Whenever that case shall arise I shall certainly desire to hear it argued and to consider whether the rule of law be not this: that a person is expected to anticipate and guard against all reasonable consequences, but that he is not by the law of England expected to anticipate and guard against that which no reasonable man would expect to occur." *Vide Burrows* v. *Gas Co., supra*, p. 48.

As to remoteness of damage, *vide* Broom Leg. Max. (5 Ed. 1870). 216, for excellent selection of authorities.

V. *A criminal prosecution against the third persons in the principal case guilty of the assault, not necessary before bringing civil suit against employer.*

See 1 Leading Criminal Cases 27, *White* v. *Font. Pettingill* v. *Rideout*, 6 N. H. 454, with authorities, decided that a civil action may at once be brought against a felonious tort-feasor, the policy of the contrary doctrine being inapplicable to this country: *Boardman* v. *Gore et al.*, 15 Mass. 331, to the same effect with authorities, action against partner of wrong-doer on partnership-note (rule of suspension said to be confined to robberies and larcenies.)

Query; whether defendant was criminally liable. 1 Leading Criminal Cases 42, 49, *cum notis.*

H. R.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF ALABAMA.[1]
SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[2]
COURT OF CHANCERY OF NEW JERSEY.[3]
SUPREME COURT OF NEW YORK.[4]
SUPREME COURT OF VERMONT.[5]

ACTION.

For Injury to Real Estate does not survive to Administrator.—At common law, a remedy by action on the case for an injury to real estate did not survive in favor of an administrator. *Forist* v. *Androscoggin R. I. Co.*, 52 N. H.

To sustain an action on the case under the statute of New Hampshire, by an administrator for an injury to real estate after the death of his intestate, the facts on which his right to sue depends must be stated in the declaration: *Id.*

ADMINISTRATOR. See *Action.*

ADMIRALTY.

Jurisdiction over Maritime Contracts is exclusive in United States Courts.—The United States District Courts have jurisdiction, exclusive of the State Courts, to enforce maritime contracts according to the usage and practice of Courts of Admiralty: *Murphy* v. *Mobile Trade Company*, 49 or 50 Ala.

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[1] From Hon. Thos. G. Jones, Reporter; to appear in 49 or 50 Ala. Reports.

[2] From J. M. Shirley, Esq., Reporter; to appear in 52 N. H. Reports.

[3] From C. E. Green, Esq., to appear in Vol. 9 of his Reports.

[4] From Hon. O. L. Barbour, to appear in Vol. 65 of his Reports.

[5] From J. W. Rowell, Esq., Reporter; to appear in 45 Vt. Reports.

The common-law remedy saved to suitors by the Judiciary Act of 1789 is such a remedy as attaches to the interests of the owner in the vessel, because it is the property of the defendant, and not because the vessel is the offending or responsible thing: *Id.*

A contract for supplies furnished in Mobile, at the instance of the master, to a steamboat enrolled and licensed in that port, and plying between there and Columbus, Miss., the owner being a resident citizen of Mississippi, is a maritime contract, the Admiralty jurisdiction of which is exclusively in the District Court: *Id.*

The proceedings in Admiralty embraced in R. C. 3127–3147 are inoperative in all cases of maritime contract whether a lien is created or not: *Id.*

Quere, whether they are not unconstitutional in respect to contracts, not maritime: *Id.*

Assumpsit.

Voluntary Payment.—The plaintiff voluntarily, and without the request of the defendant, paid taxes assessed on real estate in the possession of the defendant, who had the equitable title thereto, but the legal title of which was in the plaintiff, who claimed to own the equitable title also, and denied the title of the defendant, and her right of possession. *Held*, that the plaintiff could not recover of the defendant for the money thus paid: *Bryant* v. *Clark*, 45 Vt.

Voluntary Payment—Officer.—The defendant, a constable, having an execution in favor of S. against the plaintiff in his hands for collection, after demanding, but before receiving, payment of the same, advanced the amount thereof to S., at his request, and retained the execution in his hands, and the money when paid thereon, was to, and did, belong to the defendant. Subsequently, the plaintiff, knowing the foregoing facts, paid the amount of said execution to the defendant, with the fees for the collection thereof, without objection. *Held*, that the plaintiff could not recover back the fees so paid: *Strafford* v. *Blaisdell*, 45 Vt.

