Price, 4 Pick. 485; *Beckwith* v. *Angell*, 6 Conn. 315; *Oakley* v. *Booman*, 21 Wend. 588; *Greenaught* v. *Sneed*, 3 Ohio St. 415; Sto. Prom. Notes, § 133, 477; 1 Dan. Neg. Instr. 715. I find no cases where he has been treated simply as an endorser. And even if the presumption of law arising solely from the advancement of a past due note were the same as in the case of endorsement at the inception of the note, the facts and circumstances attending the endorsement in the present instance would remove the presumption and bring it within the authorities.

The decree of the chancellor must be reversed with costs, and a decree entered here in accordance with this opinion.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

SUPREME COURT OF MICHIGAN.[3]

SUPREME COURT COMMISSION OF OHIO.[4]

ADMIRALTY.

Proceedings in rem are exclusively cognisable in the admiralty, and the question whether a case is made for the recall of property released under bond, or stipulation in such a case, must, beyond all doubt, be determined by the courts empowered to hear and determine the matter in controversy in the pending suit: *United States* v. *Ames et al.*, S. C. U. S., Oct. Term 1878.

ANIMALS.

Owner's Liability for Injury by them.—The owner of domestic or other animals not naturally inclined to commit mischief, such as dogs, horses and oxen, is not liable for any injury committed by them to the person or personal property of another, unless it be shown such owner previously had notice of the animal's mischievous propensity, or that the injury is attributable to some other neglect on his part, it being in general necessary, in an action for injury committed by such animals, to allege and prove a *scienter*: *Marean* v. *Vanatta*, 88 Ills.

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1878. The cases will probably be reported in 7 or 8 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 88 Ills. Reports.

[3] From H. A. Chaney, Esq., Reporter; to appear in 40 Michigan Reports.

[4] From E. L. DeWitt, Esq., Reporter; to appear in 32 Ohio State Reports.

Bank.

Liability of Stockholder.—Where a clause of the charter of a bank was in the following language, viz., "the persons and property of the stockholders shall at all times be liable, pledged and bound for the redemption of bills and notes at any time issued, in proportion to the number of shares that each individual and corporation may hold and possess:" *Held*, that this provision created a personal liability on the part of the stockholder for all the notes of the bank, in the proportion that the shares held by him bore to all the shares of its capital stock, which any bill-holder could enforce upon the insolvency of the bank, by separate action to the extent of his claim: *Mills* v. *Scott*, S. C. U. S., Oct. Term 1878.

An action for debt will lie where the amount of the bank's outstanding indebtedness and the number of shares held by the stockholder can be stated. In such cases, the extent of the latter's liability is fixed, and the amount with which he should be charged is a matter of mere arithmetical calculation: *Id.*

Actions for debt will always lie where the amount sought to be recovered is certain or can be ascertained from fixed data by computation: *Id.*

Bankruptcy.

Fraud, definition of within the meaning of the Bankrupt Act—Fraud, as used in sect. 5117 of the Revised Statutes, means positive fraud or fraud in fact, involving moral turpitude or intentional wrong, as does embezzlement; and not implied fraud or fraud in law, which may exist without imputation of bad faith or immorality: *Wolf et al.* v. *Stix et al.*, S. C. U. S., Oct. Term 1878.

It does not include such fraud as the law implies from the purchase of property from a debtor with the intent thereby to hinder and delay his creditors in the collection of their debts: *Id.*

Such a purchase does not create a debt from the purchaser to the creditors. As between the debtor and the purchaser, the sale is good, but as between a creditor and the purchaser it is void. The purchaser does not by his purchase subject himself to a liability to pay to creditors the value of what he buys. All the risk he runs is that the sale may be avoided and the property reclaimed for the benefit of creditors: *Id.*

To come within this exception in the Bankrupt Act the *debt* must be created by fraud: *Id.*

Bills and Notes.

Release of Joint-maker's liability.—A joint-maker, signing for accommodation merely, is released by an extension granted without his knowledge or acquiescence: *Barron* v. *Cady*, 40 Mich.

Boundary.

