any of the states. This court is of the opinion that the ordinance is not authorized by the Act of the Legislature. The United States attorney for the district of Kentucky, the commonwealth's attorney for this judicial district, and the attorney for the city of Louisville, all are lawyers practising law for fee and reward in the city, and are included in said ordinances, and for failure to obtain such license, are liable to fine and imprisonment for exercising the functions of their respective offices. To enforce this ordinance will clog the wheels of justice.

In the opinion of this court, both the Act of the Legislature and city ordinance are against the spirit of our institutions, and are unconstitutional, the enforcement of which would produce irreparable injury. Both the Legislature and General Council should review their action.

The warrant is dismissed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF KANSAS.[1]
COURT OF APPEALS OF MARYLAND.[2]
SUPREME COURT OF NEW YORK.[3]
SUPREME COURT OF PENNSYLVANIA.[4]
SUPREME COURT OF VERMONT.[5]

ACTION. See *Assignment; Broker.*

Under particular circumstances, a creditor of the estate of a deceased person may maintain an action to collect his debt from a debtor to the estate: *Fisher et al.* v. *Hubbell et al.*, 65 Barb.

Distinction between Trespass and Account.—A bill of particulars reading as follows:

"I. B. to L. T. S., to timber taken and received from the S. W. 8, T. 12, R. 22:—

400 cross ties of the value of 50 cts. each	$200 00
3 sets of switch ties at the value of	100 00
	$300 00"

discloses an action on an account and not one for trespass on real estate: *Bernstine* v. *Smith*, 10 Kans.

[1] From W. C. Webb, Esq., Reporter; to appear in 10 Kans. Reports.
[2] From J. Shaaff Stockett, Esq., Reporter; to appear in 37 Md. Reports.
[3] From Hon. O. L. Barbour; to appear in vol. 65 of his Reports.
[4] From P. F. Smith, Esq., Reporter; to appear in 71 Pa. St. Reports.
[5] From J. W. Rowell, Esq., Reporter; to appear in 45 Vt. Reports.

ASSIGNMENT.

Right of Assignee to sue in his own Name.—A claim for money tortiously obtained from the claimant, may be assigned to a third person, so as to give the assignee a right to recover the same in his own name: *Stewart* v. *Balderson*, 10 Kans.

ASSUMPSIT.

Services in expectation of Legacy—Action for.—Contracts with nurses, housekeepers, &c., sought to be enforced after the death of the person to whom the services were rendered, ought to be very closely scanned, and juries instructed that they could be made out only by very clear proof. The correction of verdicts not founded on such proof, or unreasonable in amount, is confided to the sound legal discretion of the court below, but such contract must possess the element of certainty. *Thompson* v. *Stevens*, 71 Penn.

The promise to the plaintiff was, "If she would stay with him as long as he lived, he would provide and give her full and plenty after he was gone, so that she need not work." This was sufficiently certain and definite: *Id.*

The measure of amount would be what would keep her without work, taking into consideration her condition in life: *Id.*

Where services are gratuitously rendered under expectation of a legacy, there can be no contract and therefore no recovery for the services; but where one does services on request, no matter what his expectations were, there may be a recovery for them: *Id.*

ATTORNEY.

Authority implied by Law.—As a general rule, an attorney employed as such in a cause, has not thereby the incidental power to pledge the credit of his client by employing another attorney as an assistant. But, where the facts in a particular case are such that it may fairly be inferred from them that such authority was given, this general rule would yield: *Willard* v. *Danville*, 45 Vt.

Where the agent of a town for prosecuting and defending suits was not present at the trial of a suit against the town, but was at his home in a town adjoining the place of trial, and had done nothing about the suit, except consult once with the attorney for the town, to determine upon the necessary preparation for defence, and procure the attendance of the necessary witnesses at the trial, in other respects the care and responsibility of the trial being left with said attorney, who resided at the place of trial, nothing appearing to indicate that said agent might not have been seasonably consulted on the subject of employing assistant counsel, nor that anything transpired, or came to light, rendering counsel necessary, which was not known to said attorney and agent at the time of such consultation, it was *held*, that said attorney had not therefore authority implied by law to bind the town by the employment of assistant counsel in the case: *Id.*

BANKRUPTCY.

