ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS OF COMMON LAW.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME COURT OF MISSOURI.[3]
COURT OF ERRORS AND APPEALS OF NEW JERSEY.[4]
SUPREME COURT OF OREGON.[5]
SUPREME COURT OF RHODE ISLAND.[6]
SUPREME COURT OF APPEALS OF WEST VIRGINIA.[7]

ACCRETION. See *Riparian Owner.*

ACTION.

Assumption of Mortgage by Purchaser of Land—Statute of Frauds.—A. made three successive mortgages of his realty to B., C., and D. He then sold this realty to E., describing the mortgages in his deed of conveyance and adding the words, "which said mortgages are hereby assumed by E., as part of the consideration of this deed." Subsequently B., the first mortgagee, sold the realty under the powers of his mortgage. D., the third mortgagee, then brought *assumpsit* against E., the purchaser from A., for the amount of A.'s mortgage-note to D.: *Held*, that E. was liable for the amount of the note: *Urquhart* v. *Brayton*, 12 R. I.

E.'s liability was under an implied contract, and hence not subject to the Statute of Frauds: *Id.*

E.'s liability, not arising from a sealed contract, might be enforced by *assumpsit*: *Id.*

ADMIRALTY.

Collision—Warrant to Arrest Mail Packet belonging to Foreign State—Treaty-making Power of Crown—Jurisdiction.—A packet conveying mails and carrying on commerce, does not, notwithstanding that she belongs to the sovereign of a foreign state, and is officered by officers commissioned by him, come within the category of vessels which are exempt from process of law; and it is not competent to the Crown, without the authority of Parliament, to clothe such a vessel with the immunity of a foreign ship of war, so as to deprive a British subject of his right to proceed against her: *The Parlement Belge*, L. R., 4 Prob. Div.

Salvage—Towage Contract—Counter Claim.—A tug under contract

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[1] Selected from recent numbers of the Law Reports.

[2] From Hon. N. L. Freeman, Reporter; to appear in 89 Ills. Reports.

[3] From T. K. Skinker, Esq., Reporter; to appear in 68 Mo. Reports.

[4] From G. D. W. Vroom, Esq., Reporter; to appear in vol. 12 of his reports.

[5] Cases decided during the present term and to be reported in 7 or 8 Oregon Reports.

[6] From Arnold Green, Esq., Reporter; to appear in 12 R. I. Reports.

[7] From Hon. Robert White, Reporter, to appear in 14 W. Va. Reports.

to tow a ship is not entitled to salvage remuneration for rescuing the ship from danger brought about by the tug's negligent performance of her towage contract. A tug agreed to tow a ship from Liverpool round the Skerries for a fixed sum. The tug imprudently towed the ship in bad weather too near a lee shore, and the weather becoming worse during the performance of the agreed towage service, the hawser parted, and the ship was placed in a position of danger, and was compelled to let go her anchors to avoid being driven on shore. From this position she was rescued by the tug, having been compelled to slip her anchors and chains, which were lost: *Held*, that the tug was not entitled to claim salvage remuneration, and that her owners were liable to pay for the loss of the anchors and chains: *The Robert Dixon*, L. R., 4 Prob. Div.

AGENT.

Payments made to when Good.—Payments made to an agent are good and obligatory upon the principal in all cases where the agent is authorized to receive payment, either by express authority, from the usage of trade, or from the particular dealings between the parties: *Noble* v. *Nugent*, 89 Ills.

ASSUMPSIT. See *Action.*

ATTORNEY.

Action for Fees.—Counsel fees cannot be recovered by action, unless a contract fixing the amount can be shown: *Hopper* v. *Ludlum*, 12 Vroom.

BAILMENT.

Pledge.—A. endorsed a note made by W. and delivered it to W. to raise funds on. W. pledged it to P. for a debt due, which was afterwards paid. W., owing another debt to P., wrote to P., while the note formerly pledged was still in P.'s hands, that W. had arranged with his creditors for a time and wished the debt due to P. carried for a while, P. to hold as collateral as before the note endorsed by A. A. was secured for his endorsement. In an action by P. against A. the indorser: *Held*, that the letter of W. to P. implied an actual pledge, and was not a mere offer to pledge. *Held*, further, that P. could recover: *Providence Thread Co.* v. *Aldrich*, 12 R. I.

BILLS AND NOTES. See *Partnership.*

CHATTEL MORTGAGE. See *Debtor and Creditor.*

COLLISION. See *Admiralty.*

CONSTITUTIONAL LAW.

Drainage of Low Lands—Ancient Usage.—The legislative right to order low lands to be drained, at the expense of the owners, rests entirely on ancient custom, and cannot be deduced from the power to legislate, unless in the particular case, the lands are so situated or conditioned as to make their reclamation a matter of direct public concern: *Hoagland* v. *Wurts*, 12 Vroom.

