persons. these indictments. for the reasons I have stated. do not come under the Fifteenth Amendment. If they are valid at all. to give jurisdiction to this court it must be under the Fourteenth Amendment and the 4th section of the Act of May 1870. But, for reasons already abundantly stated, registration is a right conferred by the state. Each of the three indictments under immediate consideration expressly recites that the right is conferred by the laws of Virginia, and that the duties of the registrar were duties imposed by state laws. Nor do they charge that in consequence of the failure of the injured persons named to be admitted to registration they lost their right to vote either at a state election or an election held for officers of the United States. The denial merely of registration is an offence against the state, if it be on any other account than of race, color, &c. If the indictments had charged that the denial had been on account of race, &c., the offence would have been cognisable here; or if, after charging the denial, the indictments had gone on to charge that in consequence thereof the citizen of the United States was prevented from voting at an election held for a member of Congress, or electors of a President of the United States, I am inclined to think that the offence would have been cognisable here. But a charge merely that a citizen of the United States was denied registration, without other allegation to make it appear that some right was abridged which belonged to the man as a citizen of the United States, is not sufficient to give cognisance of the offence to this court.

I am, therefore. of opinion that the demurrers to these indictments against the Petersburg registrars ought to be sustained, and that the latter ought to be quashed.

The judges being divided in opinion, the case will be certified to the Supreme Court of the United States.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[2]

SUPREME COURT OF NEW JERSEY.[3]

SUPREME COURT OF OHIO.[4]

SUPREME COURT OF PENNSYLVANIA[5]

ARBITRATION AND AWARD.

Revocation—Jurisdiction of Courts.—It was agreed to submit all matters in a pending suit to referees under the Act of June 16th 1836, that the submission should be made a rule of court, and be binding "without appeal, exception or writ of error." *Held*, that the award was

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[1] From J. W. Wallace, Esq., Reporter; to appear in vol. 20 of his Reports.

[2] From J. M. Shirley, Esq., Reporter; to appear in 53 N. H. Reports.

[3] From G. D. W. Vroom, Esq., Reporter; to appear in vol. 8 of his Reports.

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

[5] From P. F. Smith, Esq., Reporter; to appear in 75 Pa. State Reports.

not invalid for want of the affidavit directed by the 2d section. The section does not apply to a submission and rule in a pending suit: *Shisler* v. *Keavy*, 75 Pa.

When the submission is in a pending action it need not be stipulated that it shall be a rule of court: *Id.*

On the day the award was filed, one of the parties filed a revocation of his submission; the court below refused to set the award aside. *Held*, that it belonged to such court to correct errors as on motion for a new trial, and the Supreme Court will not review the decision, except as to matters appearing by the record. Neither depositions, other evidence nor the reasons of the court below are part of the record: *Id.*

After an agreement for submission has been executed neither party can revoke it: *Id.*

Under an agreement for submission providing that the award shall be final, without appeal or exception, the court cannot rectify a mistake of fact of the referees: *Id.*

A submission in writing cannot be revoked except by writing given to the referees or a majority of them: *Id.*

ASSIGNMENT. See *Pleading.*

ATTORNEY.

Withdrawal of Appearance—Effect on Rights of Parties.—A withdrawal, "without prejudice to the plaintiff," of a general appearance entered by an attorney, for the defendant, means that the position of the plaintiff is not to be unfavorably affected by the act of withdrawal; that all his rights are to remain as they then stood. Hence where there has been error in the beginning of an action, as *ex. gr.*, one of foreign attachment, by reason of want of notice required by statute to be given to the defendant, and an attorney appears generally for such defendant, and so cures the defect, the advantage thus given to the plaintiff is not taken away by a withdrawal declared to be "without prejudice" to him. And the court states that it does not intend to intimate that the result would have been different had the appearance been withdrawn unconditionally: *Creighton* v. *Kerr*, 20 Wall.

BILLS AND NOTES.

Giving time to Maker—Stipulation that Endorser not to be Discharged.—The holder of a note agreed in writing with the drawers upon a consideration, to give them time, with the proviso, "that no delay of demand shall interfere with any claim I may have upon the endorsers of the said note." *Held*, that endorsers were not discharged: *Hagey* v. *Hill*, 75 Pa.

If time be given or any act be done by the holder which prejudices the right of the endorser to his action against the drawer or subrogation to the rights of the holder, the endorser will be discharged: *Id.*

A discharge of the debtor by the creditor will not discharge the surety if there be an agreement between the creditor and debtor that the surety shall not be discharged: *Id.*

The reservation must appear on the agreement; it cannot be shown by parol evidence: *Id.*

The endorser not being a party to the agreement, he could pay the note and sue the drawer: *Id.*

The extension of time to the drawer so that the rights of the endorser are preserved will not discharge him: *Id.*

Taking after Maturity—Set-Off.—When a note passes after maturity it is dishonored paper and the endorsee takes it subject to equities connected with the note; but not to set-off generally: *Long* v. *Rhawn*, 75 Pa.

