that they must take it subject to all the liens and conditions arising from the contract upon which the property was received by the agents. Neither the United States, in the prosecution of these suits, or the courts of England in deciding them, expressed the slightest doubt that the title to the property not originally owned by the United States had been acquired by the Confederate government, which was in the hands of its agents. And I submit that a response by those courts to the claim of the United States, that the insurgent government, being illegal in its origin and continuance, could neither take, hold nor transfer title to personal property would not have been acquiesced in, nor deemed respectful by our government. And I submit respectfully that the eloquent denunciation of the wickedness of the rebellion, contained in the opinion of the majority, is no legal answer to the demand of the claimant for the proceeds of his property seized and sold by our government, when that government long since pardoned the only offence of which that claimant was guilty, and thus gave him the assurance that he should stand in the courts of his country in as good plight and condition as any citizen, who had never sinned against its authority.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

SUPREME COURT OF INDIANA.[2]

SUPREME COURT OF IOWA.[3]

SUPREME COURT OF OHIO.[4]

ACTION. See *Duress.*

Fraudulent Assistance to Debtor in defeating Creditor's Lien.—A party who purchases goods and chattels of a judgment-debtor, with knowledge of the creditor's judgment and execution, which is a lien thereon, for the purpose of aiding the debtor to defraud the plaintiff in the judgment, where such purchase is an injury to such plaintiff by reason of the removal of the property and the insolvency of the debtor, is liable to the creditor in an action on the case for the damages occasioned by such act: *Powers* v. *Wheeler et al.*, 63 Ill.

AGENT. See *Factor.*

Sale by Agent in his Own Name.—If an agent sell and deliver personal property in payment of debts contracted by himself, in his own name, to a third party, without disclosing his agency, the right of the purchaser cannot be disturbed by the principal or his attaching creditors: *Koch* v. *Willi*, 63 Ill.

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[1] From Hon. N. L. Freeman, Reporter; to appear in 63 Ill. Reports.

[2] From Jas. B. Black, Esq., Reporter; to appear in 45 Ind. Reports.

[3] From Edw. H. Stiles, Esq., Reporter; to appear in 36 Iowa Reports.

[4] From Hon. M. M. Granger, Reporter; to appear in 24 Ohio St. Reports.

ANIMALS. See *Railroad.*

Impounding—Ordinance.—Where a plaintiff's horses escaped from his enclosure against his will, and he immediately went in search of them to put them up, but before he found them they were seized by the police-constable of the town where they were found running who impounded them under the ordinance of the town; *Held*, that under such circumstances the horses were not running at large in the legal sense of the term, and that the constable had no right to detain them from the owner: *Kinder* v. *Gillespie*, 63 Ill.

BILLS AND NOTES.

Consideration.—A promissory note given in compromise of a doubtful claim is supported by a sufficient consideration. It is not necessary that the claim should be valid at law or in equity: *Keefe* v. *Vogle*, 36 Iowa.

Parol Restrictions in Transfer.—A parol agreement in the endorsement of a promissory note to the effect that the transfer should be without recourse upon the endorser, cannot be interposed as a defence against a subsequent *bonâ fide* holder without notice. Nor would the case be varied by the fact that it was transferred to such holder by mere delivery and that he declared on the prior endorsement as though made to himself: *Skinner* v. *Church*, 36 Iowa.

BOND.

Execution of—Notice.—It is necessary to the valid execution of a bond that it should be subscribed and delivered: *Wild Cat Branch* v. *Ball*, 45 Ind.