Estoppel by Deed.—Where parties claiming under the same grantor recognise a boundary between them, and one of them afterwards conveys with reference to that boundary and without encroaching upon any rights existing in third parties, he and those who claim under him are

bound by the description as against his grantee, and a change of the recognised boundary by a re-survey will not affect the grantee's rights: *Fahey* v. *Marsh*, 40 Mich.

Certiorari.

Not a Writ of Right.—The common-law writ of *certiorari*, when used for the purpose of correcting the proceedings of inferior tribunals, is not a writ of right, but it issues only upon application to the court upon special cause shown; and when great public detriment or inconvenience may result from interfering with their proceedings, the writ should be denied: *Trustees, &c.*, v. *School Directors*, 88 Ills.

Chattel Mortgage.

When for Security only, it is not necessarily fraudulent.—Although a chattel mortgage on its face may appear to be given to secure an absolute debt, yet, if in good faith it is given in the most part to secure against a contingent liability as surety, the latter being a good consideration, it will not thereby be held fraudulent and void as to creditors of the mortgagor, and although the mortgagee has not in fact paid anything as surety, still, if he will have to pay debts as such, he may hold the property or its proceeds to apply upon the debt for which he is surety: *Goodheart* v. *Johnson*, 88 Ills.

Common Carrier.

Whether bound to carry to Destination.—Although goods shipped at New York city are marked to the consignee at Bloomington, Ills., the presumption of a contract to carry them to the latter point from the acceptance of the same so marked, may be contradicted and overcome, by proof of an express contract to carry to Chicago only: *Merchants' Dispatch and Trans. Co.* v. *Moore*, 88 Ills.

Constitutional Law.

Police Power of States, not infringed by Constitution.—The police power of the states was not surrendered when the people of the United States conferred upon Congress the general power to regulate commerce with foreign nations and between the several states: *Patterson* v. *Kentucky*, S. C. U. S., Oct. Term 1878.

The police power extends, at least, to the protection of the lives, the health and the property of the community against the injurious exercise by any citizen of his own rights: *Id.*

State legislation, strictly and legitimately for police purposes, does not, in the sense of the constitution, necessarily intrench upon any authority which has been confided expressly or by necessary implication to the national government: *Id.*

A statute of Kentucky provided that certain oils used for illuminating purposes should be inspected by an authorized state officer before being used, sold or offered for sale—such as ignite or permanently burn at a temperature of 130 degrees Fahrenheit and upwards, were recognised by the statute as standard oils, while those which ignite or permanently burn at a less temperature were condemned as unsafe for illuminating purposes. *Held*, that this statute was a police regulation, and did not conflict with any provision of the federal constitution: *Id.*

CONTRACT.

Right to Rescind.—When two parties contract to act as agents to canvass for and sell sewing machines for a company in a particular locality, and the company withdraws them from such place, they will have the right to rescind the contract and cease to act; but if they have given a bond, with sureties, for the performance of their duties, which reserves to the company the right to change the character of the employment, within the scope of the business of the company, they will not have the right to rescind, although directed to canvass in a different locality: *Howe Sewing Machine Co.* v. *Layman*, 88 Ill.

CORPORATION. See *Bank; Evidence; Officer.*

Contract of.—The contract of a corporation is presumed to be *infra vires* until the contrary is made to appear: *The Southern Express Co.* v. *The Western North Carolina Railroad Co. et al.*, S. C. U. S., Oct. Term 1878.

CRIMINAL LAW. See *Witness.*

Absence of Guilty Intent—Evidence.—Where one does an act apparently in violation of a criminal statute, but, in fact, under circumstances that tend to show a want of guilty intention, the excusing circumstances may be given in evidence on the trial, to show his good faith in the transaction, where that is a material element, or that he was ignorant of the facts that would make his acts criminal: *Farrell* v. *The State*, 32 Ohio St.

A person indicted for selling intoxicating liquors, in violation of the provisions of section 1 of the act to provide against the evils resulting from the sale of intoxicating liquors in the state of Ohio, may, on the trial, show that at the time he bought the article alleged in the indictment to be intoxicating liquor, it was represented to him to be free from alcoholic properties—that he bought it with the understanding and believing that it was not intoxicating liquor, and sold it with such understanding and belief: *Id.*

DAMAGES.

