was concerned, in New Jersey. The company was expelled from Virginia by force, and was under no obligation to send agents to that state after hostilities ceased, either to solicit further business or to put it in the power of Virginia creditors to sue it in the courts of that state.

The action was barred by the laws of New Jersey, and the court below was bound to instruct the jury that it could not therefore be maintained in this state. Wherefore, the instruction to find for the defendant did not prejudice the substantial rights of the appellant.

Judgment affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME JUDICIAL COURT OF MAINE.[2]

SUPREME COURT OF OHIO.[3]

SUPREME COURT OF PENNSYLVANIA[4]

ACCRETION. See *Landlord and Tenant.*

ADMIRALTY.

Advances in Foreign Port.—Advances made in a foreign port to equip a vessel, and to procure for her a cargo to a port of destination, are *primâ facie* presumed to be made on the credit of the vessel: *Insurance Company* v. *Baring*, 20 Wall.

They are a lien on the vessel and constitute an insurable interest: *Id.*

Claims not Maritime Liens.—Where claims on the proceeds in the registry of a vessel sold are not maritime liens, the District Court cannot distribute those proceeds in payment of the claims if the owners of the vessel oppose such distribution: *The Lottawanna*, 20 Wall.

A creditor by judgment in a state court, of the owners of the vessel, even though he have a decree *in personam* also in the admiralty against them, cannot seize, or attach, on execution, proceeds of the vessel in the registry of the admiralty: *Id.*

Where an appeal is taken to the Circuit Court from the decree of the District Court in a proceeding *in rem*, the property or its proceeds follow the cause into the former court: *Id.*

ARBITRATION.

Revocation of Agreement to Submit.—A naked power to submit a controversy to arbitration is revocable: *Paist et al.* v. *Caldwell*, 75 Pa.

An agreement to submit which is in the nature of a contract, whereby

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

[2] From Hon. E. B. Smith, Reporter; to appear in 62 Me. Reports.

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

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

rights are gained and lost and the submission is the moving consideration, is a compromise and cannot be revoked: *Id.*

Caldwell sued Paist and two others in *assumpsit* and Paist in covenant, both on the same transaction—the parties agreed to consolidate the cases and refer them finally. *Held*, that the submission was irrevocable: *Id.*

In the court below Paist asked to set aside the award; his rule was there discharged. *Held*, upon writ of error, the Supreme Court could reach only matters of record: *Id.*

ASSUMPSIT. See *Evidence.*

ATTACHMENT.

Failure of Plaintiff to show Cause of Action—Rights of Garnishee.—Jurisdiction of a defendant cannot be acquired by proceedings in attachment, on the ground of his non-residence in the state, when the petition in the case, and the affidavit for attachment, fail to show that the cause of action is one arising upon contract, judgment or decree: *Pope et al.* v. *Hibernia Ins. Co.*, 24 Ohio St.

Jurisdiction cannot be acquired in such case, by amendment of the petition and affidavit, showing a cause of action arising upon contract, without the issuance of an attachment after the amendment: *Id.*

Where no jurisdiction is acquired as against the defendant in attachment, a garnishee in the case is not liable to an action, under section 218 of the code, for failing to answer as such garnishee: *Id.*

BANKRUPTCY.

Debts to the United States.—A debt due to the United States, though it be by one who owes it as a surety only, is not barred by the debtor's discharge with certificate, under the Bankrupt Act of 1867; although the United States may prove its debt and has priority of other creditors; and though the act provides, in general terms, that the certificate shall release the bankrupt "from *all* debts, claims, liability and demands, which were or might have been proved against his estate in bankruptcy," and that it may be pleaded "as a full and complete bar of *any* such debts, claims, liabilities or demands:" *United States* v. *Herron*, 20 Wall.

No general words in a statute divest the government of its rights or remedies: *Id.*

BILLS AND NOTES.

Transfer after Maturity.—A note payable to bearer, though overdue and dishonored, passes by delivery the legal title to the holder, subject to such equities as may be asserted by reason of its dishonor: *National Bank of Washington* v *Texas*, 20 Wall.