To subscribe is to write the name under, to write the name at the bottom or end of a writing: *Id.*

Where the name of a party appears in the body of a bond, but is not subscribed to it, there is not as to such party a valid execution of the bond, and he cannot be held liable thereon, on the supposition that he adopted the name in the body of the bond as a signing of it, even if the name was written there by himself: *Id.*

If an instrument, in the body thereof, purports to be signed by a principal and his sureties, but when delivered is not signed by the principal, the obligee is chargeable with notice that it is imperfect; and the sureties may show that they did not assent to its delivery before being signed by the principal: *Id.*

Sureties may agree to become liable, and assent to the delivery of a bond to the obligee, without the name of the principal being signed thereto: *Id.*

COMPROMISE. See *Bills and Notes.*

CONTRACT. See *Bills and Notes; Evidence.*

Failure of Consideration—Plea of.—To an action on a promissory note the defendant pleaded that the sole consideration of the note was the ice to be formed on the ponds at the reservoir of the plaintiffs during the winter next following, and, in consideration of the ice so to be formed, he executed the note; that no ice of any value was formed on said ponds during said winter, &c. *Held*, that the plea was bad on general

demurrer, the facts presenting no defence to the note, there being no warranty or guaranty that any ice would form or that it would be of any particular value: *Townsend* v. *Water Commissioners*, 63 Ill.

CONTRACTOR. See *Negligence.*

COURTS.

Time of Session—Presumption in favor of Regularity—Parol Evidence.—The time of the commencement of a term of court is to be determined by the record of the court, in connection with the statute under which the term is held, and parol evidence is not admissible for the purpose: *Hemminway* v. *Davis et al.*, 24 Ohio St.

In determining the question of priority between the lien of a judgment and the lien of a mortgage filed for record on the first day of the term, where the record fails to show the hour at which the court met, the session of the court will be presumed to have commenced at 10 o'clock A. M., that being the hour, on the first day of the term, fixed by statute for the return of the *venires* for the grand and petit juries, and at which time the court, where a different hour has not been prescribed, ought to have opened: *Id.*

CRIMINAL LAW.

Larceny.—The bringing into this state by the thief, of goods stolen in the dominion of Canada, or other foreign country, is not larceny in this state: *Stanley* v. *The State*, 24 Ohio St.

Sale of Intoxicating Liquors.—The gist of the offence defined by the fourth section of the Act of May 1st 1854, to provide against the evils resulting from the sale of intoxicating liquors, is the keeping of a place of public resort where intoxicating liquors are sold in violation of law, and not that the place kept is otherwise of any particular description: *O'Keefe* v. *The State*, 24 Ohio St.

Where the place alleged to have been kept by the accused is described as a room, no case of variance is presented, although the proof given in support of the charge shows that the room kept was a cellar or a grocery: *Id.*

Indictment—Of the Averment as to the Ownership of the Property.—The rule is, that property vested in a body of persons ought not to be laid in an indictment charging a party with the larceny of the same, as the property of that body, unless such body is incorporated, but should be described as belonging to the individuals composing the company: *Wallace* v. *The People*, 63 Ill.

So where, in an indictment for larceny, it was charged that the property alleged to have been stolen was the property of the "American Merchants' Union Express Company," in the absence of an averment that such company was a corporation, it was *held* that the ownership of the property was defectively stated, and the overruling of defendant's motion to quash the indictment on that ground was fatal to the judgment: *Id.*

DEBTOR AND CREDITOR. See *Action; Mortgage.*

DURESS.

Voluntary or Compulsory Payment—Taxes Illegally Assessed.—Where

a party paid taxes illegally assessed, and the only compulsion arose from the fact that his land was liable to sale under a void judgment, which could pass no title, it was *held*, that such payment could not be regarded as made under duress, and an action for money had and received would not lie against the county treasurer, to whom the taxes were paid, to recover them back: *Swanston* v. *Ijams*, 63 Ill.

EQUITY. See *Title.*

EVIDENCE. See *Courts; Surety.*

Opinions of Experts.—Where the contract for the construction of a building stipulated that it should have a wood cornice with brackets, but without stipulating whether the cornice should be placed on the wall above the upper joist or below that point, or what width of cornice or length of bracket there should be, it was held competent, in an action by the contractor for extra work in running walls above the joist, to admit the testimony of other builders as to these matters, and to show by them that in order to properly place a cornice of a proper width on the building according to contract, the walls should have been built up to the point they were built to and for which plaintiff claimed extra pay: *Haver* v. *Tenney et al.*, 36 Iowa.

