

the defendants had any right to ask. The other assignments relate to the admission of evidence, and need not be particularly noticed. The record shows nothing but a general objection to the admission of the evidence complained of, and we have repeatedly said that such an objection will be of no avail unless it clearly appears that the evidence was not relevant or admissible for any purpose. Nor can any question as to the competency of a witness be raised under such an objection. In this case it does not clearly appear that the evidence was irrelevant and inadmissible. On the contrary, we think it tended to throw some light on the question of damages, and was, therefore, properly received.

Judgment affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.¹

COURT OF CHANCERY OF NEW JERSEY.²

SUPREME COURT OF NEW YORK.³

SUPREME COURT OF KANSAS.⁴

SUPREME COURT OF PENNSYLVANIA.⁵

ACTION.

Right of, on Promise to third Person.—A promise, made by an individual, upon a valid consideration, to pay money to a third person, will sustain an action by the latter, in his own name, against the promissor: *Hall v. Robbins*, 61 Barb.

The defendant, in consideration of goods sold and delivered to him by a firm of V. & M., agreed with them to pay the plaintiff's firm a specified sum, being a debt due from V. & M. to them. *Held*, that the plaintiff, being the owner of the claim, might recover thereon, against the defendant: *Id.*

Venue—Suit in County where Defendant does not reside.—The statute of New Hampshire provides that "transitory actions, in which both parties are inhabitants of the state, may be brought in the county of which either party is an inhabitant, and not elsewhere." To an action on a promissory note, brought in the name of an endorsee, in a county where the defendant did not reside, the defendant pleaded in abatement, that the real owner of the note (and sole plaintiff in interest) resided in the same county with the defendant; and that the endorsement was made solely for the purpose of bringing the suit in the name of the

¹ From the Judges; to appear in 49 or 50 N. H. Reports.

² From C. E. Green, Esq., Reporter; to appear in Vol. 7 of his Reports.

³ From Hon. O. L. Barbour, Reporter; to appear in Vol. 61 of his Reports.

⁴ From W. C. Webb, Esq., Reporter; to appear in 7 and 8 Kansas Reports.

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

nominal plaintiff of record in a county where the defendant did not reside. On demurrer, the plea was held good: *Parsons v. Brown*, 49 or 50 N. H.

AGENT.

Execution of Mortgage by—Sale.—Where an agent to secure a personal debt, executed in his own name a mortgage on his principal's property, there is no presumption, in the absence of proof, that the principal authorized such an encumbrance of his property: *Walfley v. Rising*, 7 Kans.

A subsequent purchaser cannot avoid a sale of personal property made in good faith, and upon sufficient consideration, though unaccompanied by a change of possession, simply on the ground that he was ignorant of it: *Id.*

Liability of Principal.—A principal employing an agent to do an illegal act is responsible for the injury done, whether the agent act innocently or maliciously: *Hynes et al. v. Jungren*, 8 Kans.

AMENDMENT. See *New Trial*.

ARREST.

Warrant must be literally pursued.—Where an order of arrest commands the officer to arrest the debtor and take him forthwith before the justice, the officer is not justified in arresting and confining him in jail: *Hynes & McCleary v. Jungren*, 8 Kans.

ASSUMPSIT.

Infant—Contract to pay for Services in Board and Clothing.—Where the plaintiff agreed with defendant that his minor son should work for defendant a certain time, to be paid for in boarding, clothing, and schooling the son, and the son worked a part of the time, and then voluntarily abandoned defendant without his consent, it was held that the law would not imply a promise to pay in money what the services of the son were reasonably worth beyond the damages caused by the son's failure to complete the contract, the defendant being always ready to pay in the manner stipulated: *Roundy v. Thatcher*, 49 or 50 N. H.

BAILMENT.

Action for Conversion of Goods Pledged.—Where a pledgee of bonds, after the payment of the loan for which they were pledged, promises to return the same, but, on demand made, refuses to do so, an action will lie for their conversion; in which the plaintiff will be entitled to recover the value of the bonds, with interest: *Roberts v. Berdell*, 61 Barb.

Statute of Limitations.—The Statute of Limitations does not commence running, against such an action, until the time of the demand and refusal: *Id.*

CHARITABLE USE.