In a suit by an endorsee against the maker of a note passed after maturity, *Held*, that the fact that the note was made with the understanding that it was to be discounted for the payee and taken up by him and the proceeds paid in discharge of a debt due to the maker;—that the proceeds were so paid, that the payee took it up and retained it and passed it to the plaintiff in consideration of a loan made by her to him, would be a defence to the suit: *Id.*

Bond.

Penalty—Liquidated Damages.—Bigony gave to Tyson a bond in $1000 conditioned that Bigony should not "practise medicine within five miles of S., in which place he has this day deeded certain property to said Tyson." *Held*, that on the face of the bond the sum was a penalty and not liquidated damages: *Bigony* v. *Tyson*, 75 Pa.

The intention of the parties gathered *extra* the instrument may fix the sum named in it as liquidated damages, and the facts and circumstances so gathered being parol, the question is for the jury: *Id.*

Circumstances in this case from which the intention that the sum was liquidated damages might be inferred: *Id.*

Chose in Action. See *Gift.*

Confederate States. See *Notice.*

Confiscation Act.

Proceedings under—An information *in rem* under the fifth, sixth and seventh sections of the Confiscation Act of July 17th 1862, for the confiscation of the real estate of a person falling within the provisions of those sections—such information not being in any sense a criminal proceeding—is not, after default made and entered, and after a final judgment of condemnation, to be held fatally defective because it has averred that the property seized belonged to some one who was one or another of the persons referred to in the fifth and sixth sections of the act (thus making its allegation in the alternative), and has not averred it otherwise: *The Confiscation Cases. Slidell's Land*, 20 Wall.

When an information avers that on a day named a seizure was made by the marshal, under written authority given him by the district attorney, in compliance with instructions issued to *him* by the Attorney-General of the United States, *by virtue of the Act of Congress of July 17th* 1862 (the Confiscation Act above mentioned); and when, to a citation or monition founded on the information, default has been made, it will, after such final judgment and condemnation, be presumed that the requirements of the statute (which direct apparently that a seizure be made *prior* to filing the information, and that this seizure be by order of *the President of the United States*) have been complied with: *Id.*

When an information under the said act, filed in the District Court, is really in common-law form, and the proceeding has the substance and

all the requisites of a common-law proceeding, the fact that the information is entitled "a *libel*" of information, and that the warrant and citation is called a "monition," does not convert it into a proceeding on the admiralty side of the court: *Id.*

What amounts to a sufficient service of process under the said act: *Id.*

The fact that the warrant, citation and monition in the District Court was not signed by the clerk of the court is unimportant, it having been attested by the judge, sealed with the seal of the court, and signed by the deputy clerk: *Id.*

Where, on an information under the said act, the information alleging that the property belongs to A., and that it is liable to forfeiture under the act—all allegations being in form—the court has proceeded, as the act directs it to do after default, to hear and determine the case, and, only after such hearing and consideration, condemns the property, it must be presumed that the property belonged to a person engaged in the rebellion, or one who had given aid and comfort thereto: *Id.*

The President's proclamations of amnesty in the year 1868 did not amount to a repeal of the Confiscation Act: *Id.*

Holders of Liens against Real Estate sold under—Holders of liens against real estate sold under the Confiscation Act of July 17th 1862, should not be permitted to intervene in any proceedings for the confiscation. Their liens will not, in any event, be divested: *Confiscation Cases. Claims of Marcuard et al.*, 20 Wall.

Practice under.—When, under the Confiscation Act of July 17th 1862, an information has been filed in the District Court and a decree of condemnation and sale of the land seized been made, and the money has been paid into the registry of the court, and on error to the Circuit Court, that court, reversing the decree, has dismissed the information but confirmed the sale, and ordered the proceeds to be paid to the owner of the land—if on error by the United States to this court, this court reverse the decree of the Circuit Court, and affirm the decree of the District Court, that reversal will leave nothing on which a writ of error by the owner can act. The judgment having been reversed, the confirmation of the sale and order to pay the proceeds fall. The only judgment can be reversal again: *Confiscation Cases. Conrad's Lots*, 20 Wall.

Conflict of Laws. See *Domicil.*

Constitutional Law.

Change of Constitution—Power of Convention subordinate to the Law under which it is called.—An existing lawful government of the people cannot be altered or abolished unless by their consent legally obtained: *Wells et al.* v. *Bain et al.*, 75 Pa.

