

their action, as it is admitted we would have the right to do in a proper case.

What might be the effect of the record of the state court being filed in the Federal court before the term next after the filing of the bond and petition in the suit in the state court, upon the general status of the case, it is not necessary to consider. There possibly might be a question whether the case would be in every respect before the Federal court prior to its next term.

It may be admitted there are difficulties in any view we may take of this part of the case, but we are at a loss to understand how the fact that the state court has had *the opportunity* to pass upon the application, can alone confer the right of removal, when it is admitted that the action or non-action of the state court may be immaterial.

If the petitioner has brought himself and is within the terms of the law and the right of removal is complete, then when there is added to that a copy of the record duly filed in the Federal court (and special bail given when requisite), the act of removal has taken place.

Motion overruled.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹

SUPREME JUDICIAL COURT OF MAINE.²

SUPREME COURT OF PENNSYLVANIA.³

ADMIRALTY.

State Liens for building Vessels—Maritime Contracts.—An assignment of error in the highest court of a state to the decision of an inferior state court, that the latter had decided a particular state statute "valid and constitutional," and a judgment entry by the latter court that the statute was not "in any respect repugnant to the Constitution of the United States," is not specific enough to give jurisdiction to the Supreme Court of the United States under section 709 of the Revised Statutes; there being nothing else anywhere in the record to show to which provision of the Constitution of the United States the statute was alleged to be repugnant: *Edwards v. Elliott et al.*, 21 Wall.

However, where the record showed that the case was one of the assertion of a lien under a state statute for building a vessel at a town on

¹ From J. W. Wallace, Esq., Reporter; to appear in vol. 21 of his Reports.

² From Hon. Edwin B. Smith, Reporter; to appear in vol. 63 Maine Reports.

³ From P. F. Smith, Esq., Reporter; to appear in 76 Penna. Reports.

what the court might perhaps judicially notice was an estuary of the sea, and where the entry of judgment showed also that the court had adjudged "that the contract for building the vessel in question was not a *maritime* contract, and that the remedy given by the *lien* law of the state did not conflict with the Constitution or laws of the United States," the court held that the latter statement, in view of the whole record, was sufficient to give this court jurisdiction: *Id.*

A maritime lien does not arise on a contract to furnish materials for the purpose of *building* a ship; and in respect to such contracts it is competent for the states to create such liens as their legislatures may deem just and expedient, not amounting to a regulation of commerce, and to enact reasonable rules and regulations prescribing the mode of their enforcement, if not inconsistent with the exclusive jurisdiction of the admiralty courts: *Id.*

ASSUMPSIT. See *Limitations*.

ATTORNEY. See *Foreign Judgment*.

Negligence of—Dealings with Client—Estoppel by Time.—An attorney cannot be charged with negligence when he accepts, as a correct exposition of the law, a decision of the Supreme Court of his state upon the question of the liability of stockholders of corporations of the state in advance of any decision thereon by this court: *Marsh v. Whitmore*, 21 Wall.

Where an attorney sold bonds of a client at public sale, and bought them in himself, at their full value at the time, and the client was aware of the purchase and acquiesced in it for twelve years, it is then too late for the client to attempt to impeach the validity of the sale: *Id.*

BANKRUPTCY.

Preference—Intention.—When the issue to be decided is whether a judgment against an insolvent was obtained with a view to give a preference, the *intention* of the bankrupt is the turning-point of the case, and all the circumstances which go to show such intent should be considered: *Little, Assignee, v. Alexander*, 21 Wall.