Experts.—To render admissible the opinion of one as an expert, the pursuit in which the witness claims to be such must be one of science, skill, trade or the like. A brakeman on a railroad is not an expert of such a character as to qualify him to give his opinions upon matters pertaining thereto: *Hamilton* v. *R. R. Co.*, 36 Iowa.

If the consequences of actions, or combinations of circumstances, cannot be understood by those not possessing skill or peculiar knowledge thereof, opinions of experts are admissible. On the other hand, if the facts in the evidence are of such character that conclusions therefrom may be reached by the jury without skill or peculiar knowledge, then the opinions of experts are not admissible: *Id.*

Marriage Contract—Instruction as to Evidence.—On the trial of an action for the breach of a contract to marry, the court gave this instruction: "In this suit the jury may infer a promise to marry to have been made by the defendant, 1st, from the conduct of the parties; 2d, from the circumstances which usually attend an engagement to marry, as visiting, the understanding of friends and relatives, preparations for marriage, and the reception of the defendant by the family of the plaintiff as a suitor." *Held*, that the instruction was erroneous. It by no means follows, because a gentleman is the suitor and visits a lady frequently, that a marriage engagement exists between them: *Walmsley* v. *Robinson*, 63 Ill.

FACTOR.

Right to sell Goods where Advances have been made.—Where goods were consigned to a factor for sale, without instructions as to the price for which they were to be sold, and the factor advanced money to the consignor to an amount greater than the value of the goods, and, after such advances, the consignor instructed the factor not to sell for less than a certain price, as he could do better by having the goods returned, and the factor thereupon informed the consignor that the goods had not

been sold, and that it was doubtful whether they could be sold at the price fixed, and that he would await further instructions, stating that if the consignor wished to remove the goods, an account of the advances would be rendered, and the amount could be remitted at the time the goods were ordered to be removed, to which the consignor made no response; *Held*, that after the lapse of a reasonable time, the factor might sell the goods for the best price he could get in the market: *Mooney* v. *Musser*, 45 Ind.

FENCE. See *Railroad.*

FOREIGN JUDGMENT.

Authentication of—Jurisdiction—Personal Judgment.—A transcript of a judgment of the county court of the state of Virginia, before its division by the formation of the state of West Virginia therefrom, authenticated by a certificate of the *circuit court* of West Virginia, showing that said county court of the state of Virginia was abolished or discontinued, and its records and proceedings transferred to said circuit court of the state of West Virginia, and that he, as the clerk of the said named court, is the lawful custodian of the records and proceedings of the said late county court, &c., and further authenticated by the presiding judge of said circuit court, was held sufficiently attested in an action thereon in this state: *Darrah* v. *Watson*, 36 Iowa.

The fact that it appears from the record that the proceeding was commenced by attachment on the ground of the non-residence of the defendant, will not invalidate a personal judgment rendered in the action when it further appears that he was personally served: *Id.*

Nor would the jurisdiction of the court be disturbed, nor the judgment rendered invalid by the fact that the defendant was not served the number of days required by law. This would simply be a case of defective service, instead of no service: *Id.*

The courts of the state of Iowa may acquire lawful jurisdiction of the person of a resident of a sister state by the service of original process upon him while within this state: *Id.*

FRAUD. See *Action.*

FORMER ADJUDICATION.

Not binding on Strangers—Priority of Liens.—In a suit by a judgment creditor, to marshal the several liens on real estate, and to distribute the proceeds of the sale thereof among such liens, according to their respective priorities, the fund still being under the control of the court, the fact that in a former suit between two of the defendants, to which the plaintiff was not a party, a decree had been rendered, giving to the junior lienholder priority, cannot be pleaded as an estoppel to preclude the court from awarding to each lien priority according to its merits, the decree in the former suit having been rendered without the presence of the necessary parties, and the fund being insufficient to discharge all the liens: *Hemminway* v. *Davis et al.*, 24 Ohio St.

