

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MAINE.¹COURT OF APPEALS OF MARYLAND.²SUPREME COURT OF MICHIGAN.³SUPREME COURT OF NEW YORK.⁴

ADVANCEMENTS.

In no case can a child, born after the making of a will by his father, recover of any brother or sister, born before the will was made, any portion of any advancement made by his father in his life-time, to such brother or sister: *Sanford v. Sanford*, 61 Barb.

When a parent conveys land to his child, without asking or receiving any consideration therefor, the presumption is that it is an advancement to the child, though the deed recites a money consideration, and contains an acknowledgment of the payment of it: *Id.*

Small, inconsiderable sums of money, occasionally given to a child to spend, or to defray expenses in traveling, or to pay for small presents, and the like, should be deemed to have been given "without a view to a portion or settlement in life," as contemplated by the statute, and not as advancements: *Id.*

But a considerable sum of money, given to a son to enable him to start in business, is, *prima facie*, an advancement: *Id.*

And every considerable sum of money, given to a child, to use in business, should be deemed an advancement, unless proved to have been given "without a view to a portion or settlement in life:" *Id.*

ADVERSE POSSESSION.

Notice—Bona fide purchase—Negotiation by Agent.—Actual possession of land is notice of the title of the party in possession, whatever it may be, and not merely of that which the registry may happen to disclose: *Russell v. Sweezey*, 22 Mich.

Where the purchase of a tract of land was negotiated by an agent, and the fact that the land was, at the time, adversely held by a party in possession was treated as a circumstance which diminished the value of the vendor's interest, the knowledge of the agent of the adverse possession will be the knowledge of the purchaser; and he, not inquiring of the party in possession as to the title, will not be regarded as a *bona fide* purchaser without notice: *Id.*

1 From W. W. Virgin, Esq., Reporter; to appear in 59 Maine Reports.

2 From J. S. Stockett, Esq., Reporter; to appear in 35 Maryland Reports.

3 From H. K. Clarke, Esq., Reporter; to appear in 22 Michigan Reports.

4 From Hon. O. L. Barbour, to appear in Vol. 61 of his reports.

ASSESSORS AND ASSESSMENT.

Property of a Corporation.—Where assessors assessed the real estate of a corporation at \$125,000, and on application refused to correct the assessment, although the highest valuation fixed for such real estate, by the uncontradicted evidence before them, was but \$45,000, held that they should have corrected the assessment by striking out the sum of \$125,000, as the valuation of the real estate, and inserting the sum of \$45,000 in its place: *The People ex rel, The American Linen Thread Company v. Howland et al.*, 61 Barb.

Held also that after having deducted from the amount of capital paid in, or secured, such sum of \$45,000, for the value of the real estate, it was proper for the assessors to assess the remaining capital as personal estate, at its actual value as shown by the evidence before them: *Id.*

Assessors act in a judicial capacity, in hearing parties aggrieved, and must be governed by the evidence presented to them on an application to correct the assessment: *Id.*

Where, upon an application to correct an assessment, there is no evidence before the assessors, on the subject of the value of the real estate assessed, except the affidavits produced by the owner, they, if uncontroverted, must be considered controlling and conclusive: *Id.*

BILLS AND NOTES—See *Trover*.

Action—Indorser against Maker for Money paid.—When cause of action accrues.—When the first indorser of a negotiable promissory note has been compelled to pay it, by a judgment in a suit commenced prior to the intervention of the statute of limitations, he may recover the amount of the note of the maker in an action for money paid: *Godfrey vs. Rice*, 59 Me.

The cause of action, in such case, accrues when the payment is made: *Id.*

Thus, in May, 1859, the defendant gave his negotiable promissory note payable on time, to the plaintiff's intestate, who indorsed it to a third person who indorsed it and got it discounted. The note went to protest, and the indorsers were seasonably notified. The latter indorser sued the former, and recovered judgment in October, 1870, for the amount of the note. After paying the judgment, the former indorser brought this action for money paid. Held, that the action was maintainable; and that the cause of action accrued when the payment was made: *Id.*

Validity—Usury.—When a draft is an accommodation one—that is, lent without consideration—it has no validity till it reaches the hands of a *bona fide* holder for value; and if the first transfer of it be tainted with *usury*, the paper will be void in the hands of any subsequent holder: *Howe v. Potter et al*, 61 Barb.

But these rules have no application to a case where there was a consideration for the draft sued on, when it was first issued, and

the transaction was not one which made the transfer to the plaintiff a usurious one: *Id.*

Consideration—Bona fide Holder.—Where, in an action upon a draft, the defendants claim that there was a misrepresentation as to the value of the property forming the consideration, and that therefore they offered to return it, and demanded back the draft, that does not make out the case of a draft given without any consideration, as a mere accommodation. On the contrary, it shows that there was some consideration; and when that is so, a *bona fide* purchaser, no matter what sum be given for it, may recover: *Id.*

CONSTITUTIONAL LAW—See *Corporation.*

Mandamus—Corporations—Rights of, and Proceedings against, members.—A voluntary society, incorporated, may be compelled by *mandamus* to restore to one of its members a substantial right of which he had been deprived by the action of the society, in violation of its constitution: *People ex rel. Koehler v. Mechanics' Aid Society*, 22 Mich.