Hence, when an ordinance of a state gave a preference as to time of trial in the courts in suits on debts contracted after a certain date, and the insolvent debtor gave his son and niece new notes for an old debt, so as to enable them to procure judgments before his other creditors, the fact that the ordinance was void does not repel the inference of intent to give and obtain a preference, and when a judgment was so obtained which gave priority of lien it will to that extent be null and void: *Id.*

Preference—Four Months—Act of Bankruptcy.—Turner, October 21st 1871, gave Sleek for value a judgment-note, on which he entered judgment February 26th 1872; an execution issued March 11th, and his personal property was levied on; April 10th his creditors filed a petition of bankruptcy against him; April 11th his personal property was sold by the sheriff; he was adjudged a bankrupt and an assignee appointed July 5th; the proceeds of sheriff's sale were brought into court: *Held*, the note having been given four months before the proceedings in bankruptcy, that Sleek's judgment was not in fraud of the

Bankrupt Law and was entitled to be paid from the proceeds of the sheriff's sale: *Sleek v. Turner's Assignee*, 76 Pa.

Turner being passive in the entry of the judgment and the issuing of the execution, had not given Sleek a preference; the case was no stronger than it would have been if judgment had been obtained in a suit on a plain note, no defence being interposed: *Id.*

Mere passive non-resistance in an insolvent debtor will not, under the Bankrupt Laws, invalidate a judgment and levy on his property when the debt is due and he has no defence: *Id.*

Though the judgment-creditor may know the insolvency of the debtor, his levy and seizure are not void, nor any violation of the Bankrupt Law: *Id.*

Giving Judgment-note—Preference.—The giving, by a debtor, for a consideration of equal value passing at the time, of a warrant of attorney to confess judgment, or of that which, under the Code of New York, is the equivalent of such warrant, and there called a "confession of judgment," is not an act of bankruptcy, though such warrant or "confession" be not entered of record, but on the contrary be kept as such things often or ordinarily are, in the creditor's own custody, and with their existence unknown to others. The creditor may enter judgment of record on them when he pleases (even upon insolvency apparent), and issue execution and sell. Such action is valid and not in fraud of the Bankrupt Law unless he be assisted by the debtor: *Clark, Assignee v. Iselin*, 21 Wall.

A creditor, having by execution obtained a valid lien on his debtor's stock of goods, of an amount in value greater than the amount of the execution, may, up to the proceedings in bankruptcy, without violating any provision of the Bankrupt Act, receive from the debtor bills receivable and accounts due him, and a small sum of cash, to the amount of the execution; the execution being thereupon released, and the judgment declared satisfied: *Id.*

BILLS AND NOTES. See *Conflict of Laws*.

Purchaser for Value.—On the face of a note on a printed form, made by Frey payable to the order of Mishler at the bank of Reed, "without defalcation for value received;" was, "credit the drawer," which was not signed by Mishler. The note was endorsed by him, discounted by Reed and the proceeds passed to the credit of Frey. In an action by Reed against Mishler, evidence by him that it was an accommodation note, that he declined to endorse unless the proceeds went to his credit, and declined to sign under "credit the drawer," and endorsed with the understanding that the proceeds were to go to his credit, was inadmissible without notice to Reed of these facts when he discounted the note: *Mishler v. Reed & Henderson*, 76 Pa.

Reed discounting the note without knowledge that Mishler was to control the proceeds, was a *bonâ fide* purchaser for value, and could not be affected by an understanding between Mishler and Frey: *Id.*

Not subscribing "credit the drawer," was not notice to Reed, but, in connection with the endorsement, was evidence that the parties did not intend to use it according to the printed form: *Id.*

That the note was in the possession of the maker before due, was not evidence that he had paid it: *Id.*

United States Bonds and Notes.—The bonds and treasury notes of the United States, payable to holder or bearer at a definite future time, are negotiable commercial paper, and their transferability is subject to the commercial law of other paper of that character: *Vermilye & Co. v. Adams Express Company*, 21 Wall.