Jurisdiction of the Courts of the United States—Attachment under State Laws.—The property of a bankrupt in the hands of his assignee,

duly appointed under the Bankrupt Law of the United States, is not liable, at the instance of a creditor of the bankrupt, to attachment under the laws of a state. *Newman* v. *Fisher*, 37 Md.

Under the Act of Congress, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2d 1867, the District Courts of the United States have original, superior and exclusive jurisdiction over a bankrupt, his estate, and all questions connected therewith, from the time proceedings in bankruptcy are begun until the final distribution and settlement of the bankrupt estate: *Id.*

Broker.

Carrying Stock—Rights of Parties—Evidence.—Esser employed brokers to buy stock and "carry it." The brokers wrote him for further security, or they would not carry his stock. The stock remained with them unsold till it was worthless. In a suit by the brokers for the money advanced by them; his defence being that they should have sold the stock, he could not testify that he believed from the letter that they would sell without further orders from him: *Esser* v. *Linderman*, 71 Penn.

What the letter meant was a question of law for the court: *Id.*

If the brokers had sold the stock without giving further notice and it had risen, they would have been responsible: *Id.*

Having proved that they had purchased the stock, it was not necessary for the brokers to produce the certificate at the trial: *Id.*

When one purchases a chattel for another, he may sue for the money without a tender of the thing: the delivery of the thing cannot be demanded until the money is paid or tendered: *Id.*

Dealings between—Disclosure of Principal—Custom.—Waln employed Markoe, a broker in Philadelphia, to sell stock; Evans, a broker in New York, sold the stock by order of Wister, another Philadelphia broker under Markoe, with assent of Waln, without naming the owner; before the proceeds were remitted by Evans, Wister failed, in debt to Evans. *Held*, that Evans could not retain the debt from the proceeds: *Evans* v. *Waln*, 71 Penn.

After Wister's failure Evans asked Markoe to send certificates and he would remit to Markoe less Wister's debt: Markoe answered, the stock was a customer's; Evans answered, send stock in any event, "will give you net balance to-morrow." Markoe sent the stock. *Held*, that "net balance" meant proceeds after deducting expenses of sale: *Id.*

Evidence that it was the custom of brokers, in their dealings with brokers of other cities, to put all transactions between them into one account and settle for the general balance, was inadmissible: *Id.*

Such custom would not have authorized defendants to credit Wister's account with the proceeds of the stock: *Id.*

The action for the amount retained by Evans, was properly brought in the name of Waln: *Id.*

An action for the proceeds of property sold by one agent by orders of another can be maintained by the owner against seller: *Id.*

Constitutional Law.

Municipal Corporations—Interference by Legislature with their vested

Rights.—Between private citizens and counties, incorporated towns or cities of the state, there is a wide and substantial distinction with respect to vested rights protected from legislative power. Such public bodies are public corporations created by the Legislature for political purposes, with political powers to be exercised for purposes connected with the public good in the administration of civil government. They are instruments of government subject at all times to the control of the Legislature with respect to their duration, powers, rights and property. It is of the essence of such a corporation that the government has the sole right as trustee of the public interest, at its own good will and pleasure, to inspect, regulate, control and direct the corporation, its funds and franchises: *Mayor, &c.*, v. *Sehner*, 37 Md.

DEED. See *Equity.*

An *escrow* signed, sealed and deposited upon a valuable consideration, is not recoverable by the depositor, except according to the terms of the agreement and deposit: *Stanton et al.* v. *Miller et al.*, 65 Barb.