The Bill of Rights embraces but three recognised modes by which the people of the state can give their consent to altering an existing constitution. (1.) The mode provided in the Constitution. (2.) A law raising a body for revision and giving it the powers of the people. (3.) Revolution: *Id.*

A law is the only means by which an authorized consent of the people can be lawfully obtained in a state of peace; irregular action, by which

a certain number of the people assume to act for the whole, is revolutionary: *Id.*

The authority of part to speak for the whole is only when it is at an election authorized by law: *Id.*

The Act of June 2d 1871, submitted to the people the question of calling a convention to amend the Constitution, to be held subject to the laws relating to the general election; the vote was in favor of calling such convention. This vote only authorized the calling a convention;—it was not a mandate on the legislature to make the call: *Id.*

The Act of April 11th 1872, authorized the election of delegates, and gave them power to propose a new Constitution or amendments, and authorized one-third of the members of the convention to require a separate vote on any amendment; it required the convention to submit the amendments to the voters at such time "and in such manner as the convention shall prescribe," and that the election to decide upon the amendments should "be conducted as the general elections now are." By the election laws, the election in Philadelphia was to be conducted by inspectors, &c. The convention, by an ordinance, appointed persons named, to have direction of the election, to fill vacancies, to appoint judges and inspectors, to make report of their action to the president of the convention, &c. *Held*, that this ordinance being contrary to the Act of 1872, was void: *Id.*

The power of the convention to act for the people was derived from the Act of 1872, and they had no other authority: *Id.*

Whether one-third of the members of the convention requested a separate submission of an amendment, and whether the request was in an orderly way, was for the convention to decide, and could not after their action be inquired into: *Id.*

Errors of procedure in the convention cannot be inquired into—the convention having acted within the scope of its powers: *Id.*

Powers of Convention to amend the Constitution.—The constitutional convention of 1873 had no inherent rights; it had powers only: *Woods's Appeal*, 75 Pa.

The Bill of Rights is a reservation of rights out of the general powers to the people themselves, not a delegation of powers to a convention: *Id.*

The convention was under the rule, that no agent or subordinate can claim the powers, liberties or franchises of the people except by their express grant or by plain and certain implication: *Id.*

The people had the same right to limit the powers of their delegates as to bound the powers of their representatives: *Id.*

The legislature cannot confer powers inconsistent with the rights, safety and liberties of the people, because no consent can be implied, but they may pass limitations in favor of their essential rights: *Id.*

The convention called under the Acts of 1871 and 1872 could not take from the people their sovereign right to ratify or reject the constitution or ordinance formed by it, and could not infuse life or vigor into its work before ratification by the people: *Id.*

Power of Taxation—Agreement of State to Surrender.—A contract by a state to give up its power to tax any property within it, can be made only by words which show clearly and unequivocally an intention to make such a contract: *North Missouri Railroad Co.* v. *Maguire*, 20 Wall.

The Act of the Legislature of Missouri of February 16th 1865, to provide for the completion of the North Missouri Railroad, does not so show an intention of the state to give up its power to tax the property of the corporation owning that railroad: *Id.*

The ordinance of the 8th of April 1865, adopted by the people of Missouri, as part of the Constitution of the state established on that day, was, as respected the North Missouri Railroad Company, a true exercise of the taxing power of the state, and not a mere change of the order of disbursing the receipts of the earnings of the company as prescribed by the Act of Legislature above named: *Id.*

Power of Taxation—Agreement of State to Surrender.—The twelfth section of the Act of the Missouri legislature, passed December 25th 1852, by which it was declared that—

"The Pacific Railroad shall be exempt from taxation until the same shall be completed, opened, and in operation, and shall declare a dividend, when the road-bed, buildings, machinery, engines, cars, and other property of such completed road, shall be subject to taxation at the actual cash value thereof:—

"*Provided*, That if said company shall fail, for the period of two years after said roads respectively shall be completed and put in operation, to declare a dividend, that then said company shall no longer be exempt from the payment of said tax—"

created a contract that, subject to the proviso, the railroad should not be taxed: *Pacific Railroad Co* v. *Maguire*, 20 Wall.

The ordinance adopted as part of the state constitution by the people of Missouri, July 4th 1865, levying a tax on the gross receipts of the company, within two years after it was completed and put in operation, in order to pay debts of the state, contracted in order to help to build the road (and which the railroad company was, as between itself and the state, primarily bound to pay), impaired the obligation of the contract, and was void: *Id.*

Contract.