Where such paper is overdue, a purchaser takes subject to the rights of antecedent holders to the same extent as in other paper bought after its maturity: *Id.*

No usage or custom among bankers and brokers dealing in such paper can be proved in contravention of this rule of law. They cannot in their own interest, by violations of the law, change it: *Id.*

It is their duty, when served with notice of the loss of such paper by the rightful owner, after maturity, to make memoranda or lists, or adopt some other reasonable mode of reference, where the notice identifies the paper, to enable them to recall the service of notice: *Id.*

Hence treasury notes of the United States, stolen from an express company and sold for value after due in the regular course of business, may be recovered of the purchaser by the express company, which had succeeded to the right of the original owner: *Id.*

BOND. See *Evidence*.

Signing in blank—Fraudulent filling up—Liability of Surety.—A person who signs, as surety, a printed form of government bond, already signed by another as principal, but the spaces in which for names, dates, amounts, &c., remain blank, and who then gives it to the person who has signed as principal, in order that he may fill the blanks with a sum agreed on between the two parties as the sum to be put there, and with the names of two sureties who shall each be worth another sum agreed on, and then have those two persons sign it, makes such person signing as principal his agent to fill up the blanks and procure the sureties, and if such person fraudulently fill up the blanks with a larger sum than that agreed on between the two persons and have the names of worthless sureties inserted, and such sureties to sign the bond, and the bond thus filled up and signed be delivered by the principal to the government, who accepts it in the belief that it has been properly executed, the party so wronged cannot, on suit on the bond, again set up the private understandings which he had with the principal: *Butler v. United States*, 21 Wall.

CITIZEN. See *Constitutional Law*.

COMMON CARRIER.

Express Company—Stipulation as to Limitation in Time of Liability.—An agreement between an express company, a common carrier in the habit of carrying small packages, that the company shall not be held liable for any loss of or damage to a package whatever, delivered to it, unless claim should be made therefor within ninety days from its delivery to the company, is an agreement which such company can rightfully make, the time required for transit between the place where the package is delivered to the company and that to which it is consigned not being long; in the present case a single day: *Express Company v. Caldwell*, 21 Wall.

CONFLICT OF LAWS.

Draft payable in another State—Usury—Equity of Purchaser.—The acceptance of a draft dated in one state and drawn by a resident of such state on the resident of another, and by the latter accepted without funds and purely for the accommodation of the former, and then returned to him to be negotiated in the state where he resides, and the proceeds to be used in his business there—he to provide for its payment—is, after it has been negotiated and in the hands of a *bonâ fide* holder for value and without notice of equities, to be regarded as a contract made in the state where the draft is dated and drawn, even though by the terms of the acceptance the draft is payable in the state where the acceptors reside: *Tilden v. Blair*, 21 Wall.

It is accordingly to be governed by the law of the former state; and if by the law of that state the holder of it, who had purchased it in a course of business without notice of equities, is entitled to recover the sum he paid for it, though he bought it usuriously, he may recover such sum, though by the law of the state where the draft was accepted and made payable, and where usury made a contract wholly void, he could not: *Id.*

A purchaser of a bill or note who purchases such paper as that above described, though a broker, is not a lender of money on it, and if he purchase honestly and without notice of equities—there being nothing on the face of the draft to awaken suspicion—he can recover the full amount of the draft: *Id.*

CONSTITUTIONAL LAW. See *Taxation*.

Citizenship—Right of Suffrage—Fourteenth Amendment.—The word “citizen” is often used to convey the idea of membership in a nation: *Minor v. Happersett*, 21 Wall.

In that sense, women, if born of citizen parents within the jurisdiction of the United States, have always been considered citizens of the United States, as much so before the adoption of the fourteenth amendment to the Constitution as since: *Id.*

The right of suffrage was not necessarily one of the privileges or immunities of citizenship before the adoption of the fourteenth amendment, and that amendment does not add to these privileges and immunities. It simply furnishes additional guaranty for the protection of such as the citizen already had: *Id.*

At the time of the adoption of that amendment, suffrage was not co-extensive with the citizenship of the states; nor was it at the time of the adoption of the Constitution: *Id.*

Neither the Constitution nor the fourteenth amendment made all citizens voters: *Id.*

A provision in a state constitution which confines the right of voting to “male citizens of the United States,” is no violation of the Federal Constitution. In such a state women have no right to vote: *Id.*

CORPORATION.