GUARANTY.

Notice—Insolvency.—A guarantor is entitled to notice of the default

of the party, the performance of whose contract he has guaranteed: *Gaff* v. *Sims*, 45 Ind.

Certain parties guaranteed the performance of a contract for the purchase of a lot of cattle and the payment therefor. For eighteen months after the maturity of the contract the principal was solvent, but afterward, and before suit, he became insolvent. No notice of his default was given to the guarantors. *Held*, that the guarantors were discharged: *Id.*

INFANT.

Contract—False Representations as to Age.—The contract of an infant in relation to personal property may be avoided by him during his minority: *Carpenter* v. *Carpenter*, 45 Ind.

That the infant falsely represented that he was of full age, will not render his contract valid, nor will it estop him from avoiding the contract, though it may constitute a cause of action for the tort: *Id.*

Where an infant has exchanged property with an adult, he is not bound to tender back the property he has received before suing for the value or the possession of the property given by him to the adult: *Id.*

On the avoidance of such contract by the infant, the adult is entitled to have the property received by the infant, in whatever condition it may be, and if the property received by the infant has been injured while in his possession, if the law furnishes any remedy, it is an action for the tort: *Id.*

It is not necessary, in order to give effect to the disaffirmance of the deed or contract of an infant, that the other party should be placed *in statu quo*: *Id.*

INTEREST. See *Surety.*

INTOXICATING LIQUORS. See *Criminal Law; Nuisance.*

JOINT DEBTOR. See *Partnership.*

Merger—Satisfaction.—Where several judgments have been rendered against parties jointly and severally liable on the same obligation, and one of the judgments has been paid, such payment is a satisfaction of all the judgments, except as to costs; and when suits are still being prosecuted against some of the parties liable, the payment of such judgment may be pleaded in bar of the further maintenance of the pending actions: *First National Bank* v. *Indianapolis, &c., Co.*, 45 Ind.

LIMITATIONS, STATUTE OF. See *Mortgage.*

MALICIOUS PROSECUTION.

Probable Cause—Nolle Prosequi.—The defendant in a criminal prosecution was found guilty; but a new trial was granted, and subsequently a *nolle prosequi* was duly entered, and the defendant was thereupon discharged. *Held*, that this was such a determination of the case as to enable the accused to sue for malicious prosecution. *Held*, also, that the finding of guilty having been set aside, it was no evidence of probable cause: *Richter* v. *Koster*, 45 Ind.

The defendant in an action for malicious prosecution was before the grand jury, not voluntarily, but in obedience to a subpœna, and, upon

being questioned, testified to what he believed to be true in reference to a criminal offence supposed to have been committed by the plaintiff, and thereafter took no part in prosecuting the criminal charge. *Held*, that malice could not be inferred from these facts: *Id.*

MASTER AND SERVANT. See *Negligence.*

Railroads—When Liable for Injury to One Employee through the Fault of Another.—If a servant of a railroad company be injured through the incompetency and unskilfulness of a fellow-servant, or in consequence of defects in machinery or tracks, and the company be guilty of negligence in the employment and retention of such agent, or in the construction and repair of its machinery and track, it is liable in damages: *C. & A. R. R. Co.* v. *Sullivan Admx.*, 63 Ill.

Habitual intemperance of a conductor, under circumstances bringing knowledge thereof to his employers, is sufficient to render them liable for injury resulting therefrom: *Id.*

MORTGAGE.

Foreclosure—Decree of Immediate Possession.—A decree on bill to foreclose a mortgage after finding the amount due, directing its payment within a certain time, and ordering a sale of the premises in default of such payment, further ordered: "that said purchaser or purchasers have immediate possession of said premises as soon as the same are sold, and that the purchaser or purchasers have the proper writ and process issued in this cause to put them in possession of said premises, &c." *Held*, that the award of immediate possession and a writ of assistance was erroneous. The purchaser is not entitled to possession before the execution of the master's deed to him: *Myers et al.* v. *Murray et al.*, 63 Ill.