The depositary of an *escrow*, under such circumstances, is as much the agent of the grantee as of the grantor; and he is as much bound to deliver the deed, on performance of the condition, as he is to withhold it until performance: *Id.*

Although it may be doubtful whether the deed can take effect without actual delivery, yet when it is delivered, the delivery relates back to the time of the deposit: *Id.*

EQUITY. See *Injunction; International Law.*

Specific Performance.—The specific performance of an agreement for the conveyance of land, in consideration of support and maintenance during life, may be compelled in equity: *Stanton et al.* v. *Miller et al.*, 65 Barb.

To compel Delivery of Deeds.—To compel the delivery of deeds and other instruments, in favor of persons legally entitled to them, is an old head of equity jurisdiction, is a most important branch of that jurisdiction, and is exerted in all suitable cases, in favor of persons entitled to the possession of deeds or other instruments: *Id.*

And a case where a deed has been delivered in *escrow*, upon a condition which has been fulfilled, would seem to be one which especially justifies and calls for the exercise of this jurisdiction; since the withholding of the deed interferes with, and probably prevents, the vesting of the legal title: *Id.*

Where the contingency upon which a deed in *escrow* was to be delivered, viz., the death of the grantor, had happened, and the grantees had fully performed the contract on their part; *Held*, that the arrangement created an equitable interest in the property conveyed, which ripened into an absolute equitable (if not legal) title, on the death of the grantor; and that the grantees were entitled to a delivery, and the custody of the deed, and to have the same recovered: *Id.*

Right of a Vendor to obtain Specific Performance of a Contract, although unable to convey to the Vendee to the full extent bargained for—Application for the Rescission of a Contract to be made without delay—Where a vendor is unable from any cause, not involving *mala fides* on his part, to convey each and every parcel of the land contracted to be

sold, and it is apparent that the part that cannot be conveyed is of small importance, or is immaterial to the purchaser's enjoyment of that which may be conveyed to him, in such case the vendor may insist on performance with compensation to the purchaser, or a proportionate abatement from the agreed price, if that has not been paid. This, however, cannot be done where the part in reference to which the defect exists is a considerable portion of the entire subject-matter, or is in its nature material to the enjoyment of that part about which there is no defect: *Foley* v. *Crow*, 37 Md.

ERROR.

Insufficiency of Record.—Where the record shows that only a portion of the evidence is preserved and fails to show that it contains all the instructions, this court is unable to say that an instruction which was given was inapplicable or erroneous, or was not so far modified by other instructions that if erroneous it has wrought no prejudice to the party complaining: *Gallobeo* v. *Mitchell*, 10 Kans.

Matters of Discretion— Withdrawal of Juror.—On a trial an attorney, in discussing a question of evidence, stated in the hearing of the jury matters not evidence; the court refused the motion of the other side to withdraw a juror. *Held*, to be in the discretion of the court below, and not reviewable on error: *Thompson* v. *Stevens*, 71 Penn.

EVIDENCE.

Records of Patent—Proof of Loss.—The record in the office of the register of deeds of a patent is admissible in evidence without proof that the original is lost, or destroyed, or not under the control of the party desiring to use it: *Bernstine* v. *Smith*, 10 Kans.

Husband and Wife.—In an action in the name of husband and wife to recover for personal injuries to the wife, the defendant introduced testimony to prove that the husband, soon after the injury, in the presence of his wife, told the witness that the infirmity of his wife was caused by overwork in gathering and boiling sap. *Held*, that it was competent for the plaintiff to show by the same witness, and as part of the same conversation, that the wife then denied her husband's statement, and declared that she had not gathered and boiled sap: *Lindsey and wife* v. *Danville*, 45 Vt.

EXECUTION.

Officer—Receiptor—Demand and Refusal—Attachment.—It has been long settled in this state that an officer is not liable for property attached by him on *mesne* process, which has perished without fault for which he is liable: *Ide* v. *Fassett*, 45 Vt.

It is equally well settled that a receiptor of such property is not liable on his receipt, when it has perished without like fault: *Id.*

On the occasion of a demand by the plaintiff, an attaching officer, of property receipted by the defendant, it was agreed that the defendant should deliver the property to the plaintiff at a time and place of sale to be appointed by the plaintiff. The plaintiff did not make such appointment, but, without making any further demand, sued the defendant on his receipt. *Held*, that he could not recover: *Id.*

The plaintiff attached ten swarms of bees, and the defendant receipted them, but no mention was made either in the attachment or the receipt,

of the hives in which they were. *Held*, that the defendant was not liable for the hives under his receipt: *Id.*

Highway.