Cancellation of Subscription—Estoppel by Acts of Secretary.—A mutual insurance company in its policies reserved the right to cancel them for non-payment of assessments for thirty days. Shoemaker insured in the company; an assessment on him being unpaid less than

thirty days, he assigned his policy to defendant with approval of the company. After the assessment had been unpaid for thirty days, the secretary informed defendant "the company cancels all policies on which assessment is not paid in thirty days." In a suit for assessments afterwards made against defendant, *Held*, that the company was bound by the letter of the secretary, and it justified the defendant in believing that the policy was cancelled, and if he acted on such belief, they could not recover the assessments against him, although the policy had not been cancelled on their books: *Columbia Ins. Co. v. Masonheimer*, 76 Pa.

The secretary was the proper organ between the plaintiff and defendant; it was within the scope of his authority to inform defendant of the cancellation of the policy, and this was binding on the company: *Id.*

DEBTOR AND CREDITOR. See *Bankruptcy*.

EJECTMENT.

Party in possession cannot bring.—The plaintiff made a contract with defendant to take timber from plaintiff's land; defendant entered to cut the timber; plaintiff remaining in possession and alleging that the contract was fraudulent, &c., brought ejectment. *Held*, that the plaintiff being in possession, he could not maintain ejectment: *Corley et al. v. Pentz*, 76 Pa.

The return of the sheriff to the writ in ejectment is only *prima facie* evidence of defendant's possession and if his evidence rebuts it, he is entitled to a verdict: *Id.*

EQUITY.

Jurisdiction in case of fraudulent Wills—Laches.—A court of equity has not jurisdiction to avoid a will or to set aside the probate thereof on the ground of fraud, mistake or forgery; this being within the exclusive jurisdiction of the courts of probate: *Case of Broderick's Will*, 21 Wall.

Nor will a court of equity give relief by charging the executor of a will or a legatee with a trust in favor of a third person, alleged to be defrauded by the forged or fraudulent will, where the court of probate could afford relief by refusing probate of the will in whole or in part: *Id.*

The same rule applies to devises of real estate, of which the courts of law have exclusive jurisdiction, except in those states in which they are subjected to probate jurisdiction: *Id.*

Semble that where the courts of probate have not jurisdiction, or where the period for its further exercise has expired and no laches is attributable to the injured party, courts of equity will, without disturbing the operation of the will, interpose to give relief to parties injured by a fraudulent or forged will against those who are in possession of the decedent's estate or its proceeds, *malà fide*, or without consideration: *Id.*

But such relief will not be granted to parties who are in laches, as where from ignorance of the testator's death they made no effort to obtain relief until eight or nine years after the probate of his will: *Id.*

Ignorance of a fraud committed, which is the ordinary excuse for

delay, does not apply in such a case, especially when it is alleged that the circumstances of the fraud were publicly and generally known at the domicile of the testator shortly after his death : *Id.*

Whilst alterations in the jurisdiction of the state courts cannot affect the equitable jurisdiction of the Circuit Courts of the United States, so long as the equitable rights themselves remain, yet an enlargement of equitable rights may be administered by the Circuit Courts as well as by the courts of the state : *Id.*

EVIDENCE. See *Insurance.*

Witness—Party—Pleading—Lapse of Time as a Defence to a Bond.
—When a party is called as a witness by his adversary as on a cross-examination under Act of April 15th 1869, sect. 2, leading questions may be put to him and there may be drawn from him any facts or admissions which weaken his case or strengthen his adversary's : *Brubaker's Administrator v. Taylor*, 76 Pa.