Prevention of Performance—Damages.—Where a person, on a given contract, covenants to pay a sum whose amount is to be contingent on certain events and is to be ascertained by arbitrators, such person, if he prevent any arbitration, may be sued at law on a *quantum valebat*, and the sum due may be ascertained by a jury under instructions from the court. If the jury, under such instructions, find that only so much is due, the plaintiff can recover nothing more: *Humaston* v. *Telegraph Company*, 20 Wall.

A contract of a special nature explained and interpreted so as to sustain a charge under which, in a case like that just stated, the jury found as due much less than the plaintiff claimed: *Id.*

Where a person in consideration of property (not money) to be assigned by another, agrees to give a certain number of shares of stock, having on the day of the contract a fixed market value, and, refusing to give the stock, is sued at law for a breach of the contract, evidence of the value of the stock at any other time than at the date of the contract is rightly excluded; its value at that date being agreed on and admitted: *Id.*

Restraint of Trade—Public Policy.—Questions about contracts in restraint of trade must be judged according to the circumstances on which they arise, and in subservience to the general rule that there must be no injury to the public by its being deprived of the restricted party's industry, and that the party himself must not be precluded from pursuing his occupation and thus prevented from supporting himself and his family. Accordingly, where A., engaged in navigating waters of California alone, sold in 1864 a steamer to B., engaged in navigating a particular river (the Columbia river) of Oregon and Washington territories (regions to the north of California), subject to a stipulation that he, B., would not employ it or suffer it to be employed for ten years from the date of the sale, in any waters of California, and B., three years afterwards—*i. e.*, in 1867—sold the same steamer to C., engaged in navigating Puget's Sound (water in the extreme north-west corner of Washington Territory and remote from all the other waters described), subject to a stipulation that she should not be run or employed upon any of the routes of travel, or the rivers, bays or waters of the state of California, or the Columbia river and its tributaries, for the period of ten years from May 1st 1867. *Held*, that the contract was not void as in restraint of trade: *Oregon Steam Nav. Co.* v. *Winsor*, 20 Wall.

Held, further—the contract in the second case having been for ten years from the date of *it*, and therefore for three years after the first contract had expired—that it was so divisible in regard to the California portion that it could stand for the seven years for which B. was bound to protect it, though it was void as to the remaining three, and accordingly that B. could sue for a breach of it occurring within the first seven years of it; that is to say, occurring within the time that he was to protect A.: *Id.*

Conveyance of Land on Condition by Grantee to use for Special Purpose—Compliance by Grantee—Railroad Company.—The owner of a piece of land agreed in writing to convey it to a railroad company for depot purposes, on condition it should be occupied for the western part of the company's depot-grounds and a part of the usual depot-buildings be erected thereon. It was then expected that the other part of the depot-grounds and buildings would be located across a street adjoining the ground to be conveyed on the east, but nothing was said in the agreement about the location of the eastern part of the depot-grounds and buildings. The company caused to be erected and sustained on said piece of ground a warehouse for the accommodation of the public in doing business on the road, and constructed thereon facilities for loading and unloading live-stock, coal and lumber; but erected the principal depot-buildings forty rods east of said piece of land. *Held*, that the company had complied with the condition of the agreement, and was entitled to hold the land: *Pittsburgh, F. W. & C. Railway Co.* v. *Rose et al.*, 24 Ohio St.

CRIMINAL LAW. See *Evidence.*

Forgery.—A count in an indictment that charges that respondent did falsely make *and* counterfeit a certain writing therein set forth, is not liable to the objection of duplicity: *State* v. *Hastings*, 53 N. H.

An averment, in an indictment for forgery, of an intent to defraud one J. A. H., is sustained by proof of an intent to defraud a company

or firm of which said J. A. H. is a member. An intent to defraud a firm, necessarily includes an intent to defraud each member of it: *Id.*

DAMAGES. See *Contract.*

Vindictive.—In a civil action founded upon a tort, punishable by the criminal law, an amount of damages equal to the full compensation of the plaintiff for the injury sustained by him cannot be increased by the addition of a fine for the punishment of the defendant: *Fay et ux.* v. *Parker*, 53 N. H.

Whether, in any civil action, the plaintiff may recover exemplary, punitory or vindictive damages, *quære: Id.*

Assessment by the Court—Practice—Replevin Bond.—The 71st section of the Practice Act, (Nix. Dig. 729), which makes it the duty of the court to assess damages on interlocutory judgment by default, unless a writ of inquiry is requested, applies only to actions of *assumpsit: Peacock* v. *Haney et al.*, 8 Vroom.