Property of Religious Society—Change of Forms of Worship.—Property vested in a religious society, incorporated or not, is a charitable use, whether the donors be one or many: *Schnorr's Appeal*, 67 Penna.

The society are trustees and cannot divert the property from the use to which it was dedicated more than other trustees: *Id.*

If they undertake to divert the fund, equity will raise another trustee to administer it according to the intention of the donor or subscribers : *Id.*

When the founders have expressed their intention that particular doctrines shall be taught or a particular form of worship and government maintained, those having the management of the institution cannot alter the purpose for which it was founded : *Id.*

A church organized and endowed as belonging to any particular sect, or in subordination to any particular form of church government, cannot break from that connection or government : *Id.*

If the church be not described in the original donation or subscription as under any particular ecclesiastical jurisdiction it may change its relation, provided there be no radical departure from the original faith or doctrine : *Id.*

In churches, those who adhere and submit to the regular order of the church, though a minority, are the true congregation : *Id.*

The title to the property of a divided congregation is in that part which is acting in harmony with its own law, and the ecclesiastical laws, usages, &c., which were accepted before the dispute are the standard to determine which is right : *Id.*

The guaranty of religious freedom has nothing to do with the property : *Id.*

The majority of a congregation organized under a particular ecclesiastical jurisdiction, resolved that they would not continue under that jurisdiction, elected church officers as an independent body, and took possession of the church property. They afterwards rescinded their resolutions and resolved to return; this did not restore them to their former church relations or to any rights in the property : *Id.*

COLLATERAL SECURITY. See *Bailment*.

CRIMINAL LAW.

Perjury.—False swearing, in an application for naturalization pending in a state court, is indictable in the state court as perjury under the state law : *State v. Whittemore*, 49 or 50 N. H.

Perjury—Indictment.—In an indictment for perjury charged to have been committed on the trial of a cause before the court, or an officer thereof, it is essential : 1st. That the name of the court should be stated, and that such court should have a legal existence ; 2d. That the offence should be charged to have been committed in the county in which the indictment was found ; and, 3d. That it should appear on the face, or be alleged in the body, of the indictment, that the evidence on which the assignment of perjury is based was material to the determination of the issue, or at least proper to be offered on the trial of such issue : *Guston v. The People*, 61 Barb.

Where an indictment alleged that the action, upon the trial of which the perjury was charged to have been committed, was pending in the "Supreme Court of the City of New York," and that the referee who administered the oath was appointed by the "Supreme Court of the City and County of New York : " *Held*, that the indictment was faulty in matter of substance : *Id.*

So, where it nowhere appeared, in the indictment, that the offence if any, was committed within the city and county of New York : *Id.*

Where it was alleged, in the indictment, "that it then became and was a material issue to be tried before W. C. T. whether the said J. J. had committed adultery, as alleged by the plaintiff in the said action," but it was nowhere alleged that the evidence adduced, or the questions calling out that evidence, were material to the determination of that issue, no information being given as to what was "alleged by the plaintiff, in the said action:" it was *held* that the indictment was fatally defective: *Id.*

DAMAGES. See *Vendor*.

Equitable owner seeking Conveyance of Legal Title.—In an action by the equitable owner of a piece of land against the party who holds the legal title, to obtain a decree for the legal title, and where such equitable owner has been in possession and had control of the land all the time, and where no damages are alleged in the petition, except that the plaintiff wanted to divide and sell the land, *Held*, that a judgment for damages is erroneous; that a general verdict for damages would not supply facts sufficient to authorize such a judgment: *Moore v. Wade*, 8 Kans.

DEBTOR AND CREDITOR. See *Insolvent; Partnership*.

Deed by Debtor in Failing Circumstances.—It is not sufficient to set aside a deed made by the grantor when in failing circumstances that his object was fraudulent; it must be shown that the grantee participated in that intent, or had knowledge of the object of the grantor, or of such facts as should have put him upon inquiry as to that object: *Merchants' National Bank of Newton v. Northrup*, 7 C. E. Green.

The mere fact that the grantee has heard of the grantor's suspension or failure, or of his being sued, is not in all cases sufficient to make a sale fraudulent and the deed void: *Id.*

DECEDENT'S ESTATE.