Any one disputing the title of the holder of such paper takes the burden of establishing, by sufficient evidence, the facts necessary to defeat it: *Id.*

There is no competent evidence in this chancery suit that the bonds in controversy, which were issued by the United States to the state of Texas, though overdue when they passed from the treasury of the state, were issued by the state or received by the person to whom they were delivered for any treasonable or other unlawful purpose: *Id.*

The absence of the endorsement of the Governor of the state on the bonds does not raise a presumption of such unlawful purpose under the circumstances of this case: *Id.*

The cases of *Texas* v. *White and Chiles*, 7 Wallace 718, *Same* v. *Hardenberg*, 10 Id. 68, and *Same* v. *Huntington*, 16 Id. 402, considered, and their true result ascertained and applied to the present case: *Id.*

Negotiability—Note given for Patent Right—Alteration.—A negotiable note on a printed blank was signed after there was written on the margin, that it was given for a patent and not to be paid till a profit specified was made. The condition was cut off and the note passed to a *bonâ fide* endorsee for value, without notice. The consideration failed. *Held*, in a suit by the holder, that this was no defence by the maker: *Zimmerman* v. *Rote*, 75 Pa.

The note was to order "for value received without interest, waiving the right of appeal and of all valuation, appraisement, stay and exemption laws." *Held* to be negotiable: *Id.*

The maker must guard the public against frauds and alterations by refusing to sign negotiable paper in such form as to admit of fraudulent practices with ease and without ready detection: *Id.*

Broker.

When Commissions are Earned.—An owner authorized a broker to sell his land for $17,000 within a time named. The broker procured a buyer at the price who requested the owner to take mortgages in part payment if convenient; the owner said that released him; he was told at the same time that the request was made only if it suited him; that the buyer would pay cash; the owner still refused. In a suit by the broker for commissions, *Held*, that it was for the jury whether the acceptance was conditional or absolute: *Clendenon* v. *Pancoast*, 75 Pa.

The broker's commissions were earned if he procured a buyer at the price named by the owner: *Id.*

Charitable Use.

Indefiniteness of Use—Advancement of Christian Religion—Interposition of Court in Advance.—A testator provided in his will that the residue of his estate, which consisted of personal property, after paying legacies, should be retained by his executor and invested by him during the life of his wife for her use, and that at her death it should be appropriated by the executor to the advancement of the Christian religion, and be applied in such manner as, in his judgment, would best promote the object named. The executor accepted the trust; and during his life and that of the widow the heir brought suit to annul the will for uncertainty as to the object of the trust. *Held*, that the testator had conferred ample power upon the executor to relieve the bequest of all objections arising from its indefinite character, and that so long as no obstacle exists to the exercise of the power at the proper time, the courts of this state will not, in advance of that time, interpose, on the application of the heir, to prevent its exercise: *Miller* v. *Teachout*, 24 Ohio St.

Common Carrier. See *Master and Servant.*

Compromise See *Arbitration; Contract.*

Conflict of Laws. See *Equity.*

CONTRACT. See *Wager.*

Consideration—Release.—A discharge under seal, not fraudulently obtained, by which a verdict for $350 is released for $67 during the pendency of a motion for a new trial of the action cannot be regarded as invalid for inadequacy of consideration: *Staples* v. *Wellington*, 62 Me

A plaintiff who has released a cause of action, and agreed to enter a discontinuance as soon as may be without costs to the defendant, will be liable to the release for any costs that may be subsequently occasioned by his ineffectual resistance to the execution of his agreement: *Id.*

CORPORATION. See *Express Company.*

DEBTOR AND CREDITOR. See *Dower.*

Fraudulent Conveyance—Death of Party pending Proceedings.—Where the grantee, in a fraudulent conveyance made by a debtor, dies after the rendering of a decree in favor of a judgment-creditor, setting aside such conveyance, and ordering the sale of the property so conveyed for the payment of the creditor, the failure to revive the decree against the heirs of such grantee will not affect the title of a purchaser acquired by a sale under the decree: *Beaumont* v. *Herrick*, 24 Ohio St.