Measure of Damages for defects in Machinery bought on Contract.—The measure of damages for putting up a steam boiler with such defects as to make it worth less than the contract price, is the difference between its value in its defective condition and its value if completed in compliance with the contract: *White* v. *Brockway*, 40 Mich.

DEBT. See *Bank.*

DEBTOR AND CREDITOR

Purchases made in contemplation of Insolvency—Fraud.—A merchant who had sold goods to a firm just before its failure claimed to have relied on the assurance of a partner that their assets exceeded their liabilities. It was shown that when the vendor's agent had asked one of the firm how he reconciled this assurance with the failure, the latter said something about having lost a good deal of money in a series of years in failures: *Held*, that even though this answer may not have

been material, its admission was harmless: *Shipman* v. *Seymour*, 40 Mich.

An agent was instructed to inquire into a customer's credit and to sell to him if he was satisfied with his answers. He sent an order to his principal without communicating the answers, and the order was filled: *Held*, that the principal had a right to assume that the inquiries were made and that the answers were satisfactory to the agent before he sent the order: *Id.*

In an action involving the good faith of a firm in buying goods just before they failed, a written answer to an inquiry by the vendor as to their credit, which though true in fact was false in spirit and tended to mislead, was admissible in evidence: *Id.*

Any purchase obtained by false representations as to solvency made by a firm within a period before its failure equal to the period of credit usually allowed to it upon its purchases, may be shown as bearing on the question whether another purchase made within that period was fraudulent or not, in contemplation of insolvency: *Id.*

No inference of fraud can be drawn from the fact that money not yet due remains unpaid, but there is no error in admitting testimony that the purchase price of goods purchased by means of a falsehood, is still unpaid: *Id.*

It is an act of bad faith for a mortgagee to withhold from record a mortgage given him by a debtor in order to shield the latter from demands that have been contracted in ignorance of its existence: *Id.*

When the good faith of a mortgage is in question, the time when it was filed and the use afterwards made of it, may be shown: *Id.*

A purchase made by one who is insolvent and with the purpose not to pay, is void even though the buyer has not made false representations: *Id.*

DEED. See *Boundary.*

Proof to Impeach acknowledgment.—Very clear and satisfactory proof is required to impeach a certificate of the acknowledgment of a deed or mortgage. The uncorroborated testimony of the grantor, or party executing the same, is not sufficient to overcome the evidence afforded by the officer's certificate of the fact, especially when the execution of the deed is not denied, or any undue influence, coercion or fraud shown: *McPherson* v. *Sanborn*, 88 Ills.

EJECTMENT.

Right of recovery between successive Mortgagees.—In ejectment, where both parties are mortgagees, and they both claim from a common source, the party having the oldest mortgage, from the common mortgagor, who first forecloses and acquires a deed must prevail, as having the paramount legal title. If the junior mortgagee has equitable rights by not being made a party to the foreclosure, he must resort to a court of chancery: *Aholtz* v. *Zeliar*, 88 Ills

ESTOPPEL. See *Boundary; United States.*

EVIDENCE. See *Debtor and Creditor; Insurance.*

Proof of Relationship.—Interrogatories relating to family relation-

ship, dates of decease and marriages, may well be answered on the basis of family tradition instead of direct personal knowledge: *Van Sickle* v. *Gibson*, 40 Mich.

Parol Evidence to modify Written Agreements—Resolutions of Appointment—Corporation.—Where a private corporation has power to employ a superintendent, the entry in its proper record book, of a resolution of appointment passed by its directors, is admissible to help establish a claim for salary: *Kalamazoo Novelty Manufacturing Works* v. *Macalister*, 40 Mich.