When the constitution of a voluntary society, which is also a corporation, makes "slander against the society" by a member an offense for which he may be fined or expelled, it will be held that an offense something analogous to the common-law offense of slander, as applicable to individuals, is intended; and, in a proceeding to enforce such a provision, unless the words charged to be slanderous are set forth, it cannot be known whether there is any jurisdiction to make the inquiry; and, as corporations are bound to keep records, the proceedings necessary to authorize action against an accused member must appear of record. A written charge, therefore, upon the records of the society, showing an offense within the meaning of the constitutional provision, is necessary to sustain the jurisdiction to proceed upon it: *Id.*

DEED.

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

Evidence.—Record.—Description.—It is no objection to the admission of a deed in evidence on the trial of an ejectment suit, that it was not recorded until after the commencement of the suit: *Russell v. Swezey*, 22 Mich.

A deed of a parcel of land described by the subdivision and number of the section, and the number of the township and range, although not specifying the county or state, is not void for uncertainty: *Id.*

ESTOPPEL.

The principle that when a person has induced another to act upon his statements or admissions, made for that purpose, he is concluded from asserting the truth against such statements and admissions, has been often applied in actions relating to real property: *Finnegan v. Caraher*, 61 Barb.

In an action of ejectment it appeared in evidence that the defendant, at the time the summons and complaint were served upon him, being then upon the premises, told the person serving the papers, in substance, that he lived in, or was in possession of the house, and service was made upon the faith of the statement. *Held* that the defendant was estopped from denying that he was in actual occupation at the commencement of the action: *Id.*

EVIDENCE.—See *Criminal Law*.

A press copy of a letter is not legal and admissible evidence, in the absence of notice to the opposite party to produce the original, and of any admission or proof that it had ever been received by him: *Marsh v. Hand*, 35 Md.

A press copy of a letter, without being submitted to the inspection of the plaintiffs' counsel, was offered in evidence, and partially read by the defendant's counsel to the jury, without objection from the plaintiffs, who then objected to the reading of the balance. *Held*, that the objection having been interposed in good faith and with reasonable diligence, was made in due time, and the evidence not being legally admissible, should have been excluded: *Id.*

Construction of.—Upon the defendant's written guaranty of the following tenor—"Oct. 14, 1860, Let the bearer buy merchandise to the amount of two or three hundred dollars, on six months, and I will see you paid," the plaintiffs sent to the bearer merchandise to the amount of two hundred and thirty dollars and thirty cents, and in November and December following, one hundred and ten dollars' worth more. *Held*, that the defendant's liability was limited to the first bill of goods: *Reed v. Fish*, 59 Me.

HUSBAND AND WIFE.—See *Criminal Law*.

Assignment by a wife of a policy of Insurance upon her Husband's Life.—An assignment by a wife and her husband, for the benefit of his creditors, of a policy of insurance on his life, obtained for her sole and separate use, and made payable to her and her assign, is valid: *Emerick v. Coakley*, 35 Md.

The forbearance of the creditors of the husband, and the granting an extension of time for the payment of his debts, is a valid consideration for an assignment by the wife: *Id.*

Married Women.—Liability on Contracts.—It is competent for a married woman, while residing with her husband, to become personally liable, so as to charge her separate estate for family necessities purchased for and actually used in the husband's family and homestead: *Tillman v. Shackleton*, 15 Mich. 447, cited and approved: *Campbell et al v. White*, 22 Mich.

In Nov., 1845, neither the common law nor the statutes of this State authorized a married woman to take a conveyance of real estate, and give back a mortgage to secure the purchase money; but such a mortgage and deed were void: *Savage v. Holyoke*, 59 Me.

A certified copy of a certificate of the entry by the mortgagee of such a mortgage on June 4, 1847, for the purpose of foreclosing it, in the absence of any evidence that such possession was continued, would not be sufficient evidence of possession to enable him to maintain trespass for acts happening twenty years thereafter: *Id.*

INSOLVENT.

Insolvency of Estate—What is proper Evidence of—Practice.—The only proper evidence of the insolvency of the estate of a deceased person is the documentary evidence from the probate office: *Bates v. Avery*, 59 Me.

But where the report of the evidence shows that the administrator testified without objection, that "the estate was represented insolvent Aug. 4, 1868;" that "a license from the judge of probate to sell the real estate was issued" on the same day; and the report stipulates that if upon the foregoing facts and evidence, the action is maintainable, a new trial is to be granted then for the purpose of determining whether or not the action is maintainable, the court will regard the insolvency as an admitted fact: *Id.*

INSURANCE.—See *Husband and Wife*.