Section 422 of the Code, which provides when a judgment shall become dormant and cease to operate as a lien on the estate of the judgment-debtor, does not apply to a decree for the sale of specific real property: *Id.*

DEED.

Construction of Boundaries—Pond.—When the lines of a deed beginning at a road, run thence to an artificial pond; thence by the side of the same a specified distance; thence by a line parallel with the first line to the road; thence to the place of beginning;—the grant is to the centre of the pond: *Mansur* v. *Blake*, 62 Me.

When the line on such pond begins at the middle of a bridge; thence joining the pond to the corner of another lot which extends to the centre of the same pond—the grant reaches to the middle thread of the stream. When a lot of land is bounded by a pond artificially created by the flowing of a stream by a mill-dam, the same rule applies to the pond as was applicable to the stream before the dam was built: *Id.*

DOWER.

Widow's Claim not barred by a Deed set aside as Fraudulent.—The dower of a surviving wife is not barred by a conveyance executed by the husband and wife which is set aside as fraudulent as against the creditors of the husband: *Richardson* v. *Wyman*, 62 Me.

Where a creditor avoids a deed from the husband to his wife on the ground that it is fraudulent and void as to him, the wife is nevertheless entitled to dower: *Id.*

EASEMENT.

Prescription.—When the owners of a mill claim an easement by prescription in another's lot, and the mill and the lot in which the easement is claimed are, during part of the twenty years next preceding,

owned by the same person, the time of such ownership is excluded from the period required to establish a right by prescription: *Mansur* v. *Blake*, 62 Me.

EQUITY.

Jurisdiction—Subject-matter out of control of the Court—Effect of Decree on Land in another State.—A court of equity in one state, having acquired jurisdiction over the persons of the parties, may enforce a trust or the specific performance of a contract, in relation to land situate in another state: *Burnley et al.* v. *Stevenson*, 24 Ohio St.

Although the decree in such case, or the deed of a master executed in pursuance thereof, cannot operate to transfer the title to such lands, yet the decree is binding upon the consciences of the parties, and concludes them in respect to all matters and things properly adjudicated and determined by the court: *Id.*

When the decree in such case finds and determines the equities of the parties in respect to such land, and directs a conveyance by the parties in accordance with their equities, such decree, although no conveyance has been executed, may be pleaded as a cause of action, or as a ground of defence in the courts of the state where the land is situated; and it is entitled, in the court where so pleaded, to the force and effect of record evidence of the equities therein determined, unless it be impeached for fraud: *Id.*

Practice—Demurrer—Leave to Reply.—Where a case is submitted to the court on a demurrer to the answer, the ground of the demurrer being that the answer does not contain a defence, and the demurrer is overruled, the plaintiff can not, without the leave of the court, dismiss his action without prejudice. The submission of the case on the demurrer is a final submission of the case within the meaning of section 372 of the Code, unless leave is obtained to reply or amend: *Beaumont* v. *Herrick*, 24 Ohio St.

Whether, in such case, after the overruling of the demurrer, the plaintiff should have leave to reply, or to amend his petition, is a matter resting in the sound discretion of the court. If the exercise of such discretion is reviewable on error in any case, it can only be where the record shows, in view of all the circumstances under which the court acted, an abuse of discretion, resulting in a denial to the party of a fair trial: *Id.*

ERROR.

Practice—Specific Grounds of Exception in the Court below.—Where a party excepts to the admission of testimony he is bound to state his objection specifically, and in a proceeding for error he is confined to the objection so taken. If he assign no ground of exception, the mere objection cannot avail him. Hence, where an original deposition, regularly taken, sealed up, transmitted, opened, and filed in the case, was lost, and a copy, taken under the direction of the clerk of the court and sworn to as a true copy, was offered in evidence in its place, an objection to the copy "on the ground that it *was not the original*" is too indefinite to let in argument that the witness was alive, and that the lost deposition could only be supplied by another one by the same witness, and that secondary evidence was inadmissible to prove the contents of the first deposition: *Button* v. *Driggs*, 20 Wall.

