equity, the court will order an accounting, and dispose of all questions arising between the parties in relation to the land and its use, and afford complete relief: *Scott et al.* v. *Guernsey et al.*: 60 Barb.

Where the title of the parties depends upon the construction to be given to a will, and the defendants are in possession, claiming that by the will they are entitled to exclusive possession, and they deny the plaintiff's right, an action for a construction of the will, for a partition, and for an accounting will lie; and the court will not require the plaintiffs to first try the question of title in an action of ejectment: *Id.*

PLEADING.

Limitations—Whether pleadable.—A remote grantee of lands filed a bill in chancery to establish a lost deed in his chain of title. The widow and heirs of the grantee in the lost deed, being made parties defendant, set up, as a defence to the relief sought, the Statute of Limitations barring a right of entry, claiming title in themselves: *Held*, the Statute of Limitations thus set up was not an appropriate defence as against the relief sought by the bill—the establishment of the lost deed. Indeed, as the defendants claimed under that deed, the relief sought was not adverse to them: *Rockwell et al.* v. *Servant et ux.*, 54 Ills.

PUBLIC OFFICER. See *Governor.*

REPLEVIN.

Execution—Bankruptcy of Debtor.—The defendant in an execution, whose property, not exempt from seizure under execution, has been levied upon under an execution, regular upon its face, and issued by proper authority, and executed by the officer to whom it is directed, cannot recover the possession of such property by an action in the nature of replevin, for the immediate possession thereof; even though he may, after the rendition of the judgment and before the issue of the execution, have obtained a discharge in bankruptcy: *Westenberger* v. *Wheaton*, 7 Kans.

SECURITY. See *Mortgage.*

SHERIFF'S SALE.

Officer—Trustee Process.—Where a constable bid in a horse which he was selling on execution, and accounted for the proceeds to the execution-creditor, neither the debtor nor creditor objecting, but being satisfied with the price, and the constable then sold it to H., the debtor acquiescing in the sale, and there being nothing in the transaction fraudulent as to creditors, it was *held* that the sale to H. was good, and transferred the title; and that neither the constable nor H. were chargeable as trustees in a suit against the debtor in favor of another creditor: *Farnum* v. *Perry*, 43 Vt.

SLANDER.

Actionable Words—Evidence.—In slander the words laid and proved were, the plaintiff "had stolen corn out of Gribble's field." The defendant's point was "that if the jury believe the defendant spoke, and the bystanders understood him as referring to standing corn, the plaintiff could not recover." *Held*, that the point should have been affirmed: *Stitzell* v. *Reynolds and Wife*, 67 Pa.

Calling one a thief for stealing a tree or other thing adhering to the freehold is not actionable: *Id.*

Charging one with wilfully taking fruit, &c., which is made by Act of Assembly a misdemeanor, is not actionable: *Id.*

To constitute slander the words spoken must impute an offence both indictable and infamous: *Id.*

Conduct and words of the defendant after suit brought should not be submitted to the jury as an element in assessing damages: *Id.*

Such evidence was proper in determining the question of malice with which the words charged had been spoken: *Id.*

TAXATION. See *Constitutional Law.*

TENANT IN COMMON.

Trespass on the Case—Aqueduct—Spring—Water.—An action on the case sounding in tort may be maintained by one tenant in common against his co-tenant for a misuse of the common property, though not amounting to a total destruction of it: *McLellan* v. *Jenness*, 43 Vt.

The plaintiff and defendant and three others owned a main aqueduct, each having the right to one-fifth the water passing therein, which they took to their respective premises by branch aqueducts which each owned separately. The plaintiff sued the defendant in trespass on the case for a misuse of the water to the injury of the plaintiff. The court charged the jury that if they found that the defendant wilfully and knowingly used or wasted more than his one-fifth part of the water which came in the main aqueduct, or knowingly *suffered his family to do it*, for the purpose of annoying or injuring the plaintiff, or with a wanton disregard or indifference to the inconvenience it might occasion to the plaintiff, and thereby the plaintiff suffered injury, then the defendant is liable in this action. *Held* that this was correct: *Id.*

Partition—Rents.—Bill for an account of rents, and for partition of a strip 50 feet long by 5 feet wide, being the rear boundary line of the lots of complainant and defendant. Decree that each party is entitled to the half of the strip which adjoins his own premises, and if the parties are agreed as to the direction of the line, division will be ordered to be made by a line drawn through the middle of the strip, parallel to and equally distant from the sides, without the delay or expense of appointing commissioners: *Davidson* v. *Thompson*, 7 C. E. Green.