Temporary adoption of Private Way—Liability of Town for Condition of.—A highway was rendered impassable by a freshet. One of the selectmen, pursuant to a previous understanding among the selectmen that each should take charge of the matters pertaining to the duties of the office in their respective parts of the town, and that what each did should be concurred in by the others, placed a barrier across the highway for the purpose of preventing travellers from passing over it while thus out of repair, and of turning the travel, for the time being, and until the highway was repaired, around the founderous portion of the highway, over a hill road, which was a private way, not adopted by the town. *Held*, that this constituted a temporary adoption of the private way as a substitute for the highway while not in condition for use, and that the town thereby became liable for damage occasioned by reason of the insufficiency and want of repair of said private way: *Dickinson* v. *Rockingham*, 45 Vt.

Husband and Wife. See *Evidence.*

Competency of Witness—Right of Administrator of Wife to maintain Suit at Law against her Husband—Fraudulent Conveyance—Reduction of Wife's Choses in Action to Possession by her Husband.—In trover for certain mortgage notes, brought by the administrator of the wife against the husband, the plaintiff's testimony tended to prove that the defendant at some time admitted that said notes belonged to the intestate. *Held*, that the defendant was not a competent witness to any matter that occurred prior to the appointment of the administrator: *Roberts* v. *Lund*, 45 Vt.

The administrator of the wife can maintain any proper action at law against the husband for the enforcement of her rights of property: *Id.*

If a husband, to avoid being compelled by the town to contribute to the support of his pauper mother, conveys land to his wife without consideration, such conveyance is good between the parties; for the law will not permit a party to allege his own fraud to avoid his contracts, or the legal consequences of his own act: *Id.*

Injunction.

Right of Way—Acquiescence—Laches.—If the right of way, over a street, of the owner of a lot fronting thereon, is so unlawfully obstructed as to subject him to a special injury, not common to, but distinct and different from that suffered by the public, and for which he cannot obtain adequate compensation at law, he is entitled to the summary interference of a court of equity by injunction: *B. & O. R. Co.* v. *Strauss*, 37 Md.

If a party fully cognisant of his rights, permits a public corporation to expend large sums of money in laying down and completing its railroad tracks in contravention of his rights, and makes no complaint, and does not attempt to interfere, or interrupt them during the progress and construction of the work, he is precluded, by such acquiescence, from relief by injunction: *Id.*

The owner of a lot of ground fronting on a public street, suffered a

railroad company which had constructed one track on said street, to h / down and complete at considerable expense, two additional tracks thereon, and made no complaint, and interposed no objection during the progress and construction of the work, but acquiesced therein. Ten years after the completion of the two additional tracks, the owner of the lot filed a bill in equity, asking that the railroad company might be restrained from using or maintaining more than two tracks, upon the ground that the use of the three tracks was an obstruction of his right of way over said street, and had done, and was doing him an irreparable injury for which he had no adequate remedy at law. *Held*, That the complainant had not used due diligence in making his application, and was therefore not entitled to an injunction: *Id.*

International Law.

Alien Enemy—Liability of a Person while within the Confederate Lines, to be proceeded against by an Order of Publication, granted by a Court in Maryland—Presumption of Notice from the due Publication of the Order of Publication—Purchasers under an Order of Court protected in their Titles.—While an alien enemy is incapable of suing and maintaining a suit, either at law or in equity, in the courts of the country to which he is hostile, during the state of hostilities, he is liable to be *sued*, if within the reach of process: *Dorsey* v. *Thompson*, 37 Md.