If the objection had been made in a form as specific as by the argument above mentioned it was sought to be made, it would be insufficient, it appearing that the witness lived in another state, and more than a hundred miles from the place of trial: *Id.*

When it is necessary to prove the results of an examination of many books of a bank to show a particular fact, as *ex. gr.*, that A. B. never at any time lent money to a bank, and the examination cannot be conveniently made in court, the results may be proved by persons who made the examination, the books being out of the state and beyond the jurisdiction of the court: *Id.*

ESTOPPEL. See *Usury.*

EVIDENCE. See *Express Company; Telegraph.*

Parol to affect Writing.—A verbal promise by one of the parties at the making of a written contract, if it was used to obtain the execution of the writing, may be given in evidence: *Powelton Coal* v. *McShain*, 75 Penn.

A written agreement was "to transport at such times as you may desire 10,000 tons of coal," &c., evidence was admissible that plaintiff refused to sign unless it was inserted that the coal should be furnished before October 1st, that defendant said "that is understood," and plaintiff then signed: *Id.*

Indebitatus assumpsit will not lie on a special contract unless it has been fully performed by plaintiff; but plaintiff could maintain an action on the common counts, where a special contract, given in evidence in defence, was found inoperative by reason of fraud: *Id.*

Plaintiff contracted to carry coal; it was carried in a barge in which another was joint owner with plaintiff. *Held*, that the suit for the freight was properly brought in the name of the plaintiff alone: *Id.*

EXPRESS COMPANY.

Sale of Unclaimed Packages—Corporation—Act of Agent.—Several trunks were transported by an express company, and after remaining in their office for a considerable time, an order of court under the Act of December 14th 1863 was obtained to sell them for freight, &c. *Held*, that this order did not protect the company for selling the trunks unopened and locked and without exposing the contents: *Adams Express Company* v. *Schlessinger*, 75 Pa.

The plaintiff testified as to the character and value of the contents of the trunks. Evidence that the plaintiff was a lady of wealth, &c., and that the goods described by her were such as are possessed by persons in similar circumstances in life, was admissible: *Id.*

An agreement by an agent of a corporation made in the course of the business intrusted to him is binding on the corporation although in excess of his instructions: *Id.*

FOREIGN ATTACHMENT. See *Attachment.*

FORMER ADJUDICATION.

Settlement of Meaning of Language of a Contract.—Where in a judicial proceeding, the matter passed upon is the right under the language of a certain contract to take receipts on a railroad, the judgment

concludes the question of the meaning of the contract on a suit for subsequent tolls received under the same contract: *Tioga Railroad* v. *Blossburg and Corning Railroad*, 20 Wall.

Homestead.

Time at which Status as Head of a Family is to be determined.—The homestead of a debtor, being subject to mortgages and judgment liens, was sold, at the suit of the lienholders, for $472 more than sufficient to satisfy the mortgages, which sum the debtor, being then the head of a family, moved the court having custody of the fund to decree to him in lieu of a homestead as against the judgment lienholders; but before the fund was disposed of by the court, he voluntarily permitted his family to separate, and abandoned the maintenance of a family homestead. *Held:* 1. That the right of a debtor to the fund must be determined upon by the state of facts existing at the time the fund was finally disposed of by the court. 2. That the debtor had then ceased to be the head of a family within the meaning of the homestead exemption act, and was not entitled to any of the exemptions therein provided: *Cooper* v. *Cooper*, 24 Ohio St.

Infant. See *Railroad.*

Insurance. See *Admiralty.*

Joint Trespassers. See *Negligence.*

Landlord and Tenant.

Distress.—A lease was for a fixed rent in money, and at the additional rate of $30 for each $500 of improvements put on the premises by the lessor. *Held*, that the $30 additional rent could be distrained for: *Detwiler* v. *Cox*, 75 Pa.

Although the payment was equal to the interest of $500, yet being named as rent it was distrainable, the $30 being the measure fixed by the lease: *Id.*

Accession—Estoppel of Tenant to deny Landlord's Title—Ownership of Building wrongfully placed on another's Land.—A tenant remaining in possession after the termination of his lease, and who has not surrendered the premises, nor been evicted by paramount title, is liable for rent: *Bonney* v. *Foss*, 62 Me.