Possession of Mortgagor not adverse—Presumption of Payment from lapse of Time—The possession of a mortgagor, or, of those claiming under him, continuing in the occupancy of the mortgaged premises, acknowledging the subsistence of the mortgage, is not adverse to the rights of the mortgagee, and will not ripen into a title superior to the mortgage: *Allen et al.* v. *Everly*, 20 Ohio St.

Where lapse of time is not pleaded in bar to an action, but is relied on merely as evidence of the payment of a debt, it can only raise a presumption of such payment, which presumption may be rebutted by other circumstances, showing that the debt is not paid: *Id.*

A party invoking affirmative relief based on the alleged payment of a debt, must establish the fact of payment; such relief will not be granted upon a presumption of payment arising alone from lapse of time. Though such presumption may be successfully used as a shield, it is not equally available as a weapon of attack: *Id.*

As between the parties to a mortgage, the legal title, after condition broken, is vested in the mortgagee; and where he devises his interest in the mortgaged premises to a trustee for the benefit of his children and their heirs, the mortgagor, without having paid the mortgage-debt, is not entitled, in an action against the *cestuis que trust* alone, to a decree against them for a relinquishment of their interest in the mortgaged premises: *Id.*

MUNICIPAL CORPORATION.

Nuisance—Structures Overhanging Sidewalk.—The cornice of a building which projects over a sidewalk in a city, and which is being constructed in such a manner as to be dangerous to persons using the sidewalk, is a nuisance: *Grove* v. *City of Fort Wayne*, 45 Ind.

The city has power under the statute to abate such nuisance, and if it fails to do so after notice to the proper authorities of its dangerous character, and takes no precaution to prevent injury to parties using the sidewalk, it will be liable in damages to a person injured by the falling of such cornice: *Id.*

The power of a city over its streets and the right of the public to them extends upward indefinitely for the purpose of their preservation, safe use and enjoyment; and the duty of a city in this respect is commensurate with its power: *Id.*

NEGLIGENCE.

Comparative and Contributory.—The doctrine of comparative negligence is discarded; that of contributory negligence prevails: *Johnson* v. *Tillson*, 36 Iowa.

In an action for personal injuries, the court instructed the jury that defendant was liable for his negligence, unless they found that plaintiff was "equally guilty of negligence with defendant." *Held*, that the instruction was erroneous as announcing the doctrine of comparative negligence: *Id.*

Excavation in Street by Contractor.—Where the owner of a lot in a city contracts with a skilful, reliable and competent builder for the erection of a house thereon, including a cellar under the sidewalk in the street, and surrenders possession of the property to the builder for the purposes of the work, and the work is not done under the direction of the owner, and injury ensues to a third person from the negligence of the contractor and not of the owner, such contractor is not the servant of the owner, and he alone is liable for the injury inflicted: *Pfau* v. *Williamson*, 63 Ill.

NUISANCE. See *Municipal Corporation.*

Legislative Power—Place where Intoxicating Liquors are Sold.—The legislature has the power to declare a place where intoxicating liquors are sold, in violation of law, to be drunk on the premises, a nuisance: *McLaughlin* v. *The State*, 45 Ind.

It is neither a cruel nor an unusual punishment to adjudge the abatement of a nuisance. Such a judgment is authorized in either a civil or a criminal action: *Id.*

PARTNERSHIP.

What Constitutes.—The joining of two or more persons in a single adventure, in which the profits are to be equally divided, does not constitute them copartners in such sense as will oust a court of law of its jurisdiction in respect thereto: *Hurley* v. *Walton, Admr.*, 63 Ill.