Where the immediate issue is whether there was a contract in writing, oral testimony bearing on that issue cannot be excluded on the assumption that such writing exists: *Id.*

A resolution of appointment is *prima facie* not a contract, and can be withdrawn or altered before acceptance: *Id.*

The rule excluding oral evidence to affect a written contract does not apply to a corporate resolution appointing an officer, so as to exclude evidence to show the actual establishment of contract relations under it: *Id.*

Must relate to the Issue.—Evidence must be confined to the issue, and even for the purpose of corroborating the testimony of witnesses, an inquiry into facts entirely collateral, leading to a controversy over matters altogether foreign to the case before the court cannot be permitted: *Henkle* v. *McClure*, 32 Ohio St.

FORMER ADJUDICATION. See *Set-off.*

FRAUD. See *Bankruptcy; Debtor and Creditor.*

FRAUDS, STATUTE OF.

Parol promise to Pay—What is another's Debt.—E. contracts with S. to build a house, and S. contracts with G. to furnish labor and materials. G. refuses to furnish such labor and materials, except upon a promise made to him by E. that he himself will pay the bill out of funds coming to S.: *Held*, to be a contract not within the Statute of Frauds so as to make a writing necessary: *Estabrook* v. *Gebhart*, 32 Ohio St.

The work being done, and it being agreed by all that E. should pay G., who was to give up his claim against S. and look to E. alone for payment; this is such a contract as need not be in writing under the statute: *Id.*

GOVERNMENT. See *United States.*

HUSBAND AND WIFE. See *Trust; Witness*

Married Woman—Charging her Separate Estate—Subscription to Corporation.—An indebtedness incurred by a married woman, for the benefit of herself or her separate property, and upon its credit, and the giving of a note or other obligation therefor, are facts from which a court of equity may imply and enforce a charge against such property: *Rice* v. *Railroad Co.*, 32 Ohio St.

But an intention to charge such property, will not be implied, merely from the giving of a note or other obligation by a married woman: *Id.*

Neither will her separate property be made liable for her general

engagements, in the absence of a contract valid in law to bind the same, or of such facts and circumstances as make it, as between the parties, just and equitable: *Id.*

When a married woman subscribes to capital stock of a railroad corporation, by which she agrees to take and pay for a certain number of shares of said stock, but makes default in payment, and action is brought to charge her separate property with the amount of such subscription: *Held*, That in the absence of any proof that either party dealt on the credit of such property, equity will not imply or enforce a charge against the same: *Id.*

Dower—Mortgage.—Where, in a suit brought to enforce a vendor's lien for purchase-money, to which the vendee and his wife, and also the holder of a subsequent mortgage executed by the vendee alone, are made defendants, and the proceeds of sale of the land covered by the liens are more than sufficient to discharge the vendor's claim, the wife is entitled, as against such mortgagees, to assert her contingent right of dower in the surplus fund: *Unger* v. *Leiter*, 32 Ohio St.

But such right of the wife must be protected in a mode which will not interfere with the right of the mortgagee to subject the whole estate of the husband in the premises, to the present satisfaction of the mortgage debt, in its order of priority: *Id.*

Therefore, when such surplus is insufficient to discharge fully the mortgage debt, the court should not (against the will of the mortgagee) direct one-third of the surplus fund to be put on interest by the sheriff, during the life of the wife, for the purpose of securing her contingent dower interest: *Id.*

The proper course, in such case, is to award to the wife from the surplus fund, the value of her contingent right of dower therein, to be ascertained by reference to the tables of recognised authority on that subject, in connection with the state of health, and constitutional vigor of the wife and her husband: *Id.*

INJUNCTION. See *Nuisance.*

INSURANCE.

Perils of Navigation—Seaworthiness—Evidence.—When a steamboat is shown to have been seaworthy at the time she was insured, and no intervening circumstance occurs to render her unseaworthy, her seaworthiness is presumed to continue; but when, during the life of the policy, she springs a dangerous leak, without apparent cause, a new presumption arises—that of unseaworthiness; yet, as this new presumption is not a conclusive one, the owners are not required, to entitle them to recover for the loss, to show the identical cause of her loss, but may show a probable cause: *Insurance Co.* v. *Tobin*, 32 Ohio St.