Bankruptcy. See *State Courts.*

Discharge—Fraudulent Debt.—The recovery of a judgment upon a contract induced by a fraud, is a waiver of the fraud, and the judgment is not a debt *created* by fraud, within the meaning of the Bankrupt Act; and the plea of a discharge in bankruptcy, is a good defence to an action of debt founded upon such judgment: *Palmer* v. *Preston*, 45 Vt.

Bill of Lading.

Assignment.—The assignment of a bill of lading as collateral security, conveys title to the cargo: *Tilden* v. *Minor*, 45 Vt.

Bills and Notes. See *Debtor and Creditor.*

Charging a Joint Owner as Endorser.—A joint owner of a promissory note cannot be charged as endorser, in an action brought by his co-owner, or one who is not a *bonâ fide* holder for value and without notice of the defendant's rights, and did not acquire it in the usual course of business, and before maturity: *Norton* v. *Edgar*, 65 Barb.

If one of two joint owners of a note is authorized to sell his co-owner's interest therein, and does sell it, with his own, the whole interest

will pass to the purchaser; and whether the latter can recover against the co-owner, as endorser, will depend upon whether he obtained the note under circumstances which entitle him to insist that such co-owner is estopped from proving facts that will protect him against such liability: *Id.*

Where one of two joint owners of a note, without authority from his co-owner, sells the latter's interest in the note, the purchaser will acquire only the interest of the seller in such note: *Id.*

Where a person, knowing that a constable has seized and offered for sale only the interest of one of two joint owners in a promissory note, purchases that interest at the sale, such sale and purchase will carry no interest in the endorsement of the same owner on which an action can be maintained by the purchaser: *Id.*

Boundary.

How proved.—An ancient boundary, of a public municipal jurisdiction, not marked by visible monuments, and of which there is not higher evidence may be proved by general reputation: *Morgan* v. *Mayor of the City of Mobile*, 49 or 50 Ala.

The location of a boundary is subject to parol evidence: *Id.*

Certiorari.

To whom to be directed.—When a case is made for issuing a writ of *certiorari*, it will be directed to all persons whose return is necessary to enable the court to determine the regularity or validity of the proceedings of the officer or tribunal sought to be reviewed: *The People ex rel. Davis* v. *Hill et al.*, 65 Barb.

If the writ is directed to all the officers or bodies, whose action was necessary to complete the act which is complained of, it is enough. Each officer, body or board can return as to the part performed by himself, or by itself, and then the court will have before it all the information that could be obtained by issuing any number of separate writs: *Id.*

When the acts of different officers do not form parts of one entire official act, then writs must issue to each body or officer whose act contributes to the completion of the act complained of: *Id.*

When ministerial acts enter into, and form part of, the act complained of as illegal, the writ is properly directed to the officer or body thus acting; although, under the circumstances, the writ could not issue against an officer or body acting ministerially: *Id.*

Ministerial Acts, when Reviewed.—The act of a ministerial officer cannot be reviewed on *certiorari*, unless it is connected with the judicial action of some other officer; nor then, unless it is necessary to enable the court from which the writ issues to grant the appropriate relief: *Id.*

Compelling Return by Ministerial Officer.—When the only relief to a party is a *certiorari*, and relief cannot be granted without having before the court the action of a ministerial officer, in reference to the same matter, it is the right, as it is the duty, of the court to compel a return of such matter, in obedience to the writ: *Id.*

Collateral Security. See *Bill of Lading.*

Damages for Conversion—Expenditure in finishing Goods to make them saleable.—When one is liable to account for the property of an-

other rightfully taken by him, and which he has managed and disposed of in good faith, and with common prudence and due diligence, he is only liable for the amount actually realized by him: *Rowan* v. *State Bank*, 45 Vt.