Independently of the statute, in actions of *assumpsit*, debt and covenant, the practice is to assess damages by the court, without a writ of inquiry, where the amount of damages is a mere matter of computation. But where the damages are for an uncertain sum, to be ascertained on the hearing of testimony, and the exercise of judgment upon the effect of proof, they must, in cases not within the statute, be determined by writ of inquiry: *Id.*

In an action on a replevin bond, the plaintiff is entitled to recover as damages the value of the goods, and, as a general rule, interest thereon from the judgment of a return, together with the costs taxed in the original action. The damages in such cases cannot be assessed by the court, but must be ascertained by a writ of inquiry: *Id.*

DEBTOR AND CREDITOR. See *Husband and Wife; Pleading.*

DEED.

Misreading—Avoiding in Law and Equity—Capacity of Grantor.—If a deed be read falsely to a man too infirm to read it himself, or if the contents be untruly stated to him, it may for that reason be avoided at law; but if he be simply misinformed as to its legal effect, it cannot be avoided in a court of law, but a court of equity will correct or reform the deed: *Eaton* v. *Eaton*, 8 Vroom.

The degree of evidence required to defeat such deed should be sufficient to carry strong conviction to the minds of the jury of its truth: *Id.*

The test of capacity to make a deed is, that a person should have the capacity to understand the nature and effect of the act in which he is engaged, and the business he is transacting: *Id.*

The deed of conveyance of a person of unsound mind, executed before an inquisition and finding of lunacy, if taken in good faith, is voidable only and not void: *Id.*

A voidable deed may be ratified by acts of acquiescence after the disability is removed; but the acts of confirmation to establish the deed must show an intention to confirm it with knowledge of its character and that it is voidable: *Id.*

DOMICIL.

Fact and Intention as parts of.—The domicil is where a person has fixed his habitation without a present intention to remove from it: *Carey's Appeal*, 75 Pa.

To constitute domicil there must be both residence and an intention to make the place of residence the home of the party: *Id.*

Primâ facie the residence is the domicil: *Id.*

The intention formed and announced to change a domicil, will not avail unless there be an actual change of habitation: *Id.*

In this case a testator made a will in Pennsylvania witnessed by two witnesses;—the evidence showing that his domicil was in Rhode Island where three witnesses are required, on appeal to the Supreme Court, probate of the Pennsylvania will by the register in Philadelphia was revoked and letters testamentary vacated: *Id.*

EQUITY. See *Notice.*

EVIDENCE. See *Officer; Street.*

Criminal Law—Former Acts of same kind.—Evidence that the defendant, the keeper of the Sherman House, kept spirituous liquor for sale there, at a certain date, has a tendency to prove that the defendant, still keeping the Sherman House, kept spirituous liquor for sale there at a later date: *State* v. *Colston*, 53 N. H.

Experts—Comparison of Hands.—Experts may make comparisons between the writing in dispute and other writings, which are either admitted or proved to be genuine, and their opinions thus formed in regard to the genuineness of the writing in question may be given in evidence. In such cases the jury should first pass upon the question whether such writings as were thus introduced as standards of comparison were genuine; and if they find that they were, then they should consider and weigh the evidence of such experts, and may themselves examine such other writings and compare them with that in dispute, and institute comparisons for themselves; but if they find that such writings or any of them were not genuine, they should lay such writings and all the evidence based upon them out of the case: *State* v. *Hastings*, 53 N. H.

FRAUD. See *Deed; Partnership.*

GIFT.

Written Assignment of Policy of Insurance not delivered—Seal.—Trough effected a life-insurance, being solvent:—in consideration of $1 and love and affection for his children he executed under seal an assignment of the policy to Hicks in trust for them; put the policy and assignment into an envelope, addressed "John W. Hicks, Plumber, 2d St., &c.—Please send this to him at my death, H. Trough," and placed the envelope in a safe of his own firm. He paid the premiums till his death seven years after the assignment;—but never communicated the transaction to Hicks, who knew nothing of it till after his death. *Held*, that the assignment was invalid for want of delivery, and the proceeds belonged to Trough's estate: *Trough's Estate*, 75 Pa.

A gift of a chose in action or chattel cannot be made by words *in futuro* or words *in præsenti* unaccompanied by delivery: *Id.*

Where the donor retains the control of a voluntary bond or chose in action given or assigned, he may cancel or destroy it: *Id.*

If the determining act be *in fieri* the intention to deliver does not execute the gift: *Id.*

The assignment being without valuable consideration was not a contract or trust which could be enforced: *Id.*

A seal does not import a consideration, if the instrument be not delivered: *Id.*

Failure to deliver in Giver's Lifetime.—Streeper held a bond against Zimmerman; he endorsed on it, "I request my executors to give this bond to Anna for her great kindness she has shown to me and her grandmother," this was signed and sealed: after it was written, "This is not to interfere with what I will to her, this she is to have beside that." Anna was the granddaughter of the obligee and the wife of the obligor. The bond was not delivered to Anna but remained in the obligor's possession with his other securities till his death. *Held*, that the bond did not pass to Anna: *Zimmerman* v. *Streeper et al.*, 75 Pa.