In case of loss from some unknown cause, a person conversant with steamboat navigation, and who is, from actual experience, familiar with the perils attending steamboat navigation on the privileged waters and other of the western rivers, may give his opinion, and say whether a steamboat, while being navigated thereon, with ordinary skill and care, might, without apparent or known cause, suddenly spring a leak and sink from some unknown peril of the river: *Id.*

When the actual effect of a known agency is unknown, and the opinion of one familiar, by actual observation, with the matter under consideration, is the best testimony the subject-matter to be investigated affords, the opinion of such person may be received as testimony; hence, it was competent to receive as testimony the opinion of skilled river navigators, familiar with the subject, as to the effect the wave-swells made by a larger steamboat would have upon a smaller and heavily-laden one, while passing: *Id.*

The statements of a steamboat captain, made in the discharge of his duty as commander of the vessel, while she is in a sinking condition, and he is in the act of seeking aid of another to relieve her from present peril of loss, as to her perilous condition, how and where she was leaking, made under such circumstances, his statements accompanying his acts, and explanatory of them, are *res gestæ*, and therefore competent testimony: *Id.*

Waiver of Forfeiture.—Where a mutual insurance company imposes forfeiture, in case a loss occurs while its assessments are still unpaid, but its local agent receives past due assessments with knowledge of a loss and forwards them to the company without notifying them of it, and they receive them and two or three weeks afterward order the loss to be paid when adjusted, they cannot afterward refuse payment on the ground of delay in paying the assessments, since they have waived that by receiving them when over due and ordering payment: *Farmers' Mutual Fire Ins. Co.* v. *Bowen*, 40 Mich.

A note written by plaintiff's attorney before suit, and expressing the opinion that defendant is not liable, is not admissible in evidence for the defence: *Id.*

INTOXICATING LIQUORS. See *Criminal Law.*

JURY. See *Trial.*

MASTER AND SERVANT.

Risks of Employment—Injury to Railroad Employee —A switchman while standing on the foot-board of a tender that was backing on a side-track, let go the hand-rail to shift his lantern from one hand to the other, and was thrown off by a jerk caused by a worn rail left there by his fellow employees, the trackmen. He had full means of knowing the condition of the track, and the custom of the road as to using worn rails for side-tracks: *Held*, that the risk was one of the ordinary risks of his employment, and that he had no ground of recovery: *Michigan Central Railroad Co.* v. *Austin*, 40 Mich

MORTGAGE. See *Debtor and Creditor; Ejectment; Husband and Wife.*

NUISANCE.

Injunction against threatened Nuisance.—Whether injunction to restrain threatened injury is matter of right—*Quære.* *Hall* v. *Rood*, 40 Mich.

Injunction will not be granted where such relief is disproportionate to the injury: *Id.*

A wooden building encroached six inches on a private alley for more than twenty years. The owner attempted to veneer it with brick, where-

by it would encroach three inches more. It did not appear that the encroachment would materially injure the right of way. *Held*, that the adjacent owner was not entitled to remedy by injunction: *Id.*

Officer.

When delegated authority presumed.—The law presumes that persons acting in a public office have been duly appointed, and are acting with authority, until the contrary is shown. If officers of corporations openly exercise a power which presupposes a delegated authority for the purpose, the acts of such officers will be deemed rightful, and the delegated authority will be presumed: *Keely* v. *Sanders et al.*, S. C. U. S., Oct. Term 1878.

An officer *de facto* is not a mere usurper, nor yet within the sanction of law, but one who, *colore officii*, claims and assumes to exercise official authority, is reputed to have it, and the community acquiesces accordingly: *Hussey* v. *Smith*, S. C. U. S., Oct. Term 1878.

The acts of such officers are held to be valid because the public good requires it: *Id.*

Parent and Child.

Liability of Father for Necessaries supplied to Infant.—Where a father has supplied his minor son with necessaries, or is ready to supply them, he cannot be bound by a contract the son may make with a third person for the purchase of goods without his authority, although they may be regarded as necessaries: *Johnson* v. *Smallwood*, 88 Ills.

Payment.