The party so called is to be considered, as if originally offered and examined on his own behalf : *Id.*

The testimony of a *party* so called may be contradicted by proof of inconsistent declarations made out of court, without giving him an opportunity of explaining; his declarations, he being a party, are evidence in themselves : *Id.*

The plea of "nil debet," to a *sealed* instrument is bad on general demurrer; but if the party goes to trial without objection, it is not to be treated as a nullity; its effect is the same as upon simple contract : *Id.*

A long time, but less than twenty years, having elapsed from the maturity of a sealed note and bringing suit although not long enough to raise the presumption of payment in law; with corroborative circumstances justify submitting to the jury to presume payment. Such circumstances in this case : *Id.*

EXPRESS COMPANY. See *Common Carrier.*

FOREIGN JUDGMENT. See *United States Courts.*

Judgment in another State—Pleading—Authority of Attorney.—Where suit is brought on a record which shows that service was not made on the defendant, but which shows also that an appearance was entered for him by an attorney of the court, it is not allowable, under a plea of *nul tiel record* only, to prove that the attorney had no authority to appear : *Hill v. Mendenhall*, 21 Wall.

Presumptively, an attorney of a court of record, who appears for a party, has authority to appear for him; and though the party for whom he has appeared, when sued on a record in which judgment has been entered against him on such attorney's appearance, may prove that the attorney had no authority to appear, yet he can do this only on a special plea, or on such plea as under systems which do not follow the common-law system of pleading, is the equivalent of such plea : *Id.*

HUSBAND AND WIFE.

Deed of Trust—Delivery.—When on a bill by a wife against her husband to establish a deed of trust to a third party in her favor, and now

in the husband's possession, which deed she alleges that he executed and *delivered*, the husband, in an answer responsive to her bill, denies that he did deliver it, his denial comes to nothing if he admit in the same answer certain facts, as, *ex. gr.*, that he signed and sealed it, acknowledged it before a proper magistrate, and put it upon record; facts which of themselves may, under the circumstances of the case, constitute a delivery. In such a case he denies the law simply: *Adams v. Adams*, 21 Wall.

When husband and wife join in making a deed of property belonging to him, to a third party, in trust for the wife, the fact that such party was not in the least cognizant of what was done, and never heard of nor saw the deed until long afterwards, when he at once refused to accept the trust or in any way to act in it, does not affect the transaction as between the husband and wife: *Id.*

A deed by husband and wife conveying by formal words, *in presenti*, a portion of his real property in trust to a third party, for the wife's separate use, signed, sealed and acknowledged by both parties, all in form and put on record in the appropriate office by the husband, and afterwards spoken of by him to her and to other persons as a provision which he had made for her and her children against accident, here sustained as such trust in her favor, in the face of his answer that he never "delivered" the deed, and that owing to the disturbed and revolutionary character of the times (the rebellion then, August 1861, apparently waxing strong), and the threatened condition of the Federal city and other contingencies growing out of the war, he had caused the deed to be made and *partially* executed, so that upon short notice he could deliver it and make it effectual, retaining in the meantime the control of the title; and that he had himself put it on record, and that it had never been out of his possession except for the time necessary to have it recorded. This decision made, though the person named in the deed as trustee never heard of the deed until years afterwards, when he was called on by the wife, she being then divorced from her husband, to assert the trust: *Id.*

INSURANCE.

Answers by Insured—Parol Proof to counteract the Paper signed—Evidence.—The answer to a question put by an insurance company to an applicant for insurance, on a matter going to affect the risk, as written down by the agent of the company, when he takes the application for insurance, and which is signed by the applicant, may be proved by the evidence of persons who were present, not to have been the answer given by the applicant. *Insurance Co. v. Wilkinson*, 13 Wall. 222, affirmed: *Insurance Co. v. Mahone*, 21 Wall.