Where one voluntarily erects a building upon the land of another, without any contract with the owner of the soil, and against his consent, the building becomes a part of the realty and belongs to the owner of the land: *Id.*

Master and Servant.

Assault—Justification of—Liability of Common Carriers for injuries inflicted by their Servants upon Passengers.—Railroad companies, as well as other common carriers, are responsible for the misconduct of their servants and for assaults and batteries by them committed upon passengers, without justification; affirming *Goddard* v. *G. T. R. Co.*, 57 Maine 202: *Hanson* v. *European and North American Railway Co*, 62 Me.

If the servant be first assaulted he may defend himself, and may use sufficient force to overcome any unauthorized opposition to his proper performance of any duty. But the assault being over, or the resistance

ended, he cannot pursue and punish the wrongdoer, and will make himself and the carrier both liable if he do so: *Id.*

He who seeks to justify a *primâ facie* case of assault must show that no more force was used than was suited in kind and degree to the exigencies of the occasion, or the justification fails: *Id.*

Disobedience to the rules of a company by a passenger will justify the carrier in refusing to carry him further; but not in maltreating him while continuing to perform the contract for his conveyance: *Id.*

NEGLIGENCE. See *Railroad.*

Nonsuit—Proximate and Concurring Cause.—Where the evidence tended to show that the defendants negligently piled their boards in the travelled path of a public highway;—that a wagon loaded with barrels was driven over these boards causing a rattling noise which frightened the plaintiff's well broken and carefully driven horse;—that the horse being frightened by the noise, suddenly started and threw the plaintiff, while carefully driving, out of his wagon, whereby he was seriously injured;—it was held that a nonsuit could not properly be ordered—and that it was for the jury to determine whether or not the defendants' acts were the proximate cause of the plaintiff's injury: *Lake* v. *Milliken and others*, 62 Me.

Every wrongdoer is at least responsible for all the mischievous consequences that might be reasonably expected under the circumstances to result from his misconduct: *Id.*

Where an injury is the result of two concurring causes, the party responsible for one of these causes is not exempt from liability because the person who is responsible for the other cause may be equally culpable: *Id.*

PARTNERSHIP.

Use of Firm Property to pay Individual Debt.—In order to allow firm property to be applied in payment of the individual debt of one partner, the consent of the other is necessary: *Todd* v. *Lorah*, 75 Pa.

Such consent may be inferred from a knowledge of the other partner that the goods are being so applied, and his silence when he ought to speak, &c. Knowledge alone of the application will not bind the other partner: *Id.*

By a case stated, it was agreed that a creditor of one partner agreed with him that he should buy firm goods, and that they should be a set-off against the price of the goods, and the set-off was made; the other partner knew that the goods were being bought on this condition, but "was not a party to the agreement, and did not consent thereto." *Held*, that the creditor was liable to the firm for the goods: *Id.*

POND. See *Deed.*

RAILROAD.

Rate of Speed—Negligence—Infant.—Railroad trains may be run at a high rate of speed to reach their greatest utility; but in populous towns and cities the speed must be moderated: *P. & R. Railroad Co.* v. *Long*, 75 Pa.

If parents permit a child of tender years to wander on a street it is negligence: *Id.*

In this case a child of tender years whilst on a railroad track in a

street in a city was killed by a train;—under the evidence it was for the jury to say whether the train was running too fast, or there was negligence otherwise; and whether the child was in the street through the negligence of the parents: *Id.*

REAL ESTATE. See *Trover.*

SALE.

Caveat Emptor—Fraud—Warranty.—A purchaser takes the risk of the quality of an article sold unless there be fraud or warranty: *Whitaker* v. *Eastwick*, 75 Pa.

In a sale of goods there is an implied warranty of title, and generally of the species, but not of quality: *Id.*

Mere representation is not warranty: *Id.*

The relation of seller and buyer is not a confidential one: *Id.*

The plaintiffs purchased a cargo of coal by the bill of lading and the representation of defendants that it was "good coal, well adapted for generating steam." In a suit for defect in the coal, *Held*, that evidence that the coal had much dirt in it and it took an increased quantity to generate steam was inadmissible: *Id.*

Rescission—Insolvency of Vendee not by itself sufficient Evidence of Fraud.—Insolvency of a vendee of goods and his knowledge of it are not alone such fraud as will set aside a sale and enable the vendor to rescind and replevy the goods after they have come fairly and fully into the possession of the vendee: *Rodman* v. *Thalheimer*, 75 Pa.