The endorsement indicated a prospective gift; there being no delivery it was without operation: *Id.*

HUSBAND AND WIFE. See *Pleading*; *Vendor.*

Separation — Covenant to Pay — Reconciliation — Voluntary Settlement.—A deed by which a husband, on articles of separation between him and his wife, binds himself to pay, in trust for her, a certain amount of money (capital), and interest on it till paid, becomes a voluntary settlement if, before payment is made, the parties are reconciled, make null all the covenants of the articles of separation, and cohabit again, with an agreement that the settlement shall stand as agreed on, except that the husband shall not pay interest while he and his wife live together: *Kehr* v. *Smith*, 20 Wall.

A voluntary settlement of $7000 cannot be sustained against creditors where the person owes $9306, and has, of all sorts of property, the same being not cash, not more than $16,132: *Id.*

JUDGMENT. See *Pleading.*

LACHES. See *Notice.*

LANDLORD AND TENANT.

Lease—Incidents to.—By the lease of a building, everything which belongs to it, or is used with it, and which is reasonably essential to its enjoyment, passes as incident to the principal thing and as a part of it, unless especially reserved: *Riddle* v. *Littlefield et al.*, 53 N. H.

A. leased to B. "a certain store * * known as No. 191 Elm street;" —*Held*, that by the terms of the lease B. acquired the right to the use of the outside walls of the building, for the purpose of posting bills and notices thereon; and that A. could not convey this incident right to a third person: *Id.*

LEASE. See *Landlord and Tenant.*

LUNATIC. See *Deed.*

MANDAMUS.

Not appropriate to enforce Payment of Debt.—A *mandamus* is not the proper remedy whereby to enforce payment of moneys due from a municipal corporation for work and labor: *The State ex rel. Little* v. *Township Committee of Union Township*, 8 Vroom.

MARRIED WOMEN. See *Husband and Wife; Pleading.*

MUNICIPAL CORPORATION. See *Mandamus.*

NEGLIGENCE.

Injury by Railroad Company to Child of Thirteen Years.—As a general rule a question of negligence is for the jury, especially if there be substantial doubt as to the facts or their inferences: *Crissey* v. *Hestonville Railway Co.*, 75 Pa.

Negligence is dependent upon the circumstances of the case; and is for the jury where the measure of duty is not unvarying: a higher degree of care is demanded in some cases than in others, and both the duty and its extent are to be ascertained by facts: *Id.*

Where negligence is concurrent a child will not be held to the same degree of care as an adult: *Id.*

The plaintiff thirteen years of age, with a companion of same age, signalled a street car, got on the front platform without objection from the driver or conductor, and paid their fare. After riding for a considerable distance, plaintiff said he was going to get off, the driver "slacked up," but did not stop; in getting off plaintiff was injured. Whether he had been guilty of negligence was for the jury: *Id.*

Whether permitting the plaintiff to stand on the front platform and get off from it were negligence, and proper care was exercised in not stopping the car sooner, was for the jury: *Id.*

It is the duty of a railway company to cause its cars to come to a full stop for passengers to get off: *Id.*

NOTICE.

Absence in the Service of Rebellion—Notice of Suit by Publication—Laches.—A man who has neglected his private affairs and gone away from his home and state, for the purpose of devoting his time to the cause of rebellion against the government, cannot come into equity to complain that his creditors have obtained payment of admitted debts through judicial process obtained upon constructive notice, and on a supposition wrongly made by them that he had no home in the state, or none that they knew of: *McQuiddy* v. *Ware*, 20 Wall.

Especially is this true when there is no allegation of want of actual knowledge of what they were doing: *Id.*

And still more especially true is it in Missouri, where the statutes of the state allow a bill of review of decrees or judgments obtained on constructive notice at any time within three years after they are obtained, and the complainant has let more than six years pass without an effort to have them so reviewed: *Id.*

Allegations of general ignorance of things a knowledge of which is easily ascertainable, is insufficient to set into action the remedies of equity: *Id.*

Officer.

Evidence of Appointment—Commission by Governor.—The Act of April 12th 1867, for protection of person, &c., in mining regions is constitutional, so far as it provides for appointing police officers and paying the compensation fixed by the governor out of the county treasury: *Northumberland County* v. *Zimmerman*, 75 Pa.