A resident citizen of Maryland, who, after hostilities had commenced between the United States and the Confederate States, voluntarily left his home, and went to Virginia, one of the Confederate States, and afterwards joined the Confederate army, may be proceeded against by order of publication, granted by a court in Maryland, and he is bound by the proceedings taken in the cause, as any other non-resident defendant would be, notwithstanding that he was at the time within the Confederate lines, and could not in fact receive the notice by publication: *Id.*

The presumption of notice, resulting from the due publication of the order of court, is such as to confer upon the court power and jurisdiction to decree upon the subject-matter of the suit, that subject-matter itself being within the jurisdiction of the court: *Id.*

Where a court of equity, having jurisdiction, passes an order directing the sale of real estate, the purchasers of such real estate are entitled to be protected, and a reversal of the order of sale would not operate to disturb their titles acquired under it: *Id.*

Landlord and Tenant.

Notice to quit—Tenancy from year to year—Determination of Tenancy at will, or at sufferance.—Notice to quit is never necessary, unless the relation of landlord and tenant exists: *Chamberlin* v. *Donahue*, 45 Vt.

If one in possession repudiates the relation of tenant to his landlord, demand of possession or notice to quit, is not necessary: *Id.*

An agreement to pay rent by the tenant, is an essential element of a tenacy from year to year: *Id.*

A tenancy at will may always be determined by any act or declaration inconsistent with the continued voluntary relation of landlord and tenant: *Id.*

Whether one be in possession of land under an implied license, or as tenant at sufferance, or at will, the commencement of an action of ejectment against him by the owner, determines his relation, and his possession thereafter becomes wrongful: *Id.*

LIMITATIONS, STATUTE OF.

Note payable in Instalments—Joint Note—Promise by one of the Debtors.—In *assumpsit* on a note payable in instalments, an action may be maintained on each as it becomes due; the statute therefore began to run as soon as such instalment became due: *Bush* v. *Stowell*, 71 Penn.

A payment or acknowledgment by one of several joint debtors will not avoid the bar of the statute as to the others: *Id*

In an action of assumpsit against four on a joint note payable by instalments, one of which had become due within six years, two pleaded the statute; and there was an acknowledgment by one as to the whole; the verdict was for the plaintiff for the whole, "for $692 whereof and no more two of the defendants D. and A. are liable." On error by the plaintiff, *held*, that no injury had been done him, and the judgment on the verdict was affirmed: *Id.*

The instruction of the court should have been to find against all the defendants for the amount of the last instalment: *Id.*

MUNICIPAL CORPORATION. See *Constitutional Law; Highway.*

PARTIES.

To bind the estate of a deceased party, or to authorize any decree for an account, against the same, it is not sufficient that the person who is the representative thereof is a party to the suit. He must be made a party distinctly in his representative character: *Fisher et al.* v. *Hubbell et al.*, 65 Barb.

Where a defect of parties is apparent on the face of the complaint, but no demurrer is interposed, and no suggestion of the defect made until the argument of an appeal from the judgment, neither party is entitled to costs of the appeal: *Id.*

PARTNERSHIP.

Use of Name of a Person not a Partner.—If one suffers another to hold him out as a partner, or to use his name in business as such, he is liable as a partner on a contract thus made, although in fact he has no interest in the business of such partnership: *Smith* v. *Hill*, 45 Vt.

Hill and Harrington were never partners, and no such firm as Hill & Co. ever existed; but Harrington gave the plaintiff a note for some staging property purchased by him, signed "Hill & Co., by Harrington," without the knowledge of Hill. Two or three years before said note was given, Hill was informed that Harrington was using the name of Hill & Co., in his staging business, and he afterwards saw Harrington and told him he must not use that name to injure him, and he said he would not. The plaintiff did not know of such previous use of that name at the time said note was given, and it did not appear whether Harrington made any representations to him at that time. *Held*, that Hill was liable on said note: *Id.*

Held, also, that, inasmuch as the signature to said note disclosed the name of Hill, it made no difference that the plaintiff did not know of

the previous use of Hill's name as aforesaid, at the time said note was executed, for the legal intendment is, that the payee takes a note upon the faith of the persons whose names appear upon it as makers: *Id.*

Evidence.—In a question of partnership, evidence that the connection between alleged partners had been formed fraudulently and for the purpose of covering the property of one from his creditors, is not admissible: *Thomas* v. *Moore*, 71 Penn.