Parol Evidence to explain Written Contracts.—Evidence of the circumstances under which a written contract was executed, or of the sense in which equivocal words in a written contract were used, for the purpose of explaining the contract, is admissible only when words have been employed which are ambiguous or equivocal in meaning: *North American Fire Ins. Co. v. Throop*, 22 Mich.

LANDLORD AND TENANT.

Distress—Regularity of Proceedings.—A distress warrant directed distress to be made to satisfy rent due J. as per account, which was made out in J.'s name and sworn to by him. The warrant was signed by the Justice of the Peace before whom the affidavit was made with the letters "J. P." appended to the signature. *Held*, 1st. That if the person signing the warrant was in fact the agent of the landlord, the warrant was a sufficient authority to the constable, although not signed in terms as agent, or for the landlord by name. 2d. That a distress made in the name of the landlord, even if made without precedent authority, is validated by his subsequent adoption and ratification: *Jean v. Spurrier*, 35 Md.

A distress is not vitiated by more rent being distrained for than is due; and the avowant may recover in the action of replevin what is actually due, where he alleges a larger sum in arrear than is so in fact: *Id.*

In the affidavit accompanying a distress warrant, the amount of rent due was stated to be "two hundred and fifty —;" and the annexed account was for \$250. *Held*, that the omission of the word "dollars" in the affidavit, was cured by the account: *Id.*

MANDAMUS—See *Corporation*.

PARTNERSHIP.

Right of one Partner to obtain Renewal of Lease, for his own Benefit.—Where, during the existence of a copartnership, new leases of the premises occupied by the firm as its place of business are obtained by one of the partners to himself, without the consent of his copartner, for a term to commence before the partnership ends, such leases will be declared to be held by the lessee as trustee for the firm: *Mitchell v. Reed*, 61 Barb.

And the same rule would apply in a case where the partnership was depending on the will of the partners, to be dissolved by either, on notice, and the lease was obtained before notice was given: *Id.*

But where the partnership is to continue for a specified term, and there is nothing in the articles of copartnership which contemplates any extension of the term; and it is not claimed that the firm have any right of renewal; there is nothing in the relation of the parties, under the partnership agreement, that prevents either partner from taking a new lease of the premises occupied by the firm, to himself alone, for a term to commence after the expiration of the partnership, although obtained before its termination: *Id.*

Where two partners held the premises occupied by them, under a lease running to the 1st of May, which had been assigned to them by H., in which a reversion was reserved to H. of two days, at the end of the lease, so that the lease to the partners would expire with the 28th of April, during which period H., and not the firm, was the holder of the lease. *Held*, that one of the partners had the right, as against the other, to obtain, during the partnership, for his own benefit, a renewal of the lease from the 1st of May: *Id.*

TAXATION—See *Assessor*—*Trespass*.

Collector of Taxes—Liability of.—A collector of taxes who, after selling a distress, fails to restore the balance to the former owner, after deducting the unpaid taxes and legal expenses of sale, is a trespasser *ab initio*: *Carter v. Allen*, 59 Me.

Thus, where a collector of taxes for three successive years applied a portion of the proceeds of a distress sold according to law to a tax of the second year already paid, and another portion to illegal charges, and made a written account thereof accordingly, which, with the balance as therein appearing, he tendered to the owner, *Held*, that the collector was a trespasser *ab initio*: *Id.*

TRESPASS.—See *Taxation*.

Trespass quare clausum—What title will enable Plaintiff to sustain—Tax title.—As the law in this State was in 1835, in order to sustain a title under the tax-deed from a county treasurer, it must affirmatively appear that the provisions of law preparatory to and

authorizing a sale of land for taxes had been strictly complied with: *Savage v. Holyoke and others*, 59 Me.

To sustain an action of *trespass quare clausum* against one having no right to be upon the premises, the plaintiff put in evidence a deed of quitclaim to himself from one who never had either title or possession. The deed was never recorded until after the trespass complained of, and it did not appear that the plaintiff ever had possession under it. *Held*, insufficient: *Id.*

TROVER.

By one joint owner of a Promissory note against the other, for its Conversion.—Where two persons are jointly interested in a promissory note, and one of them deposits it with the other for collection, and he without authority surrenders it to the drawer to be canceled or destroyed, such surrender is a conversion, and trover will lie therefor, by the other joint owner of the note: *Winner v. Penniman*, 35 Md.

VESSEL.

VENDOR AND PURCHASER.—See *Adverse Possession*.

Vessel—Mortgage of, where to be Recorded.—Before a vessel is registered or enrolled, a mortgage of it will be valid if recorded agreeably to the laws of the State: *Perkins v. Emerson*, 59 Me.

After it is registered or enrolled, a mortgage of it will not be valid against any person other than the mortgagor, his heirs and devisees, and persons having actual notice thereof, unless recorded as required by the laws of the United States: *Id.*