Discharge of one Joint Debtor—Pending the dissolution of a partnership, a creditor received the notes of the several partners for their

respective portions of a partnership debt standing on an open account, and agreed to release each partner from any other portion of the debt than that covered by his note, and accepted the notes as a full discharge of each partner from the residue of the account. *Held*, that the contract was binding on the creditor, and that he could not maintain a suit on the account against a partner who had paid the note so accepted for his share of the debt: *Maxwell* v. *Day*, 45 Ind.

The taking of a note, with or without security, from one of several joint debtors for a pre-existing debt, is a payment, when it is expressly agreed that it is taken as payment and at the risk of the creditor: *Id.*

Agreement between Partners—Set-off.—A. and B., being partners, dissolved their partnership, A. giving his note to B. for his interest in the partnership property, and agreeing to pay all the partnership debts except a note to one S., which B. assumed and agreed to pay. In a suit by B. against A. on the note of the latter, A. answered by way of set-off the agreement of B. to pay the note held by S., averring that it was due and wholly unpaid, and that he, A., was personally liable for the amount thereof. *Held*, that the answer was a good defence to an amount equal to the note due to S. *Held*, also, that an answer of set-off is not demurrable for assuming to answer the entire complaint, although the set-off is shown to be for a sum less than the plaintiff's demand. The answer is good to the extent of the set-off: *Mullendore* v. *Scott*, 45 Ind.

Presumption of Payment. See *Mortgage.*

Public Lands.

Government Surveys—Of Paramount Authority.—The purchaser of government lands acquires, by his patent, title to all of the land embraced within the boundary lines of the tract purchased, even though the survey be inaccurate, for the boundaries, when found, must control the notes and plat of the survey. The plat and notes of the survey are intended to represent what was done in the field, and must yield to the lines and courses when found: *Sawyer* v. *Cox*, 63 Ill.

Railroad.

Injuries to Employees—Negligence.—In an action against a railroad company for injuries to plaintiff received in coupling a car loaded with timber projecting over the end thereof, the defendant asked the court to instruct the jury, that "if the car which hurt plaintiff was loaded as loads of timber had been usually and commonly loaded and carried over defendants' and other railroads, then it was not negligence in defendant to carry the timber upon which plaintiff was hurt." *Held*, that the instruction was properly refused, on the ground that if the manner of carriage was negligent, the habit of defendant or other roads in that respect, would not relieve defendant from liability: *Hamilton* v. *R. R. Co.*, 36 Iowa.

The following instruction was also asked: "If it was the usual and common custom of defendants' railroad to carry projecting timbers on cars, the same as when plaintiff was hurt, then it was plaintiff's duty to watch and look for such projecting timbers and avoid them; and if he

did not when he could or should have done so he is not entitled to recover." *Held*, that the instruction was properly refused, on the ground that it required of plaintiff the exercise of more than ordinary care and foresight: *Id*

Injury to Cattle—Fence.—Where a portion of the fence of a railroad was burned, and one week thereafter cattle entered upon the track through the opening so caused, and were injured by a passing train; *Held*, that the delay in repairing the fence was unreasonably long, and that the railroad company was liable for the injury to the cattle: *C., C., C. & I. R. R. Co.* v. *Brown*, 45 Ind.

Fence—Killing Animals.—A cow got upon a railroad track and was killed by a passing locomotive, at a point on said railroad where there was a saw-mill located and in operation fifty feet from said track, the intervening ground between said track and said mill being used by the owners of the mill for piling their lumber and for loading lumber upon the cars of the railroad company for transportation, and by the public for passing to and from said mill with logs and lumber, and for piling wood to be sold to the railroad company. *Held*, that the railroad company was not bound to fence in the track at such point, and, in the absence of negligence, was not liable for the killing of the cow: *P., C. & St. L. R. W. Co.* v. *Bowyer*, 45 Ind.

Sale.

Warranty—Reliance on.—Where the seller of personal property which is unsound warrants it to be sound, the purchaser has a right to rely on the warranty, though he may have an opportunity to examine the property: *First National Bank* v. *Grindstaff*, 45 Ind.