B. sold part of a coal-lease with the personal property to M., who constituted O. his attorney; orders drawn for goods by B. on a firm, "B. & Co.," in favor of the plaintiffs, accepted by O., and goods furnished accordingly, were evidence of partnership between B. & M.: *Id.*

B. when alone kept blank assignments which were filled up by him to the plaintiff, a storekeeper, for the amount due laborers of B., and the laborers received goods to the amount from the plaintiff. There being evidence of partnership between B. and M., such assignments dated afterwards were evidence in a suit against the firm: *Id.*

Settlement of Accounts—Assumpsit does not lie between Partners until Balance struck.—Leidy and Messinger as partners, purchased for $1000 one share of the stock of an unincorporated oil company; Messinger paid $500 in cash, and Leidy gave his note for $500, which was passed in payment for the purchase-money of the land of the company, placed by the vendor in the hands of counsel for collection and was unpaid. The company became insolvent. *Held*, that Messinger in assumpsit could not recover from Leidy the one-half of the cash paid by him: *Leidy* v. *Messinger*, 71 Penn.

Leidy's liability to Messinger resulted from the partnership relation, and Messinger could not recover until there was a settlement of their accounts and a balance struck: *Id.*

Partnership accounts must be settled in one proceeding; by account render or bill in equity; until there has been a settlement of partnership accounts, *assumpsit* will not lie for advances unless there has been an express promise to repay: *Id.*

This rule applies whether the property of the partnership had ceased to exist or not: *Id.*

PLEADING.

Including various Causes of Action in one Count—Facts not well pleaded—Demurrer.—A petition is bad, which classifies and groups together the principal facts constituting 670 separate and distinct causes of action, and alleges such facts in general terms (670 separate and distinct facts being stated in one general allegation), in one general heading to said petition, and does not state the facts constituting each cause of action in a separate count, but simply refers, in each count, to the facts as stated in said general heading: *Stewart* v. *Balderson*, 10 Kans.

Such a petition does not nor does any count thereof state facts sufficient, *well pleaded*, to constitute a cause of action: *Id.*

A motion asking that the plaintiffs be required to make such petition definite and certain, by separately stating and numbering their several causes of action, should have been sustained: *Id.*

Where such a motion has been made to such a petition, and overruled, and then a demurrer filed thereto, no facts stated in the petition should be taken as true on the hearing of the demurrer, unless they were so well pleaded as not to be objectionable on the hearing of said motion: *Id.*

After such a motion has been made and overruled, and demurrers filed to the petition and to each count thereof, on the ground that the same did not state facts sufficient to constitute a cause of action, the demurrers should have been sustained, on the ground that neither the petition nor any count thereof did state facts sufficient, *well pleaded*, to constitute a cause of action: *Id.*

Railroad.

Responsibility for Injury done by Fire occasioned by its Engines.—The 1st section of Article 77 of the Code of Public General Laws, which makes railroad companies responsible for injuries by fire occasioned by their engines upon any of their roads, applies not only to a case where a party has suffered damage by fire communicated by sparks flying from the smokestack, or by sparks, coals or fire dropping from, or flying out of the furnace or ash-pan of the engine, but also to a case where the fire was communicated from coals or cinders thrown from the engine by the servants of the company having charge of it at the time; and if the party damaged establishes by sufficient proof that the fire thus originated, and that he suffered damage thereby, the *onus* is cast upon the company of proving that such damage was not the result of its negligence or carelessness, or that of its agents: *B. & O. R. Co.* v. *Dorsey*, 37 Md.

Sheriff. See *Execution.*

Irregular Writ—Officer protected in execution of.—A libel for materials, &c., was filed, and a writ of attachment was issued against five boats, which were attached by the sheriff. *Held*, if the attachment was irregular because joint, as the court had jurisdiction, it was a protection to the sheriff: *Fall Creek Coal Co.* v. *Smith*, 71 Penn.