When property held as collateral security is taken into the possession of the creditor in such an unfinished state that a court of chancery would order it finished by a receiver, and the creditor does in that respect what chancery would have ordered, he is properly chargeable with the avails thereof when finished, notwithstanding it was finished with his property and by his means; but equity requires that the avails thereof should be applied to the extinguishment of the creditor's disbursements in that behalf, before any application is made upon the debt; and any equity acquired by an attachment of such unfinished property as the property of the pledgor, is subordinate to such equity of the creditor: *Id.*

CONSTITUTIONAL LAW. See *Statutes.*

Being Witness against self—Waiver of Privilege.—The prohibition of the constitution of the state against compelling a subject to accuse or furnish evidence against himself (Bill of Rights, Art. XV.) may be waived by him, and is waived by his consenting to be a witness in his own behalf, under the Act of 1869, in relation to respondents' testifying in criminal cases (ch. 23, Laws of 1869), and he thereby subjects himself to the rules and tests applicable to other witnesses: *State* v. *Ober*, 52 N. H.

Statute may be good in part and bad in part—When divisible in the Nature of the Subject-matter or in its Provisions, the unobjectionable Part will be sustained.—If some of the provisions of a statute are violative of the constitution, while others are consistent with it, the latter will be maintained, if they can be separated from and stand without the unconstitutional parts of the law: *Lowndes County* v. *Hunter*, 49 or 50 Ala.

In the application of the rule, it is not material, that the constitutional and unconstitutional provisions are mingled in the same section of the statute, if they are not so essentially and indispensably connected, that if the unconstitutional provision is stricken out, that which remains is not capable of execution according to the legislative intent: *Id.*

If matter foreign to the subject expressed in the title is introduced into the statute, and is divisible from that which falls within the title, and the latter can stand, and have effect without the former, then only so much of the statute as is not embraced by the title is void: *Id.*

When a statute created a claim against a county, and provided no remedy for its enforcement, a suit by summons and complaint against the county is the proper remedy: *Id.*

CONTRACT.

Wagers—At Common Law not void unless against Policy—May not be enforced although not criminal.—The common law allowing actions to be maintained upon a wager, in cases not contrary to public policy, or prohibited by statute, has never been adopted in this state: *Winchester* v. *Nutter*, 52 N. H.

In this state all wager contracts are void; but a bet or wager, unconnected with a criminal offence, is no offence against the criminal law: *Id.*

A bet upon the result of a squirrel hunt is not a violation of any law of this state: *Id.*

The plaintiff presided at a meeting at which it was agreed to have a squirrel hunt. The side that should be beaten in the contest was to pay for supper for both sides. It was arranged that each man should pay for his own supper, and for that of one man on the victorious side; but the two captains (the defendants) were to engage and be responsible for the suppers for all the men, and the matter was to be afterwards adjusted between the captains and their men. In pursuance of this arrangement, the plaintiff furnished suppers for all the men, knowing and understanding fully how the suppers were to be paid for in the end. *Held*, that the plaintiff was entitled to recover of the two defendants the price of all the suppers: *Id.*

Corporation.

Effect of Proxy—Notice to Principal.—A stockholder in an insurance company allowing representation by a proxy in a meeting of the stockholders of such company, must be visited with notice and knowledge of all the proceedings transacted by the stockholders in such meeting, known to his proxy. In legal effect the proxy is the principal: *Thames* v. *Central City Insurance Co.*, 49 or 50 Ala.

Right against a Stockholder in Debt to Corporation—Lien on Stock.—At common law there is no lien implied in favor of a corporation to charge the stock of a shareholder with debts due from him: *Mut. Ins. Co.* v. *Cullom*, 49 or 50 Ala.

The act incorporating the "Mobile Mutual Insurance Company" declares a lien in favor of the corporation, on the stock of a shareholder for "any debt or liability of such stockholder to the company." *Held*, to embrace not only a debt for an unpaid balance on the subscription for stock, but a general debt contracted with the corporation, without notice of the assignment of the stock: *Id.*

Covenant.

In relation to Building on Land—What is Violation of—Interference by Equity.—An agreement under seal, made subsequent to a conveyance of a lot of land, that the vendee would build thereon within a year, a residence to cost not less than $18,000, and would place the main front wall thereof twelve feet from the line of the street, and that the vendors, in case of any further conveyances of lots on that street, would stipulate and provide with the purchasers that the houses to be erected on such lots between specified streets, should be so erected that the main front wall should be on a line twelve feet from the line of the street, will be enforced in equity, as against a subsequent grantee, with notice. Equity will charge the conscience of the grantee with such agreement, though it neither creates an easement nor runs with the land: *Kirkpatrick* v. *Peshine*, 9 C. E. Green.