Warranty—Pleading.—To an action on a promissory note, the defendant answered that it was given for a threshing-machine, of plaintiff's manufacture, and that the plaintiff warranted it to be a good machine and capable of doing good work, when, in fact, it would not operate at all, and was utterly worthless, as plaintiff well knew. *Held*, that the answer was good. The machine being worthless, an offer to redeliver it to the seller was unnecessary: *Dill* v. *O'Ferrell*, 45 Ind.

Slander.

Justification—Evidence.—In an action of slander for an alleged charge of a crime against plaintiff, an answer of justification on the ground that the charge was true can be sustained only by proof of its truth beyond a reasonable doubt, by such evidence as would justify a conviction on an indictment for the offence: *Tucker* v. *Call*, 45 Ind.

In an action of slander the plaintiff must prove the speaking of enough of the words alleged in the complaint to constitute the slanderous charge complained of, and not other or equivalent words: *Id.*

Justification—Degree of Proof.—In an action for slanderous words importing that the plaintiff, an unmarried female, submitted to sexual intercourse resulting in her pregnancy, under an answer alleging the truth of the words spoken, the court instructed the jury that the defendant must have proved beyond a reasonable doubt that the

plaintiff was a woman of bad character and had been guilty of fornication as in said answer alleged. *Held*, that this was error; that it was sufficient to prove the truth of the words, not beyond a reasonable doubt, but by a preponderance of evidence, without proving that the plaintiff was a woman of bad character: *Wilson* v. *Barnett*, 45 Ind.

STREET. See *Municipal Corporation.*

SURETY. See *Bond; Guaranty.*

Mortgage to Indemnify—Payment of Money by Surety or by Principal with Surety's Money.—Where an accommodation endorser of notes took from the principal debtor a mortgage conditioned to save the endorser harmless, and to pay him all money he might be compelled to pay, and might pay, on account of such endorsements; and at the maturity of the notes, having been informed by the principal that he could not and would not pay the same, the endorser, in order to save the notes from going to protest, paid the same without protest. *Held*, that this was a payment within the purview of the condition of the mortgage for which the endorser was entitled to the benefit of the mortgage security: *National State Bank* v. *Davis*, 24 Ohio St.

Where such principal debtor had in his hands money of the accommodation endorser, or was indebted to him, in a sum equalling the amount due upon the endorsed notes, and in pursuance of an agreement between them, and with the intention to preserve the endorser's mortgage security, the money so in the hands of the principal debtor, or so due from him, was applied by him in payment of the notes, and charged to the endorser as money paid on his account, and the notes so paid delivered to him. *Held*, that this was in law a payment by the endorser and not by the principal debtor: *Id.*

Co-sureties—Judgment.—When two sureties are sued upon a promissory note, one of them who has paid half the note is not entitled to an order directing the sheriff to levy an execution that may be issued to collect the residue upon the property of his co-surety exclusively. The creditor has his remedy against all the makers for all of the debt; and sections 674 and 675 of the Code only authorize the court to order that the property of the principal shall be sold before resort is had to that of the surety: *Schooley* v. *Fletcher et al.*, 45 Ind.

It is only when one surety has paid more than his share of the liability that he can call upon a co-surety for contribution: *Id.*

Extension of Time—Interest.—An agreement in writing to pay an increased rate of interest, made by the principal maker with the holder of a promissory note, is a good consideration for an extension of the time of payment; and when the agreement is to extend for a definite period without the consent of the surety, it will discharge the surety: *Huff* v. *Cole*, 45 Ind.

An agreement to pay an increased rate of interest thereafter, endorsed on a promissory note, made by the principal only, without the knowledge or consent of the surety, does not of itself change, alter or supersede the contract evidenced by the face of the note; and in a suit against the surety, the note is proper evidence to be given to the jury. *Harden* v. *Wolf*, 2 Ind. 31, explained: *Id.*