The opinion of a medical witness that a person was not worthy of insurance, in June of one year, is not competent evidence in a suit on a policy issued on the 30th of August of the same year; there being no issue made in the pleadings as to the health of the assured prior to the date of the policy: *Id.*

Under a stipulation that "all original papers filed in the case" (a suit against a life insurance company, on a policy of life insurance), and "which were competent evidence for either side," may be read in evidence, the written opinions of the medical examiner of the company, and of its agent appointed to examine risks, both made at the time of

the application for insurance and appended to the proposals for insurance, and both certifying that the risk was a first-class risk, are competent evidence on an issue of fraudulent representation to the company, to show that the company was not deceived: *Id.*

Evidence that the general agent of an insurance company, sent by it to examine into the circumstances connected with the death of a person insured, after so examining, expressed the opinion that it would "be best for the company to accept the situation and pay the amount of the policy," is not competent on a suit by the holders of the policy against the company: *Id.*

INTOXICATING LIQUORS. See *Tendor*.

LACHES. See *Attorney; Equity*.

LIMITATIONS, STATUTE OF. See *Evidence*.

Services by a Daughter—Action more than Six Years after.—A daughter sued her father's estate for wages for services after she attained twenty-one, her last services being more than six years before suit: *Held*, that she must prove an express contract and a clear, distinct and unequivocal acknowledgment of the existence of the debt, within six years of the commencement of suit: *Watson's Executors v. Stem*, 76 Pa.

Where there is a distinct admission of an existing indebtedness for a specific sum, it is presumed to be a valid debt, and the presumption must stand until overthrown by the attending circumstances on other evidence: *Id.*

NEGLIGENCE.

Railroad Crossing—Duty of Traveller—Evidence.—Weber driving a horse and light wagon over a railroad on the crossing of a county road was killed by a locomotive moving on the railroad. There was no express testimony as to whether he stopped and looked and listened before going on the railroad. *Held*, that the question of his negligence was for the jury: *Pennsylvania Railroad Co. v. Weber*, 76 Pa.

It is the duty of a traveller to stop and look and listen before crossing a railroad: not so doing is negligence in itself: *Id.*

The presumption in the absence of other evidence is that the traveller stops and looks and listens, before crossing a railroad: *Id.*

In an action against a railroad company for injuring such traveller, the burden is on the defendants to disprove care on part of plaintiff unless the plaintiff's own evidence shows contributory negligence: *Id.*

Although from the uncontradicted evidence in this case it might have been inferred that if the traveller had stopped and looked and listened he would have seen the approaching train, it was for the jury to determine the fact: *Id.*

OFFICER.

Appointment of not a Contract.—By law the first meeting of county commissioners commenced on the first Mouday in February in each year; on that day they appointed a clerk for one year from the first day of the succeeding April: *Held* to be in excess of their authority—the appointment should be made *each* year: *Koontz v. Franklin County*, 76 Pa

The appointment of a public officer and the services rendered by him are not in the nature of a contract: *Id.*

There can be no express or implied contract for the permanence of a salary of a public officer, unless as specifically provided in the Constitution: *Id.*

SURETY. See *Bond.*

TAXATION.

Agreement by State to exempt must be clear.—A railroad 455 miles long, forty-two miles of which were in a state other than that by which it was incorporated, held to be "doing business" within the state where the forty-two miles were, within the meaning of an act taxing all railroad companies "doing business within the state and upon whose road freight may be transported:" *Erie Railway Co. v. Pennsylvania*, 21 Wall.

It being settled law that the language by which a state surrenders its right of taxation, must be clear and unmistakable, a grant by one state to a corporation of another state to exercise a part of its franchise within the limits of the state making the grant, as above said, and laying a tax upon it at the time of the grant, does not, of itself, preclude a right of further taxation by the same state: *Id.*

TRESPASS.

Lies for a Continuance of a Wrongful Erection.—The mere continuance of a structure tortiously erected upon another's land, even after recovery and satisfaction of a judgment for its wrongful erection, is a trespass for which another action of trespass *quare clausum* will lie: *Russell v. Brown*, 63 Me.