Sale by Executor for Payment of Debts.—A sale and conveyance by an executor under an order of the Orphans' Court for the payment of testator's debts, obtained after the lapse of a year from testator's death, vests in the purchaser only such estate as the heir or devisee was seised of at the time of making the order for sale: *Bockover v. Ayres*, 7 C. E. Green.

A judgment against such devisee, being a lien on the lands, is unaffected by such sale and conveyance; it remains a lien on the land: *Id.*

The judgment-creditor therefore in such case has no right to any part or share of the surplus of the purchase-money in the executor's hands after the payment of debts: *Id.*

DEED. See *Debtor and Creditor*.

Avoidance for want of Mental Capacity in one of Grantors.—Where a deed, executed by husband and wife, is set aside because of the husband's unsoundness of mind, no deduction can be made on account of the value of the wife's right of dower, nor for taxes and assessments paid since the execution of the deed: *Marvin v. Lewis*, 61 Barb.

Such a deed passes nothing; and the wife could not convey her inchoate right of dower. She could only release it to some one having the legal estate in the land: *Id.*

A deed being void, the heir of the grantor may recover the land attempted to be conveyed. And the court, in declaring such deed void in law, cannot impose, as a condition, that it shall be treated as good, so far as to require the plaintiff to repay what has been paid, by the occupant, for taxes and assessments: *Id.*

EQUITY.

Injunction.—A preliminary injunction will not be granted on doubtful points of constitutional law, nor to restrain the execution of laws because the authority delegated by them may be used unwisely or injuriously to the public: *Inhabitants of Greenville v. Seymour*, 7 C. E. Green.

This court will not interfere with the exercise of delegated powers within the limits allowed by the acts conferring them; but the perversion or abuse of such powers, either actual or threatened, will be restrained when made to appear: *Id.*

In this case injunction denied, because the provisions of the acts, however impolitic or oppressive, were within the power of the legislature to enact, and no sufficient cause was shown to interfere with the action of the commissioners: *Id.*

Parties.—The complainant is inadmissible as a witness when the answer is by a party in a representative capacity: *Sweet v. Parker*, 7 C. E. Green.

Where the bill prays an answer without oath, the answer if sworn to is treated as if it were not: *Id.*

Many exceptions exist to the general rule that in equity all must be parties who have an interest in the object of the suit. Where it is the interest which the court is considering, and the owner merely as the guardian of that interest, and others are present who with reference to that interest are equally certain to bring forward the entire merits of the question, the object is satisfied for which the presence of the actual owner would be required: *Id.*

Where the fund is in the hands of a trustee for the life of the parent, who takes a life interest, and her children, the principal upon her death, and in a suit affecting such fund the trustee and parent are defendants, an objection taken at the hearing for want of parties because the children have not been joined as defendants, will not prevail. The interest of the children has been protected by their representatives: *Id.*

A deed given as a security decreed to be a mortgage, and the grantor allowed to redeem: *Id.*

In a suit to have a deed absolute on its face decreed to be a mortgage parol evidence is admissible, not to establish an agreement to reconvey which equity will enforce, but to establish the true nature of the instrument by showing the object for which it was made: *Id.*

Specific Performance.—A president of a corporation cannot bring suit in his own name on an agreement signed by him as president, and entered into on behalf of the corporation: *Nichols v. Williams*, 7 C. E. Green.

In equity all suits must be in the name of the party really interested, and where the name of an agent or trustee is used, the *cestui qui trust* must be made complainant with him: *Id.*

A contract to give in part payment for the purchase of lands two

mortgages, without stating when they were to be paid, whether with or without interest, or at what rate of interest, is the same, practically, as a contract to pay a certain sum on *terms or credits* to be arranged between the parties, and will not be enforced for uncertainty: *Id.*

Specific performance will not be decreed of any contract when any material parts of the terms or conditions are uncertain: *Id.*

FISHERY. See *Waters and Watercourses.*

HUSBAND AND WIFE. See *Deed.*

Suit for Injury to Wife.—A suit brought by husband and wife for personal injuries sustained by the wife, does not survive to the husband, but may be prosecuted by the wife's administrator: *Saltmarsh v. Canada*, 49 or 50 N. H.