It was not for the sheriff to determine anything about the irregularity of the writ, but he was bound to serve it: *Id.*

Where a court has jurisdiction of the action, their officers are not responsible for errors in the process: *Id.*

It depends upon the action of the party in interest whether irregular process shall become void: if *inherently* without efficacy it is void as to all persons, whether interested or not: *Id.*

Surety.

Discharge by failure to sue Debtor—New Promise.—Funk, who was surety on a note, was discharged by the holder refusing to pursue the principal upon notice. He afterwards wrote to holder, "Have patience until about January 3d. I think you will receive your money;" again, "I was at Esq's for money three times, but did not meet him; I will pay you as soon as the money is obtained. I will see you yet this week." Suit had been brought at the date of last note. *Held*, 1. That the letters were only a conditional promise to pay on obtaining the money from the justice. 2. If it had been absolute, the consideration of forbearance had not been performed: *Funk* v. *Frankenfield*, 71 Penn.

Town. See *Highway.*

Trespass.

When will not lie for the Asportation and Conversion of Property—Practice—Burden of Proof.—A verbal agreement to sell and convey,

for a valuable consideration, all the personal property the vendor then had, and all that she might *thereafter acquire* and die possessed of, is inoperative to pass the legal title to the subsequently acquired property, so as to enable the vendee to maintain trespass or trover for its asportation and conversion: *Wilson* v. *Wilson*, 37 Md.

And in an action by the vendee for the asportation and conversion of the property embraced in such contract of sale, the burden of proof rests upon him to show what articles, among those claimed, the vendor had at the time the contract was made, the defendant conceding his liability for all articles taken by him as were in the possession of the vendor at the date of the contract. Without such proof the jury would have no standard of damages upon which they could base their verdict: *Id.*

TROVER.

Conversion—Offset.—The defendant delivered his stage horses to the plaintiff to be kept at an agreed price. There was no promise on the part of the plaintiff, express or implied, to redeliver said horses to the defendant on demand, other than what might be implied from his agreement to keep them as aforesaid; but the defendant had a right to take them at any and all times, to use in his business, and had always done so until the plaintiff refused to permit him to do so, and detained them from him. *Held*, that such refusal and detention was a tort, and a conversion of the horses, and not the proper subject of a plea in offset: *Hudson* v. *Nute*, 45 Vt.

Conditional Sale—Property by Accession.—H. bought a stage-wagon of B. upon condition that it should remain B.'s till paid for. The plaintiff repaired it for H. by supplying new wheels and putting in new iron axles. H. wrongfully took it from the plaintiff's possession without paying for repairs. A few days thereafter, the plaintiff took H.'s note for the repairs, with an agreement that the "running part" of said wagon should remain his till said note was paid. H. never paid B for the wagon, but the plaintiff knew nothing of B.'s claim. B., knowing the wagon had been repaired, but not knowing by whom, took it back from H. and sold it to the defendant, who knew nothing of the plaintiff's claim till long after his purchase. *Held*, that the plaintiff could maintain trover for said wheels and axles: *Clark* v. *Wells*, 45 Vt.

WAY.

Deed—Acts of Parties—Force of.—Fox conveyed a lot to Kraut, with a passage, without defining it, over his "remaining ground" to convey the filth from Kraut's privy; part of his "remaining ground" was vacant and part occupied by a house in which Fox lived, he conveyed the vacant part, with special warranty, to Craig, without any reservation, and afterwards opened for the purpose through his house a passage, which Kraut used twice. Fox's heirs were bound by this location and could be restrained from preventing Kraut from using the passage: *Kraut's Appeal*, 71 Penn.

Although the construction of the grant might be that the vacant part was intended for the passage, the parties might define the limits by subsequent agreement, use and acquiescence: *Id*

The presumption was that Fox intended by his deed that Craig's lot should be discharged from the easement, and that it should be fixed on Fox's improved lot: *Id.*