A tenant in common is not, in general, accountable to his co-tenant for rents. But when he takes possession of the premises, and excludes his co-tenant and takes the rent therefor, he must account for the rents, deducting expenses for repairs and taxes: *Id.*

One entitled in remainder as co-tenant during the life estate, by permission of, and agreement with, the life tenant, erected buildings on the common property, and received rents for the same before and after the termination of the life estate. *Held* that on partition he could not hold the buildings or their value, and must account for the rents received after the death of the life tenant: *Scott et al.* v. *Guernsey et al.*, 60 Barb.

Nor will equity support such a claim, where the tenant has, by the rents received during the life estate, been fully reimbursed for all his expenditures and interest: *Id.*

One tenant in common in possession of the common property, is liable to pay rent only when he agrees to pay it; and such an agreement only enures to the benefit of the co-tenant with whom it is made. Nor can he set off against such rent the cost of improvements and additions, not strictly repairs: *Id.*

A tenant in common occupying without agreement to pay rent is not liable, on partition, to account for rent, even though the occupancy be by a firm of which the tenant in common is a partner: *Id.*

A tenant in common receiving rents is liable to pay interest on the sums so received without a previous demand: *Id.*

The rent so received is a lien on the shares of the parties receiving it, in favor of the parties to whom it is due. *Id.*

TENDER. See *Vendor*.

At what Time it may be made.—A debtor may, even after suit is brought, and at any time before the trial, make a sufficient tender and relieve himself from future costs: *Sweetland* v. *Tuthill*, 54 Ills.

But in such a case, he should tender a sum sufficient to cover all that the creditor then has a right to recover, whether of debt, interest, or costs, and if he tenders less, the tender is not good, and the plaintiff would be entitled to recover costs: *Id.*

A debtor tendered his creditor a certain sum as the amount due, which, being refused, was deposited in court. Upon a trial by jury, a verdict was rendered for a less sum, when the court ordered the residue to be refunded to the defendant: *Held*, this was error, the defendant having, by tendering the sum, admitted it was due: *Id.*

USURY.

Interest—Agency.—A sale of mortgage securities at a premium cannot subject the party to an action to recover back the premium on the ground of usury: *Culver* v. *Bigelow*, 43 Vt.

Although courts rarely, if ever, as between debtor and creditor, enforce an executory contract for the payment of compound interest, yet the payment of it is not necessarily in a legal sense the payment of usury; and if a debtor knowingly, understandingly, and unconditionally pays it under no peculiar circumstances of oppression, it cannot be recovered back: *Id.*

Where a party by simple contract deals with an agent who does not disclose the fact of his agency, he may be made liable in a suit in the name of the principal to the same extent as if the agent had been principal and the suit had been brought in his name: *Id.*

But where an agent of a party holden on a note and mortgage purchases the same for his principal, taking an assignment to himself instead of a discharge, and pays more than annual interest, and the agency is not known to the creditor, but he supposes the agent purchased in his own behalf, the liability of the creditor for the excess paid is not different from what it would have been if the transaction was in fact what it apparently was, a purchase by the agent in his own behalf: *Id.*

If the agency was known to the creditor, the form of the transaction, being a sale and transfer to the agent, would not vary the creditor's liability to the principal for the usury from what it would have been if it had been a payment by the principal: *Id.*

There being testimony tending to show notice of the agency to the creditor or his attorney, the question of notice should have been submitted to the jury in an action by the principal to recover back the excess: *Id.*

VENDOR AND VENDEE.

Enforcing Performance—Tender—Rescission.—Irvin contracted to buy land from Bleakley, paid half the purchase-money down, and was to pay the remainder in sixty days, when the deed was to be delivered. The money was not paid or demanded at the end of sixty days nor deed tendered. After that the time for performance became indefinite, but mutual and dependent whenever it should occur: *Irvin* v. *Bleakley*, 67 Pa.