The husband was erroneously allowed to prosecute the suit, and obtained a verdict. Subsequently he was appointed administrator on the wife's estate, and in that capacity was willing to ratify what had been done since the wife's death. *Held*, that the verdict for plaintiff must be set aside, inasmuch as a verdict for defendant against the husband would not have been binding on the administrator, and "nobody can take benefit by a verdict who had not been prejudiced by it had it gone contrary:" *Id.*

Sale of Land.—A married woman and her husband by articles not acknowledged, agreed to sell her land, part of the purchase-money to be secured by judgment bond, and possession to be delivered at a day named. The deed of the husband and wife with warranty was delivered and the bond given; the vendee could not get possession as stipulated, the premises being under a lease of which he was ignorant. *Held*, that he had a defence against an action on the bond to the extent of his injury, notwithstanding the coverture of the vendor: *Cross v. Noble*, 67 Penna.

The vendee was entitled to the rent reserved under the lease, and his receipt of it would not preclude him from setting up failure of title to the extent of his real injury, allowing for what he had received: *Id.*

The vendor's defence was not set-off, which is a cross action, and in which the personal liability of the vendor to damages would have arisen: *Id.*

Had the whole purchase-money been paid, the vendee could not have sustained an action against the vendor either on the article or the deed: *Id.*

In an action to recover the consideration of a sale, the defendant may show that the consideration has failed in whole or in part: *Id.*

INSOLVENCY.

Accidental Omission of Debt in Petition.—The bare omission, by an insolvent debtor, applying for a discharge under the insolvent laws of Massachusetts, to set forth a particular debt, in his petition, will not vitiate the discharge, where the omission is admitted to have been neither wilful nor fraudulent: *Hall v. Robbins*, 61 Barb.

Where a commissioner of insolvency in Massachusetts, having acquired jurisdiction of the case, adjudged that the insolvent had assigned

his estate for the benefit of his creditors, according to the provisions of the insolvent law of that state, and had in all things conformed to the directions of such law, and discharged the insolvent from his debts: *Held*, that the record in Massachusetts must be deemed conclusive in New York: *Id.*

JUDGMENT.

Power of Court over.—There is no limitation to the power of a court to open a judgment by default for want of an appearance: *Breden v. Gilliland*, 67 Penna.

The lien of the judgment on realty is not thereby disturbed, and the court may impose such terms as will secure the lien of a *fi. fa.* on personalty: *Id.*

The opening of such judgment is discretionary and cannot be reviewed: *Id.*

A court has not power to strike off a judgment regular on its face: *Id.*

If there be a fact which ought to appear on the record and does not and which would render the judgment irregular, it should be put on the record by amendment, *nunc pro tunc*: *Id.*

LIMITATIONS, STATUTE OF. See *Bailment*.

Mere Assertion of Claim will not stop the Running of.—The mere verbal assertion of a claim, without entry, is insufficient to stop the running of the Statute of Limitations, or prevent the occupant from acquiring title to land by twenty years' adverse possession: *Fullam v. Welch*, 49 or 50 N. H.

MERGER.

Mortgage may be kept alive after Legal Title and Equity of Redemption have united in the Mortgage.—Where, by a release of the right of redemption, the two estates are united in the mortgagee, the mortgage will be upheld as a subsisting source of title whenever it is required by the justice of the case or the intention of the parties: *Stanton v. Thompson*, 49 or 50 N. H.

Whether the mortgage shall be kept on foot or not depends, ordinarily, upon the intention of the parties; but, in order to protect the mortgagee against an intervening title, the law will uphold the mortgage, even where the parties had undertaken to discharge it, unless injustice would be done thereby: *Id.*

MORTGAGE. See *Agent*; *Equity*.

Deed absolute on its Face—Delay in asserting it to be a Mortgage.—If a deed absolute on its face be in fact a mortgage, it has a legal effect which cannot be changed except by payment or release: *Odenbaugh v. Bradford*, 67 Penna.