When voluntary, cannot be recovered back, though demand illegal and written Protest filed—Taxation.—Where a party pays an illegal demand with a full knowledge of all the facts which render such demand illegal, without an immediate and urgent necessity therefor, or unless to release his person or property from detention, or to prevent an immediate seizure of his person or property, such payment must be deemed voluntary and cannot be recovered back. And the fact that the party at the time of making the payment files a written protest does not make the payment involuntary: *Union Pacific Railroad Co.* v. *County Commissioners of Dodge Co.*, S. C. U. S., Oct. Term 1878.

When, however, a party not liable to taxation is called upon peremptorily to pay upon a tax-warrant, and he can save himself and his property in no other way than by paying the illegal demand, he may give notice that he so pays it by duress and not voluntarily, and by showing that he is not liable, recover it back: *Id.*

Where, however, no attempt has been made to serve a tax-warrant, but before any active steps whatever have been taken to enforce the collection of taxes, one present himself at the tax-office, and in the usual course of business pays in full everything that is charged against him, accompanying the payment, however, with a general protest against the legality of the charges and a notice that suit would be commenced to recover back the full amount that is paid: *Held*, that such a payment is not compulsory in such a sense as to give a right to recover the money back; *Id.*

RAILROAD. See *Master and Servant.*

SALE. See *Debtor and Creditor.*

SET-OFF.

Set-off of Judgment—Former Adjudication.—B. had a contract with M., but sued him on the common counts before a justice to recover back an overpayment. He did not put the contract in issue, though he gave M. credits under it. M. filed no set-off, but immediately sued B. before another justice for the whole amount of his bill: *Held*, that the judgment in the first suit did not bar the second: *McEwen* v. *Bigelow*, 40 Mich.

A plaintiff cannot fix the amount of a contested bill by giving credit for what he claims it should be: *Id.*

A defendant can withhold his claim of set-off to be litigated in another suit: *Id.*

A judgment recovered before one justice can be ascertained and applied by another in satisfaction of a counter claim recovered before him by the other party: *Id.*

STATUTE.

When Remedy is exclusive—Where a statute creates a new offence by prohibiting and making unlawful anything which was lawful before, and provides a specific remedy against such new offence (not antecedently unlawful) by a particular sanction and method of proceeding, that method of proceeding and none other, must be preserved: *Commissioners, &c.* v. *Bank of Findley*, 32 Ohio St.

By sect. 15 of "an act to establish an independent treasury of the state of Ohio," any person advising, aiding or participating in the loaning of the public moneys, is, with the public officer who makes such loan, guilty of embezzlement, and, on conviction, is subject to imprisonment and to a fine in double the amount so embezzled. Such fine is a judgment in favor of the party whose funds are so embezzled, to be collected as other judgments at law, and can only be satisfied or released by such party: *Held*, that for a violation of said section, by advising, aiding or participating in lending the public moneys, this section provides for a new offence, and gives a specific remedy to the injured party in the judgment therein provided for, and such remedy is exclusive of a civil action for the same offence: *Id.*

TAXATION.

Presumption against Exemption.—The power of taxation is an attribute of sovereignty, and is essential to every independent government. Stripped of this power it must perish. Whoever, therefore, claims its surrender must show it in language which will admit of no other reasonable construction. If a doubt arise as to the intent of the legislature, it must be solved in favor of the state: *Hoge* v. *Richmond and Danville Railroad Co.*, S. C. U. S., Oct. Term 1878.

TRIAL.

Practice—Opening and Conclusion to Jury.—The party holding the affirmative of the issue, as a general rule, ought to open and close the

evidence and argument, and there being a number of issues, if the plaintiff holds the affirmative of any one, or if any evidence material to his case is required of him, he ought to begin. In determining the question, however, upon a complicated state of pleading, a liberal discretion is allowed to the court trying the cause, and this discretion will not be reviewed, except upon a plain case of error: *Montgomery* v. *Swindler*, 32 Ohio St.

Juror—Misconduct of.—The mere fact that a juror in a civil case drank intoxicating liquor during an adjournment of the court while the trial was in progress, is not a sufficient reason for granting a new trial, unless there be reason to suspect it may have had some influence on the final result of the case: *Pittsburgh, Cincinnati and St. Louis Railway Co.* v. *Porter*, 32 Ohio St.