The act requires, that the governor may appoint such officers on the petition of one hundred citizens in the region, &c. *Held*, that a copy of such petition, &c., certified by the secretary of the Commonwealth, with the commission to the officer, was evidence of the appointment: *Id.*

Certified copies of all records, &c., in the secretary's office are evidence wherever the original would be: *Id.*

The governor is authorized to commission all officers whose election or appointment is provided by law, and his commission is the proper evidence of election or appointment: *Id.*

Partnership.

Appropriation of Firm Property by one Partner for his own Debt—Fraud—Presumption.—An appropriation of partnership assets by one partner without the assent of his copartners, in satisfaction or security of his private debt, in the absence of proof to the contrary is presumed to be fraudulent and collusive, as against the other members of the firm, and may by them be set aside. This presumption, however, is not conclusive, but may be rebutted: *Corwin* v. *Suydam*, 24 Ohio St.

Where the sole acting member of a dissolved partnership, with full power to dispose of its property and pay its debts, himself became a creditor of the firm, by advancing his private funds in payment of its debts, and then in good faith and with no intention to defraud the company, disposed of the property of the firm to an amount less than the sum so due him, in satisfaction of a debt due from him to a third person, who received the same in like good faith, and in the belief that such sale was authorized by the firm: *Held*, that this disposition of the property cannot be avoided by another member of the firm, it appearing that all the outside debts of the firm are paid or secured, and that there is nothing due to such other member from the firm, unless he includes in his account against it a part of the same claim of A. upon the firm, transferred by A. to him in satisfaction of a debt due to him from A.: *Id.*

Receipt of Part of Profits—Not Conclusive.—An agreement by which a person is to have a share of the profits of a business, is competent evidence on the question of his liability as a partner in that business; but sharing profits, in any other sense than sharing them as a principal, is not an absolute legal test of his liability: *Eastman* v. *Clark*, 53 N. H.

The question of his liability, is the question whether he is a principal bound by a contract made by himself, or his agent acting by his authority, or whether he is estopped to deny that he is a principal within the general doctrine of estoppel: *Id.*

Pleading.

Joinder of Plaintiffs claiming in different Rights, but for same Cause of Action.—Two or more of the several owners of lots assessed for a

street improvement, claiming the assessment to be, for the same reason, invalid as to each, may properly join in an action to restrain the collection of the assessment; and when the parties thus similarly interested in the question are numerous, one may sue on behalf of himself and all others whom he is authorized to represent, and who might otherwise rightfully join in the action: *Upington, &c.*, v. *Oviatt, Treasurer*, 24 Ohio St.

Necessary Parties to the Issue—Set-off—Assignment of Judgment.—In an action by the assignees of a judgment, against the debtor and others, to subject equities to the satisfaction of the judgment, the judgment-debtor set up in his answer, by way of set-off, an indebtedness to him from the judgment-creditor accruing before the assignment to the plaintiff. *Held*, that the judgment-creditor was a necessary party to the issue thus tendered by the defendant in his answer. And *quære*—Whether in such case, in order to constitute an equitable set-off, an allegation of the insolvency of the judgment-creditor, or other circumstance of equitable cognisance, is not necessary?: *Gildersleeve et al.* v. *Burrows et al.*, 24 Ohio St.

Action by Feme Covert without joining the Husband—Narr. should set forth the Circumstances giving her the Right to sue alone.—A party who is sued by a married woman, who declares as if she were a *feme sole*, in a case where she has no right thus to sue, may take advantage of the defect by plea in abatement, and the plaintiff must reply the facts which enable her to sue alone: *Dutton et al.* v. *Rice et al.*, 53 N. H.

The rule of pleading, by which the burden of allegation of facts enabling a *feme covert* to sue alone is thus cast upon her, seems, in the present condition of statutory law in this state, to be more convenient and reasonable than a rule which should impose upon the defendant, in pleading, a denial of all the possible conditions in which the suit might be maintained, notwithstanding the coverture: *Id.*

To a declaration in assumpsit by a *feme covert*, the defendants pleaded in abatement the non-joinder of the plaintiff's husband. Upon demurrer to the plea—*Held*, that the demurrer imported into the plaintiff's declaration the fact of coverture admitted thereby, and so the declaration was insufficient, inasmuch as it contained no statement of any circumstances indicating her right to sue without joining her husband in the action; but the plaintiff was permitted to withdraw her demurrer, and by replication set out such facts as might enable her to maintain the suit: *Id.*

PRACTICE. See *Damages; Witness.*

RAILROAD. See *Contract; Negligence.*

RECEIVER.

Nature of his Title—Suit by—Set-off against him.—A receiver has no legal title to the assets of the estate and cannot maintain trover for them without leave of the court, except after they have actually passed into his possession: *Singerly* v. *Fox*, 75 Pa.