The deed being conditional, the mortgagor has the same time to make payment that any other debtor has: *Id.*

Delay in asserting a deed to be a mortgage has not the same effect as in seeking in equity to enforce performance of an executory contract: *Id.*

Payment does not stand on the footing of performance in equity: *Id.*

The only effect delay has as to a mortgage is its bearing on the primary question, mortgage or no mortgage: *Id.*

Possession by Mortgagee—Fraud.—If a mortgagee take possession

of personal property under his mortgage without any other contract, he cannot hold the property as pledgee, if the mortgage prove to be void: *Janvrin v. Fogg*, 49 or 50 N. H.

If such mortgage proves to be void as against the mortgagor's creditors on account of the fraudulent intent of the parties to the mortgage, such creditors may take and hold the property discharged of any lien of the mortgagee thus holding the property: *Id.*

Possession by the mortgagee of personal property mortgaged answers instead of the record of the mortgage. But whether the mortgage be recorded or possession of the property be taken under it, the affidavit required by statute must be taken and subscribed by both the parties thereto: *Id.*

Where certain acts of the plaintiff have been proved for the purpose of asking the jury to find the existence of fraud on his part, he may be allowed to state the reasons why he did the acts in question with a view to rebut the presumption of fraud: *Id.*

NATURALIZATION. See *Criminal Law*.

Court of Record.—A court, having no clerk or recording officer other than the justice of the said court, is not "a court of record, having a clerk or prothonotary," within the meaning of the United States Statute of April 14th 1802, and therefore cannot take jurisdiction of applications for naturalization: *State v. Whittemore*, 49 or 50 N. H.

NEW TRIAL.

Surprise.—Where a new trial is asked on the ground of "surprise which ordinary prudence could not have guarded against," and where the surprise relied on is that a witness of the adverse party testified differently on the trial from what he had done on a former trial, and where no effort has been made to impeach the testimony of said witness, although it is admitted that several persons were present at both trials and heard the testimony of said witness. *Held*, that a new trial should not be granted: *Abeles v. Cohen*, 7 Kans.

NUISANCE.

Injunction—Principles on which Equity treats Cases.—The canal company having filed their bill to restrain the defendants from occupying land alleged to belong to the complainants for their canal and embankment, an injunction was denied on final hearing on the grounds that the title to the premises was in dispute and open to reasonable doubt, and that for the injury complained of an adequate remedy existed at law: *Morris Canal and Banking Company v. Fagin*, 7 C. E. Green.

The principles by which injuries are tested in the character as nuisances, for the prevention or suppression of which courts of equity administer injunctive relief, are substantially the same, whether such nuisances be private or public. In either case the injury must be such as the courts of law cannot adequately redress: *Id.*

An injunction will not be granted where an action of ejectment will restore the complainant to all his rights: *Id.*

Considering the canal as a public highway, the granting of an injunction to restrain encroachments on it will depend upon the extent to which such encroachments impede navigation: *Id.*

Where, as in the present case, the alleged encroachment does not materially narrow the waterway, within the width it has for navigation above and below the place where such encroachment exists, and does not interfere with the tow-path, the injury, if a public nuisance, can be remedied by indictment, and if a private one, and the complainants claim title to the land, an action at law will afford sufficient protection and relief: *Id.*

OFFICER.

Possession of by de facto.—An officer *de facto* must be in the actual possession of the office, and have the same under his actual control. If the officer *de jure* is in possession of the office—if the officer *de jure* is also officer *de facto*, then no other person can be an officer *de facto* for that office: *McCahon v. County Commissioners*, 8 Kans.

PARTNERSHIP.

Debtor and Creditor—Attachment.—An attachment of the separate property of a partner to secure a partnership debt has priority over a subsequent attachment by a separate creditor to secure a separate debt, if the latter debt was not contracted until after the making of the attachment to secure the partnership debt: *Miles v. Pennock*, 49 or 50 N. H.

New Firm under same Name—Renewal of Note.—Where some of the members of a partnership retired and the others continued the business under the same firm name, a promissory note given by the new firm for a note of the old firm, the payee being ignorant of the change, will not be deemed payment: *Hills v. Marcy et al.*, 49 or 50 N. H.

The giving of such note operates as payment upon condition that the note proves to be productive, and if the creditor makes an absolute sale and transfer of the note or of a judgment upon it, without the assent of the old firm, and thus treats it as his own, he must be deemed to have elected to take it as payment, even if he receive less than the amount due upon it: *Id.*

REPLEVIN.