The vendee with whom such agreement was made is entitled to the benefit of a covenant contained in the deed to such subsequent grantee, binding her so far as her land is concerned, substantially to the observance of the agreement, notwithstanding the absence of any privity between them: *Id.*

The erection of a bay window, one story high, built up from the

foundation-wall, and extending beyond the line of the twelve feet, is a violation of the agreement, and will be restrained: *Id.*

The erection of a stone stoop or steps occupying the whole width of the twelve feet, is not an infringement of the agreement: *Id.*

The court will not refuse to restrain the violation of such agreement because the inconvenience resulting to the complainant will be slight. It must be clear that there is no appreciable, or at all events no substantial damage from the breach, before the court will, upon the ground of smallness of damage, withhold its hand from enforcing the execution: *Id.*

Does not lie against Grantee of Deed-poll although in Possession under the Deed.—An action of covenant for rent will not lie against a lessee where the lease is a deed-poll, signed by the lessor only, although the lessee may have accepted the lease, and occupied and held under it during the full term, without paying the rent reserved: *Johnson* v. *Muzzy*, 45 Vt.

In an action of covenant the declaration alleged that, on the 7th of March 1841, the plaintiff, by deed duly executed, conveyed a certain farm to the defendant, reserving to himself the fruit of the orchard for ten years, and that the defendant, in and by said deed, covenanted to keep the orchard well fenced, and to preserve it from depredation by cattle, &c. Plea, *non est factum.* The defendant accepted said deed, and possessed and held under it, but it was signed and sealed by the plaintiff only. *Held*, that it was not, in legal contemplation, the deed of the defendant, and that covenant would not lie. *House* v. *Foster*, Washington county 1852, cited by ROYCE, J.: *Id.*

CRIMINAL LAW. See *Constitutional Law.*

Indictments—Exceptions and Provisos in Statute—When to be alleged.—In an indictment, founded upon Gen. Stats., ch. 259, sect. 6, which provides for the punishment of any person who shall "wilfully obstruct or assault an officer or other person, duly authorized, in the service of any criminal process, for any offence punishable by imprisonment for more than one year," it is unnecessary to allege that the officer who served the process was duly and legally appointed; or that he was duly and legally qualified, and authorized to serve the same; or that the process therein described was "a lawful process;" or that the complaint upon which the process was issued was signed, or addressed to the justice who issued the same, or to any other magistrate; or that the process was under the seal of the justice who issued it: *State* v. *Cassady*, 52 N. H.

Where provisos or exceptions are contained in distinct and independent clauses of the statute upon which an indictment is founded, it is unnecessary to allege, in the indictment, that the party described is not within the exceptions, nor to negative the provisos; for these conditions of the party are matters of defence, which the prosecutor need not anticipate: *Id.*

DAMAGES. See *Collateral Security; Vendor.*

DEBTOR AND CREDITOR. See *Collateral Security.*

Statute of Frauds—Husband and Wife—Equity—Lien of Judgment on Land—Notice to Vendee.—An endorser of an accommodation note is

a creditor of the drawer within the meaning of the fourth section of the Statute of Frauds: *Phelps* v. *Morrison et al.*, 9 C. E. Green.

A voluntary conveyance by a debtor to his wife is void for fraud as against an antecedent creditor: *Id.*

A contract by a married woman for the sale of her real estate, and a deed executed by herself alone, are void. Equity will not enforce the one or give effect to the other: *Id.*

The record of a judgment against the husband is not notice to his wife's grantee, when at the time of his contract to purchase and of his taking the deed, the legal title to the property was in the wife: *Id.*

Such judgment was not a legal encumbrance on the property, though the conveyance by the husband to the wife was voluntary, both deeds expressing a full consideration, and bearing no evidence on their face of their voluntary character: *Id.*

A purchaser under a void deed for valuable and adequate consideration without notice, will be protected against an antecedent creditor to the amount he paid for purchase-money: *Id.*