To avoid the sale there must be artifice, trick or false pretence as a means of obtaining possession, bad faith and intent at the time to defraud the vendor: *Id.*

Insolvency and a knowledge of it at the time of the sale are evidence for the jury with other facts of intended fraud: *Id.*

The doctrine in New York on the question of rescission on the ground of insolvency does not obtain in Pennsylvania: *Id.*

SURETY.

Discharge of.—A surety is not discharged by a contract between his principal and their common obligee, which does not place him in a different position from that which he occupied before the contract was made: *Roach* v. *Summers*, 20 Wall.

TELEGRAPH.

Exemption from Liability declared Void—Onus of Proof.—A rule adopted by a telegraph company, that it will receive and send messages by night at half its usual rates "on condition that the company shall not be liable for errors or delay in the transmission or delivery, or for the non-delivery of such messages, from whatever cause occurring, and shall only be bound in such case to return the amount paid by the sender," is against public policy;—and is, therefore, void, even when assented to by the sender: *Bartlett* v. *Western Union Tel. Co.*, 62 Me.

It is void also, because its terms are repugnant, assuming to impose an obligation, and, by the same act, to release from all obligation: *Id.*

In an action to recover damages of a telegraph company for an error in the transmission of a message, in the absence of any rule or contract fixing the measure of liability, the plaintiff makes out a *primâ facie* case

by proof of the undertaking, error and damage, and throws the burden upon the company, to show that the error was caused by some agency for which it is not liable: *Id.*

TITLE.

Lost Goods—Finder's Title.—Lost goods, as against all persons but the original owner and those deriving title from him, belong to the first finder who does such acts as indicate an intention to take possession of them: *Lawrence* v. *Buck*, 62 Me.

TRESPASS. See *Master and Servant.*

TROVER.

Conversion—Delivery—Temporary Track, not owned by the Company, held personalty.—Persons, who contracted to build a railroad, were the owners of certain rails and sleepers, consisting of a side track connected with the main track, used for the purpose of conveying materials upon the road-bed during construction, and when the road was delivered to the railroad company, at the request of the company and for their accommodation and use, the contractors consented that the track should remain a while, to be returned to the contractors anywhere upon the line of the road whenever called for; and while in that situation the rails and sleepers were seized and sold upon executions as the personal property of the contractors. *Held*, that they were not a part of the realty, but personal chattels, liable to be so seized and sold: *Fifield* v. *Maine Central Railroad Co.*, 62 Me.

The officer could give and the purchaser receive, a delivery, without taking any other possession of the rails and sleepers than such as could be had without disturbing their situation as a track: *Id.*

The railroad corporation would not be liable to an action for conversion of the rails by a reasonable use of them while they had no notice that the ownership of them had changed; nor by a mere non-compliance with a written demand served upon its president at a place other than where the rails were, the corporation making no objection or resistance to the plaintiff's taking possession of them: *Id.*

USURY.

Estoppel of Debtor to set up.—A debtor of an estate, in settling with the executors, allowed usurious interest on his indebtedness. In payment of the amount found due, he gave his notes to a legatee, who accepted them in part payment of his legacy. In an action on the notes thus given, the debtor cannot, by way of defence, set up the usurious interest allowed the estate, although the legatee was one of the executors with whom the settlement was made: *McCoy* v. *Stranahan.* 24 Ohio St.

VENDOR AND PURCHASER. See *Sale.*

WAGER.

Purchase of Stocks on Margin.—A transaction in stocks by way of margin, settlement of differences and payment of gain or loss, without intending to deliver the stocks, is a mere wager: *Max* v. *Gheen*, 75 *Pa.*

Where there was a contract to buy and sell stocks which were delivered and the contract carried into execution, it was not illegal: *Id.*