By leave of the court a receiver of a firm which was lessee, sold goods on the premises to the landlord; in an action for the price by the receiver the landlord could not set off rent due him: *Id.*

The receiver could maintain the suit in his own name without the order of the court: *Id.*

The landlord had no right to have his rent from the proceeds of sale, as in case of an execution under the Act of June 13th 1836, sects. 83, 84: *Id.*

RELIGIOUS SOCIETIES.

Jurisdiction of Civil Courts over—Principles on which such Courts intervene.—Civil courts, in determining the question of legitimate succession of an unincorporated religious society, where a separation has taken place, will adopt its rules, and enforce its polity in the spirit and to the effect for which it was designed: *Harrison et al.* v. *Hoyle et al.*, 24 Ohio St.

Where public policy, or the positive law of the land, is not contravened, the decisions and orders of such society, when made in conformity to its polity, should have the same effect, in civil courts, which the society intended should be awarded to them when pronounced by its own judicatories: *Id.*

If such society be composed of several bodies or branches, whether co-ordinate or subordinated, the rules of the society, for the management of its internal affairs, and for the adjustment of the relations between its branches, constitute the rule by which they should be governed: *Id.*

REPLEVIN. See *Damages.*

SEAL. See *Gift.*

SPECIFIC PERFORMANCE. See *Vendor.*

STREET.

Map or Plan—Dedication to Public Use—Damages for Opening.—The adoption of a map or plan by commissioners appointed by the legislature, or under legislative authority, by conveying or bounding with reference thereto, is a dedication of the lands of the owner within the lines of the street laid down on said map, and referred to in the conveyance: *Clark* v. *City of Elizabeth*, 8 Vroom.

On opening the street no assessment of damages will be made to such landowner: *Id.*

The deed is the best evidence of dedication, and parol evidence will not be admitted to contradict it, and show there was no intention to dedicate: *Id.*

TAXATION. See *Constitutional Law.*

TORT.

Joint and Separate Liability—When two or more persons, though not acting in concert, occasion an injury, they are severally liable for the consequences: *Newman* v. *Fowler*, 8 Vroom.

Where a house was badly built in consequence of the joint neglect of the architect and the contractor, a suit founded on such neglect, will lie against the architect alone: *Id.*

Nor will the fact that the owner of the house refused to pay the contractor a part of the money due to the contractor on the ground that the house is badly built, bar such suit: *Id.*

Vendor and Purchaser.

Specific Performance—Refusal of Wife to join in Deed.—A purchaser is entitled to have a contract for sale of land specifically executed so far as the vendor can, and to have an abatement from the purchase-money for any deficiency in the title, quantity or other matter touching the estate: *Burk's Appeal*, 75 Pa.

A husband contracted to sell land, the wife refused to join in the deed, there being no collusion with her husband. *Held*, that the vendee could not compel specific execution by the husband alone and retain part of the purchase-money as indemnity against the wife's contingent claim for dower: *Id.*

A purchaser from a husband takes the risk of the wife joining in the deed or his action against the husband for damages: *Id.*

Specific execution of an agreement to sell land will not be decreed against a vendor, a married man whose wife refuses to join in the deed, unless the vendee be willing to pay the full purchase-money and accept the deed without the wife: *Id.*

The purchaser having proposed in open court to accept a deed from the vendor alone and pay the purchase-money, the case was remitted that the court below might make such decree: *Id.*

Waters.

Right of Fishing in Tide-Waters—State Grant—Joint Action—Confusion of Goods.—The right of fishing and taking oysters in the tidal waters of this state is *primâ facie* common to all the people of this state. But the legislature may grant a right of enjoyment in lands under tide-waters to private individuals for the purpose of fishing and planting oysters, to the exclusion of the public right therein: *Wooley* v. *Campbell et al.*, 8 Vroom.

Several lessees under the act entitled "An act to authorize the planting of oysters on lands covered with water in Shark river, and for the protection of the same" (Acts 1861, p. 436), may, by agreement, use jointly the lands which have been granted to them severally for the purpose of planting oysters; and in such case, having a joint property in the oysters planted, may join in an action to recover damages for taking their joint property: *Id.*

The doctrine that one mixing his goods with those of another, so that a separation is impossible, loses his property, is a doctrine that is adopted to prevent fraud, and is not applied except in favor of an innocent party against a wrongdoer. A person who is himself a wrongdoer is not entitled to the benefit of this principle: *Id.*

Witness.

Privilege from Service of Process.—A party to a suit in chancery, who resides in another state, and comes into this state to give testimony in his own behalf before a Master in Chancery, is, while necessarily attending before the master and going to and returning from the place where such examination is held, privileged from the service of a summons in a civil cause, without any *subpœna ad testificandum* being served: *Dungan* ads. *Miller*, 8 Vroom.