Any attempt on the part of the prevailing party or his attorney in the case, to corrupt a juror, though it be not shown to be successful, is a good ground for a new trial: *Id.*

Where it appears that during the progress of a trial, the prevailing party or his attorney has furnished intoxicating liquors to a juror, it is a good ground for a new trial, unless it is clearly shown that it was not intended to influence his action in the case, and that it had no influence on his mind as a juror: *Id.*

TRUST.

Implied—Evidence—Husband and Wife.—A trust raised by implication of law may be proved by parol: *Newton et al.* v. *Taylor*, 32 Ohio St.

An implied or constructive trust may be established from the acts of a party who has obtained money upon the faith of his agreement to buy lands in the name of his wife, and, having bought them, takes the title to himself: *Id.*

A husband, so receiving money, which would not have been advanced unless upon the agreement that it was for the wife's benefit, and to be invested in her name, is an agent for the wife, and by taking the deed to himself, under such circumstances, makes himself a trustee *ex maleficio*: *Id.*

If the husband is a participant in inducing the purchase for the wife's benefit, receives the money for that purpose to invest in her name, and then buys for himself, this is such a fraud as will create a trust against him and those claiming under him with notice: *Id.*

When it arises.—Where one accepts notes of another in trust to pay such person's debt, and agrees with the creditor to either turn over the note to him, or when collected to pay him the money, and enters upon the performance of the undertaking, there will arise an obligation on his part to execute the trust faithfully, and an action lies in favor of the creditor for a failure to do so, he makes himself a trustee for the creditor, even though he receives no compensation: *Walden* v. *Karr*, 88 Ills.

UNITED STATES.

Not suable directly or indirectly—Judgment in Ejectment against its Officers not an Estoppel to the Government.—The United States filed a bill to quiet the title to certain lots in its possession in San Francisco; the defendant set up, by way of estoppel, certain judgments in eject-

ment rendered by the state courts, at the suit of his grantor, against certain officers of the government who, as its agents, had possession of the lots; in those actions the district-attorney, and additional counsel employed by the Secretary of the Treasury appeared for the defendants, and the title was contested on the trial: *Held*, that these facts constituted no estoppel against the government, although in California a judgment in ejectment is, in ordinary cases, an estoppel both against the tenant in possession and against the landlord who has notice of the suit: *Carr* v. *The United States*, S. C. U. S., Oct. Term 1878.

The United States cannot be estopped by proceedings against its tenants or agents; and cannot be sued without its consent; and such consent can only be given by act of Congress. No state can pass a law making the United States suable in its courts: *Id.*

Without an act of Congress, no direct proceedings will lie at the suit of an individual against the United States or its property; and no officer of the government can waive its privilege in this respect, nor lawfully consent that such a suit may be prosecuted so as to bind the government: *Id.*

The government can only hold possession of its property by means of its officers or agents, and to allow them to be dispossessed by suit, would enable parties always to compel the government to come into court and litigate its rights. Therefore, when it becomes apparent by the pleadings, or the proofs, that the possession assailed is the possession of the government by its agents, the jurisdiction of the court ought to cease, and its proceedings cannot be set up as an estoppel against the government: *Id.*

The cases in which the property of the government may be subjected to claims against it, are those in which the property is in juridical possession by the act of the government itself, or has become so without violating its possession, and it seeks the aid of the court to establish or reclaim its rights therein; in such cases it is equitable that the prior rights of others to the same property should be adjudicated and allowed. The cases of *The Siren*, 7 Wall. 152, and *The Davis*, 10 Id. 15, cited and approved: *Id.*

Vendor and Vendee.

Rescission by Vendee—Surrender of Possession.—A purchaser of land by contract, who has paid the price and taken possession, cannot maintain an action to recover back the purchase-money, without giving up the possession of the premises. He cannot retain the use of the estate and maintain an action to recover back what he has paid: *Long* v. *Saunders*, 88 Ills.

Witness.

Wife not competent in Prosecution of Husband.—A wife is not a competent witness for her husband in a criminal prosecution; and her incompetency in such cases is not removed by either the criminal or civil codes of procedure: *Schultz* v. *State*, 32 Ohio St.