A debtor made a voluntary conveyance of real estate to his wife. She sold and conveyed the property—her husband not joining in the conveyance—to B., who had no knowledge that the conveyance to the wife was voluntary, and who paid a valuable and adequate consideration for the property, and went into possession under his deed. B. conveyed to C., also for full and valuable consideration, with the usual covenants including general warranty, and gave to C. possession. *Held*, that in equity, the claim of B. on the premises is to the extent of the amount of purchase-money paid by him for the property, superior to that of a creditor whose debt existed at the time of the conveyance, and to that extent B. and C. will be protected. The premises were charged, 1st, with the amount paid by B. for the property with interest, deducting rents and profits, and 2dly, with the debt of the antecedent creditor: *Id.*

DIVORCE. See *Former Adjudication.*

Equitable Jurisdiction—Causes of.—A marriage will not be annulled for impotence. The Court of Chancery is restricted in its jurisdiction in suits for divorce to the legislation on the subject, and in suits for nullity of marriage to cases within the inherent and undoubted jurisdiction of equity: *Anonymous*, 9 C. E. Green.

This court will, outside of its statutory jurisdiction, annul a contract of marriage, only when the contract is void; not where it is voidable only: *Id.*

EASEMENT.

Mill-Dam—Extent of Flowage Right obtained by Adverse User.—Merely maintaining a dam for twenty years does not give a prescriptive right to flow land as high as it can be flowed by that dam. To acquire such right, the water must be actually raised on the adjacent owner's land so often as to afford him reasonable notice, during the entire period of twenty years, that the right is being claimed against him: *Gilford* v. *Winnipiseogee Lake Co.*, 52 N. H.

In order to gain a prescriptive right of flowage, it is not enough that the adverse user has been co-extensive with the wants of the party claiming the right. The acts of user must be of such a nature and of

such frequency as to give reasonable notice to the landowner that the right is being claimed against him: *Id.*

EQUITY. See *Covenant; Debtor and Creditor; Municipal Claim; Vendor.*

Jurisdiction to impeach Proceedings at Law for Irregularity.—It is a general principle of equity jurisprudence, that a court of chancery will not entertain a bill to impeach a judgment at law, for mere irregularity in the proceedings, but leave such questions arising in legal proceedings, to the exclusive jurisdiction of courts of law: *T. of Wardsboro* v. *Whitingham*, 45 Vt.

Neither will a court of chancery entertain a bill to try the truth of an officer's return by parol testimony; nor to grant relief upon falsifying the record of the doings of a sworn officer in a proceeding at law: *Id.*

ESTOPPEL. See *Municipal Claim.*

EVIDENCE.

Expert—Writings—Whether made at different Times or not.—Upon the question whether a long account upon a party's books was written at different times, as it purported to be, or whether it was all written with the same pen and ink and at the same time, a witness testified that he had been in practice as a lawyer some forty years, and had had about the same experience as lawyers in general in the examination and comparison of handwritings; that he had been engaged in one or two cases which led him particularly to examine and compare handwritings, but he did not claim to be able to give an opinion upon which any great reliance could be placed. *Held*, that the admission of the witness to testify as an expert was erroneous: *Ellingwood* v. *Bragg*, 52 N. H.

The ruling of a judge, at *nisi prius*, upon the qualifications of a witness to testify as an expert, will not be revised, unless the question of discretion is fully reserved by the presiding judge. *Dole* v. *Johnson*, 50 N. H. 452, affirmed: *Id.*

FORMER ADJUDICATION.

Not a Bar if Jurisdiction of Court does not appear.—In divorce proceedings, a former adjudication need not be specially pleaded as a bar, or an estoppel, but may be given in evidence at the trial: *Blain* v. *Blain*, 45 Vt.

A former adjudication by the courts of New Hampshire, dismissing a petition for divorce for want of sufficient proof of the allegations thereof, is not a bar to granting a divorce in this state for acts of intolerable severity, which were alleged and attempted to be proved in the proceedings in which such adjudication was had, but which occurred in New York, while the parties were domiciled there, when it is not made to appear that the courts of New Hampshire had jurisdiction of causes happening while the parties were residing in another state, and without its jurisdiction: *Id.*

Rights subsequently accrued.—A judgment in a former action is not a bar to a second action for the same cause, if at the time of the rendition of the judgment in such former action, the cause of action last sued on had not accrued: *Marcellus* v. *Countryman*, 65 Barb.