Distress for Rent in Arrear—Possession of the Goods.—An avowry in replevin, that the taking of the goods was on premises leased for which rent was in arrear, is good in form although it does not allege that the distress was taken for that rent: *Baird v. Porter*, 67 Penna.

Such avowry would be good in substance when the plaintiff had declared in the *detinuit*, for the defendant might lawfully distrain the goods on the premises for rent and detain them during the period allowed to replevy them: *Id.*

The defendant had no right to retain the goods after a replevin, by giving a claim-property bond, unless he had a property in them which entitled him to their possession: *Id.*

The landlord has neither a special or a general property in goods distrained for rent, nor right to their possession after service of the replevin: *Id.*

It is the landlord's duty to deliver the goods under the replevin and look to the replevin bond: *Id.*

That the landlord took the goods as a distress for rent, is no justification, under a declaration in the *detinet*: *Id.*

SALE.

Implied License to Purchaser to enter to take Possession of his Purchase.—Where the court instructed the jury that upon a contract of sale the title to a pair of oxen having passed to the defendant, there was an implied license to enter the plaintiff's barn and take them; and at the same time they were told that these instructions were given with some hesitation, as defendant knew that there was a misunderstanding as to the sale, but that they might take the law to be as stated, it was held that the defendant had no cause to complain: *Evans v. Foss et al.*, 49 or 50 N. H.

A contract was made for the exchange of plaintiff's oxen for defendant Foss's steers and \$125 in money, but the parties disagreed as to whether it was for defendant's yearling or two-year-old steers. Defendant's servants drove the yearling steers to plaintiff's barn and took away the plaintiff's oxen against plaintiff's remonstrance; defendant Foss knowing that plaintiff claimed the two-year-old steers. The court instructed the jury that if they found the acts of the defendant to be wanton they might award vindictive damages. Held, that in this there was no error, there being evidence on which the jury might have found that defendants acted in bad faith and maliciously: *Id.*

SHERIFF'S SALE.

Return is part of Record—Sheriff not permitted to allege that he did not receive the Money.—A sheriff's return on an order of sale, showing that he had collected money thereon, is a part of the record of the proceedings: *Ferguson et al. v. Tutt et al.*, 8 Kans.

It is competent to show by *parol* evidence the contents of a lost record: *Id.*

A person may make a demand as well through an agent as by himself: *Id.*

After a sale of real estate has been made by a sheriff on execution or order of sale, and the sale confirmed by the court, the sheriff cannot be allowed to show that he has not received the purchase-money on the sale. It is his duty to receive it when the sale is made. He then holds it until the sale is confirmed by the court, and then, without waiting till a deed for the premises shall be executed, he pays it over to the person or persons entitled thereto: *Id.*

A sheriff's sale may be confirmed at any time after the sheriff has made his return, on motion of any person interested therein, or on the court's own motion, and without the consent of the sheriff: *Id.*

After a sheriff's sale has been confirmed, and the sheriff and his sureties sued for the purchase-money, they cannot raise any question of irregularity in the confirmation of the sale or in any of the prior proceedings: *Id.*

STAMP. See *New Trial*.

TENDER.

What is Necessary in Equity.—The effect of a tender, lawfully made, of the amount due on a mortgage is to discharge the debtor from subsequent interest and costs; but to have this effect the amount tendered must be kept in readiness, and on bill to redeem, or on plea or answer

setting up tender, the money must be paid into court. No less strictness is required in such cases in equity than at law: *Shields v. Lozcar*, 7 C. E. Green.

Differences among the authorities as to the meaning of the term "readiness to pay:" *Id.*

TROVER. See *Bailment*.

TRUSTEE.

Liability for Costs.—A trustee who is not chargeable and is not guilty of fraud or unnecessary delay is entitled to costs against the plaintiff: *Kent v. Hutchins*, 49 or 50 N. H.