TRUST. See *Husband and Wife.*

UNITED STATES COURTS. See *Admiralty; Equity.*

Review of Judgment of State Courts by the Supreme Court.—When, in a case in a state court, a right or immunity is set up under and by virtue of a judgment of a court of the United States, and the decision is against such right or immunity, a case is presented for removal and review by writ of error to the Supreme Court of the United States under the Act of February 5th 1867: *Dupasseur v. Rochereau*, 21 Wall.

In such a case, the Supreme Court will examine and inquire whether or not due validity and effect have been accorded to the judgment of the Federal court, and if they have not, and the right or immunity claimed has been thereby lost, it will reverse the judgment of the state court: *Id.*

Whether due validity and effect have or have not been accorded to the judgment of the Federal court will depend on the circumstances of the case. If jurisdiction of the case was acquired only by reason of the citizenship of the parties, and the state law alone was administered, then only such validity and effect can be claimed for the judgment as would be due to a judgment of the state courts under like circumstances: *Id.*

Judgment was rendered by the Circuit Court of the United States for Louisiana on a vendor's privilege and mortgage, declaring it to be the first lien and privilege on the land; and the marshal sold the property clear of all prior liens; and the mortgagee purchased, and paid into court for the benefit of subsequent liens, the surplus of his bid beyond

the amount of his own debt. This judgment and sale were set up by way of defence to a suit brought in the state court by another mortgagee, who claimed priority to the first mortgage, and who had not been made a party to the suit in the Circuit Court. The state court held that the plaintiff was not bound by the former judgment on the question of priority, not being a party to the suit. The case was brought to the Supreme Court of the United States by writ of error, and this court *held*, that the state court did not refuse to accord due force and effect to the judgment; that such a judgment in the state courts would not be conclusive on the point in question, and the judgment of the Circuit Court could not have any greater force or effect than judgments in the state courts: *Id.*

USAGE. See *Bills and Notes.*

VENDOR.

Agency—Delivery—Intention—Intoxicating Liquors.—It is a question of fact for the jury whether or not, when goods have been intrusted to a common carrier to be carried to a consignee, that is a delivery to the consignee for himself or as agent for another, though the existence of any such agency has never been disclosed to the vendors: *State of Maine v. Intoxicating Liquors, and James Garland, claimant*, 63 Me.

The disposition to be made of liquors libelled, as kept for unlawful sale, must be decided by the determination of the jury as to the intention in this respect, of the person who owns them, or who has authority from the owner to sell them. A design on the part of one who is a mere bailee of the owner (without authority from him to make sales) illegally to sell such liquors in this state, will not work a forfeiture: *Id.*

WILL. See *Equity.*

Provision—What is—Liability of Executor for Assets.—By his will a testator left certain real and personal estate to his widow during her life and widowhood, to revert to his heirs upon her death or marriage, and bequeathed the residue of his estate to his father. Two months after the testator's death, a child was born of his widow: *held*, that the reversionary clause above mentioned was not a provision for the child, under R. S., c. 74, § 8, and that, by virtue of that section, it took the same share in the estate that it would, had its father died intestate: *Waterman v. Hawkins*, 63 Me.

The judge of probate can only be relieved of the duty cast upon him by R. S., c. 74, § 8, of assigning to a posthumous child its share of its father's estate, by provision being made specifically for the unborn child. He cannot be disinherited, like a child living when the will is made, by its appearing that the omission to name him was intentional: *Id.*

The widow seasonably waived the provisions of the will intended for her benefit: *held*, that the child's share was properly taken wholly from the estate given to the residuary legatee: *Id.*

That the executor has delivered the bequeathed property to the legatee of it, before the birth of the child, is no defence to a suit brought for the child's benefit upon the executor's bond, to obtain its share; especially where the Court of Probate has made a decree, not appealed from, establishing and assigning such share under R. S., c. 74, § 8: *Id.*