Parol evidence is admissible to show that the demand in the second

suit was not recovered for in the first, and the reason why it was not. For this purpose, the testimony of a juror in the former suit is properly received: *Id.*

Where it was a question of fact for the jury, in a former action, to determine upon conflicting evidence, whether an agreement to extend the time of payment had been entered into, and they found there had been: *Held*, that if the jury decided erroneously, the error should have been corrected, upon appeal in that action; and that no appeal having been taken, the verdict and judgment could not be reviewed in a second suit between the same parties: *Id.*

FRAUDS, STATUTE OF. See *Debtor and Creditor.*

HIGHWAY. See *Nuisance.*

HUSBAND AND WIFE. See *Debtor and Creditor; Divorce.*

Debt for Necessaries.—When a debt is contracted partly for necessaries, and partly in the purchase by the wife of goods for resale, neither the common-law liability of the husband nor the statutory liability of the wife's separate estate for the necessaries is discharged, because there is not a liability for the goods purchased for resale: *Parker* v. *Dillard*, 49 or 50 Ala.

Wife's Earnings—Separate Estate—Bill in Equity to protect.—Husband may permit wife to have the savings of her own industry for her separate property: *Rivers* v. *Charlton*, 49 or 50 Ala.

A bill in chancery which shows that the wife, who is a complainant, owned a separate property, purchased with the savings of her own industry in 1852, and claimed by her as such, and which was invested in lands, in her husband's name, but not as her trustee, is not without equity, when it shows also that the husband had mortgaged the lands thus held for his own debt, and when the bill is filed against the husband's mortgagee, who was not his creditor before the commencement of the wife's estate: *Id.*

Most regularly, such a bill should show that the wife's acquisitions were made with the consent, concurrence or approbation of the husband, and that he acquiesced in her claim to the same as her separate estate, but on demurrer for want of equity the allegation that property claimed is her separate estate, will be held sufficient to cover the defect: *Id.*

INFANT.

Rescission of Contract by Parent.—The plaintiff's son of eleven years, purchased of the defendant, a shop-keeper, cigar-holders and fancy pipes in cases, and paid therefor $4.75 in money. The next day the plaintiff's wife (the child's mother), went with the boy to the defendant's shop, and tendered back said articles, and demanded the money paid therefor, which the defendant refused to pay back. The plaintiff thereupon brought this suit to recover the money; and it was *held*, that he could recover: *Sequin* v. *Peterson*, 45 Vt.

Held, also, that said demand by the plaintiff's wife, if one was necessary, was sufficient: *Id.*

LIS PENDENS.

Good Plea in Abatement without showing actual vexatiousness.—The

pendency of two suits, for one cause at one time, brought by one plaintiff against one defendant, is a cause of abating the second suit without inquiry into the fact of actual vexatiousness and oppression, and notwithstanding the plaintiff, before commencing the second, gave the defendant a written notice that he discontinued the first: *Gamsby* v. *Ray*, 52 N. H.

MILL-DAM. See *Easement.*

MUNICIPAL CLAIMS.

Interference of Equity against—Assessment on Landowners—Estoppel by Laches.—Where, under the provisions of a city charter, the entire cost of street improvements is to be assessed upon the property-owners on the line of the street, or part of the street, on which the improvements are made, and the work is all completed and accepted, and the contract-price paid, before suit commenced, equity will not restrain the city from assessing the property-owners for the cost of a pavement on the ground that the work has not been done according to the requirements of the contract, and that in materials and execution it was so defective as to render the pavement almost useless: *Liebenstein* v. *The City of Newark*, 9 C. E. Green.

A court of equity will not entertain an action for relief against an erroneous or illegal assessment, except where the enforcement of the assessment would lead to a multiplicity of suits, or where it would produce irreparable injury, or where the assessment on the face of the proceedings is valid, and extrinsic evidence is required to show its invalidity: *Id.*

That the levy and collection of the assessment might deprive the complainant of his property, is not the irreparable injury contemplated by the exception: *Id.*

Where, under the provisions of a city charter, the corporation, in the making of street improvements, are to be regarded as the agents of the landowners, the latter must bear the consequences of the negligence of their agents: *Id.*