But when the trustee is guilty of any of the fraudulent acts enumerated in sect. 43 of ch. 230 of the General Statutes, the statute is peremptory that he shall pay costs, even though not chargeable as trustee: *Id.*

If the jury in deciding whether the trustee is chargeable or not under the instructions of the court, find that the trustee is not guilty of any of the acts specified in sect. 43, ch. 230, General Statutes, the court may in its discretion adopt such finding of the jury as the basis of its action in regard to costs, or it may adopt its own views of the evidence as the basis, and act accordingly: *Id.*

VENDOR AND PURCHASER.

Covenant of seisin—Breach by bad Title—Damages.—The covenant of seisin is broken as soon as the deed is executed, if the title be bad: *Dale v. Shively*, 7 Kans.

The necessary damages upon breach of the covenant of seisin is, as a general rule, the consideration-money and interest: *Id.*

But where the vendee buys in the paramount title, his recovery is limited to the amount he pays therefor and interest: *Id.*

The amount paid for the paramount title includes both the sum which passes to the holder thereof, and the reasonable, necessary, and actual expenses of obtaining the same: *Id.*

In some cases the vendee may also recover the costs and attorney's fees paid by him in prosecuting or defending a suit in reference to the land conveyed, but only where actual possession not having been given the vendee brings suit to recover it, or having been given, he defends against the suit of the true owner: *Id.*

Proof that a gross amount was paid for two items, for one of which the party may recover, and not for the other, does not warrant a finding in his favor for any sum, in the absence of any testimony from which an apportionment can be deduced: *Id.*

Sale of Personal Chattels—Damages for Refusal to receive.—To maintain an action for goods bargained and sold, the property in the goods must have passed to the vendee, though they are not delivered, and the vendee must be in a position to recover the goods in trover, should any one take them away, or to sustain the loss if the goods should be stolen or destroyed by fire: *Gordon v. Norris et al.*, 49 or 50 N. H.

The measure of damages in an action for goods bargained and sold is the contract price for the goods: *Id.*

When the vendee refuses to receive and pay for ordinary goods, wares, and merchandise which he has contracted to purchase, the measure of damages which the vendor is entitled to recover is not ordinarily the contract price of the goods, but the difference between the contract price and the market price or value of the same goods at the time when the vendee had agreed to receive them: *Id.*

But when an artist prepares a statue or a picture of some person to order, or a mechanic makes a specific article in his line of business to order, and after particular measure, pattern, or style, or for a particular use or purpose, when he has fully performed the contract on his part, and has tendered or offered to deliver the article thus manufactured according to contract, and the vendee refuses to receive and pay for the same, he may in an action against the vendee for a breach of said contract recover as damages the full contract price of the article thus manufactured: *Id.*

But in such case, or in case of an ordinary contract for the purchase and sale of goods, wares, and merchandise, if the vendee refuses to accept the property, the vendor may if he choose, upon notice to the vendee, sell the property at auction, and recover of the vendee the difference between the contract price and the price for which the goods were sold: *Id.*

VERDICT.

Amendment of—Separation of Jury.—Where the verdict of the jury is ambiguous the court may in its discretion send out the jury for further deliberation, even after they had sealed up their verdict and separated for dinner—there being no suggestion of abuse during the separation: *Evans v. Foss*, 49 or 50 N. H.

Where the officer in charge of a jury, without the direction of the court or the consent of the parties, allowed the jury to separate after having agreed upon and sealed up their verdict to be rendered in court on its opening in the afternoon, the verdict will not be disturbed for that cause where it appears there was no intentional wrong on the part of the officer or the jury, unless there is cause to suspect that some abuse was practised: *Id.*

WATERS AND WATERCOURSES.

Flowage—Fishery.—For the purpose of creating a water-power, B. secured the right of flowage from adjoining landowners, and enlarged a pond previously existing upon his land so as to flow the lands of others. He then stocked the pond more fully with fish. *Held*, that B. did not acquire an exclusive right of fishery in the waters over land upon which he had only the right of flowage; but that the right of fishery belonged to the owner of the land flowed: *Damon v. Felch*, 49 or 50 N. H.

Dams without Fishways—Prescription.—Riparian proprietors maintained dams without fishways more than twenty years in a river which is the outlet of a large inland lake, thereby obstructing the passage of migratory fish between the sea and the lake. *Held*, that they had not acquired a prescriptive right against the public to maintain the dams without fishways: *State v. Franklin Falls Co.*, 49 or 50 N. H.