Where city authorities have been guilty of negligence in permitting street improvements to be made in a grossly defective manner, and to the great injury of the landowners, a court of equity will restrain the authorities from paying for the work, until the defects shall have been remedied, or will compel a just deduction in respect of such defects, from the contract price if it be still unpaid, or from any part of it remaining unpaid if sufficient for the purpose; and if not sufficient, then so far as it will go. But the application must be made while the court has the power to do justice between the parties, without injustice to others: *Id.*

But if the landowners stand by and permit the city to pay the contractor, they can have no relief against the assessment. Their inaction is a ground of estoppel, and by permitting the city to pay the contract price, they have put it out of the power of the court to afford relief: *Id.*

Where landowners along the line of a street where improvements have been made, seek, on the score of the negligence of the municipal authorities in the execution of the contract, to restrain the assessment of the contract price upon them, and so shift to the tax-payers at large a part of the burden which the legislature intended should be borne by themselves alone, vigilance as to the work and prompt recourse to the court are essential pre-requisites to the application: *Id.*

MUNICIPAL CORPORATION.

Police Powers of—Abatement of Nuisances—Authority of Board of Health.—The police powers vested in municipal bodies, by which the public health, peace, comfort and convenience, and the general welfare are secured, or promoted, are not only respected but maintained by the courts, which as a matter of public policy, will not interfere with or disturb municipal bodies in the legitimate exercise of those powers. It is only when those bodies transcend their limits in that respect, that the aid of the courts can be successfully invoked to restrain them, or to visit upon them the injurious consequences of their acts: *Weil* v. *Ricord & Others*, 9 C. E. Green.

The Board of Health of the city of Newark, in the legitimate exercise of its powers, cannot absolutely prohibit the carrying on of a lawful business, not necessarily a nuisance, but which may be conducted without injury or danger to the public health, and without public inconvenience. They will be confined in their interference with the lawful business of any individual to such interruptions as may be reasonably necessary to enable them to abate any nuisance he may create in conducting it: *Id.*

A person cannot be deprived of the use of his property for the purposes of his lawful business, by force of an adjudication of a board of health, under its powers over the matter of nuisances, made without notice to him, and without giving him an opportunity to be heard in his defence: *Id.*

A grant of special powers to a corporation will not be enlarged by intendment to include a power not expressly conferred: *Id.*

NEGLIGENCE.

The plaintiff, being the owner of a canal-boat, employed the defendants to tow the same from Albany to New York. The boat used by the defendants in towing the same, did not belong to them, but to a steamboat company, and was chartered by the defendants for the season, under an arrangement by which they were to pay so much for a round trip, for the use thereof, and the company were to pay the expenses of running the boat, and were to hire and pay the men engaged thereon, and the defendants were to receive the earnings of the boat after paying expenses. *Held*, that the defendants were not liable to the plaintiff for the sinking of the canal-boat through the negligence of the hands managing the tow-boat: *Bissel* v. *Torrey*, 65 Barb.

Held, also, that for the negligence of those employed on the towing boat, the owners, alone, were liable; and that the action against them would not be on the contract, but for breach of the duty to tow safely: *Id.*

NUISANCE. See *Municipal Corporation.*

Jurisdiction of Equity to abate—When it will be exercised—Highway not in use.—The jurisdiction of courts of equity to redress the grievance of public nuisances by injunction is undoubted and clearly established. But it is well settled, that as a general rule, equity will not interfere where the object sought can be as well attained in the ordinary tribunals: *Attorney-General* v. *Brown*, 9 C. E. Green.

Because the remedy by indictment is so efficacious, courts of equity entertain jurisdiction in such cases with great reluctance, whether their

intervention is invoked at the instance of the attorney-general or of a private individual who suffers some injury therefrom distinct from that of the public, and they will only do so where there appears to be a necessity for their interference: *Id.*

The obstruction of a highway which not only is not used, but cannot be used, is not the sort of grievance which under its jurisdiction over public nuisances, this court will undertake to redress by injunction: *Id.*

This court will not interfere by injunction in the matter of an obstruction to a highway where the highway has for a long period of time been disused, and where the inconvenience to the public occasioned by the obstruction is inconsiderable, being at most merely the necessity of making a slight detour: *Id.*

Where upon an information to restrain the erection of a building in a public highway, it appears that the public authorities have failed to take any action for seventeen days, and that no irreparable or even serious injury appears to have been done or to be about to be done, which should induce the action of this court in the matter, but the case presents merely the features of an unwarrantable occupation of part of a public highway, disused but not abandoned, to its complete obstruction, an invasion of the public right, unattended however with any great or considerable public inconvenience—the jurisdiction of this court will not be exercised: *Id.*

Partnership.

Custom of Business—Effect on Contract.—A partnership may be entered into with reference to a custom or usage of the place where its business is to be transacted: *Waring* v. *Grady*, 49 or 50 Ala.

This custom, if begun, may modify the effect of the partnership agreement; and it may be shown in connection with the contract of the partnership to establish the intention of the parties in entering into it, and thus become a part of this contract and limit or enlarge its ordinary legal effect: *Id.*

If a partner wishes to protect himself against such a usage or custom, the partnership agreement should be so framed as to do this, or he should give notice of his dissent: *Id.*

Prescription. See *Easement.*

Sheriff.

Declaration on Official Bond—Liability for Custody of Goods.—A count of a complaint in a suit on a sheriff's official bond against the securities of such sheriff, which shows that the injury complained of arose out of a breach of the bond, by a failure of the sheriff to perform a duty imposed by law in a proper manner, is not a count in trespass, though the complaint alleges that the authority under which the sheriff acted was void or illegal: *Price* v. *Stone*, 49 or 50 Ala.

In the custody of property seized by the sheriff under authority of legal process, he is a *quasi* bailee, and as such he is bound only to use such care and diligence about keeping a steamboat in his custody under proceedings in admiralty under the code as is required of a bailee who receives compensation for his services, if he otherwise complies with requisitions of the statute: *Id.*

SPECIFIC PERFORMANCE. See *Vendor.*

STATE COURTS.

An action by an assignee in bankruptcy, to set aside a conveyance made by the bankrupt, as a fraud on the Bankrupt Act, is an action to enforce the law, of which a state court has no jurisdiction: *Gilbert et al.* v. *Priest et al.*, 65 Barb.

The state courts have concurrent jurisdiction with those of the United States courts only of actions arising incidentally from Acts of Congress passed to carry into effect a power conferred upon them by the Constitution, and of which the state courts had jurisdiction before the adoption of the Constitution, and such an action is not one of that class of cases: *Id.*

The acts for which the state courts may set aside conveyances are such as are *malum in se;* the act for which the conveyance of a bankrupt is sought to be set aside as being in fraud of the Bankrupt Act, is not of that class, but is prohibited by a law which the state courts have no power to enforce: *Id.*

If a conveyance made by a bankrupt, is fraudulent against *creditors,* the Supreme Court of New York has jurisdiction to adjudge it void. Chancery had jurisdiction over that class of frauds before the adoption of the Constitution of the United States, and therefore the jurisdiction is concurrent with that of the Federal courts: *Id.*

STATUTES.

Where a local or private bill contains provisions which apply to the whole state, the act is valid although the title does not refer to such provisions. But where a statute which applies to the state at large contains provisions of a local or private nature, not disclosed in the title, the latter provisions are void as being in violation of the constitution: *The People ex rel. Akin* v. *Morgan et al.*, 65 Barb.

SURETY.

Rights of Co-sureties—Representations.—Where several sign a promissory note, and one of them is the real principal, the others, *inter sese,* are, *primâ facie,* sureties of the principal, and co-sureties of each other, and the burden of proof is on the party alleging the contrary: *Flanagan* v. *Post,* 45 Vt.

A security from a principal to one surety, enures, by operation of law, equally to the benefit of a co-surety: *Id.*

If a principal procure one to sign a note with him as surety, upon the representation that the money raised thereon shall be paid upon debts where the surety is already holden for him, a co-surety is not affected by such representation when the money thus raised is paid on a debt where he is sole surety for the principal, unless he had knowledge of such representation: *Id.*

M , as principal, and A., F. and P., as sureties, executed a promissory note to raise money to pay a note on which P. was sole surety of M. and the note was delivered to P. to get discounted. P., before getting the note discounted, and on the faith of it, paid the debt on which he was sole surety, out of his own funds. *Held,* that P. was not then bound to cancel the note, or surrender it to his co sureties: *Id.*