In this state ancient usage sanctions legislation that provides for the drainage of low lands at the expense of the owners. But such legisla-

tion, to be valid, must conform to the usage upon which the right to legislate is founded: *Id.*

A law authorized the cost of a drainage scheme to be estimated, and such estimated expense to be allotted to the landowner in proportion fixed by the mere judgment of the appraisers, in advance of the doing of the work. *Held*, that such a method was a departure from the old usage, and was illegal: *Id.*

CONTRACT. See *Sale.*

Entire or Divisible.—A contract to cut and deliver at the boom of appellant's mill, one million feet of good, sound merchantable logs within the year, at $4.25 per thousand feet, to be scaled and received as each one hundred thousand feet are put in floating water of the creek, held to be a severable and not an entire contract: *Tenny et al.* v. *Mulvaney et al.*, S. C., Oregon.

Parties Contracting by Letter.—The defendant applied for shares in the plaintiffs' company. The company allotted the shares to the defendant, and duly addressed to him and posted a letter containing the notice of allotment, but the letter never was received by him. *Held*, by BAGGALLAY and THESIGER, L.JJ., BRAMWELL, L. J., dissenting, that the defendant was a shareholder: *British and American Telegraph Co.* v. *Colson*, Law Rep., 6 Ex. 18, overruled: *Household Fire Ins. Co.* v. *Grant*, Law Rep. 4 Exch. Div.

CORPORATION. See *Criminal Law.*

Estoppel.—Stockholders who subscribe and organize a corporation under a charter, and reap the benefits of the law, and thereby induce persons to credit the corporation, or make deposits on the faith of its being legally organized, and of the individual liability of its members, will be estopped from alleging that the charter is unconstitutional as a means of avoiding their personal liability as fixed by such charter: *McCarthy* v. *Lavasche*, 89 Ills.

CRIMINAL LAW. See *Verdict.*

Libel—Indictment.—Whether matter published is obscene or not is a question of law and not of fact, and an indictment for printing, having in possession and giving away an obscene and indecent pamphlet, must set out the supposed obscene matter, unless the publication is in the hands of the defendant, or out of the power of the prosecution, or the matter is too gross and obscene to be spread on the records of the court, either of which facts, if existing, should be averred as an excuse for failing to set out the obscene matters: *McNair* v. *The People*, 89 Ills.

Corporation—Indictment of.—A corporation may be indicted for "Sabbath breaking" under the 16th and 17th sections of chapter 149 of the Code of W. Va.: *State* v. *B. & O. Railroad Co.*, 14 W. Va.

Murder.—Section 1, p. 445 Wagner's Statutes, provides that every murder * * * which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary *or other felony*, shall be deemed murder in the first degree. *Held*, that the words "other felony" here refer to some felony collateral to the homicide, and not to those acts of personal violence to the deceased which are necessary and

constituent elements of the homicide itself. They are merged in it, and do not, when consummated, constitute an offence distinct from the homicide. Section 33 p. 450, Wag. Stat., makes them a felony only when death does not ensue. Hence, where a homicide results from blows given wilfully and maliciously, and with intent to inflict great bodily harm, but without the intent to kill, it does not constitute murder in the first degree. NORTON, J., and SHERWOOD, C. J., dissenting: *State* v. *Shock*, 68 Mo.

DAMAGES.

Liquidated by the Parties in Advance.—Where in a written contract to cut a certain number of cords of wood by a given time, it was stipulated in the contract that in case the wood was not all cut by the time named in the contract, the laborer should forfeit five cents per cord on what wood he had cut. *Held*, that such stipulation fixes the measure of damages to be paid by the party failing to cut the wood: *Lung Louis* v. *Brown*, S. C., Oregon.

DEBTOR AND CREDITOR.

Taking Separate Obligation for Joint Debt.—Where there is an express agreement between the creditor and a partnership or a joint debtor, whereby the creditor agrees to take and accepts the individual note or obligation of the partner or joint debtor in discharge of the partnership or joint debt, such agreement is founded upon a valid consideration, and will have the effect to discharge the partnership or joint debt: *Bowyer* v. *Martin*, 14 W. Va.

Such an agreement and acceptance would be equally binding if it were to take the individual obligations or notes of each partner or joint debtor, each for his portion of the joint or partnership debt, and would release the individuals from the joint or partnership debt: *Id.*

Mortgage of Chattels—Possession and Power of Sale remaining in Mortgagor.—Where it appears either on the face of the mortgage or by parol evidence that the mortgagee of personal property has given to the mortgagor an unlimited power to dispose of the property mortgaged for the use of the mortgagor, and the property remains in the hands of the mortgagor, the mortgage is void as to purchasers and attaching creditors of the mortgagor: *Orton* v. *Orton*, S. C., Oregon.

DRAINAGE. See *Constitutional Law.*

EMINENT DOMAIN.

Choice by Public—Mine.—When lands are sought to be taken for a public use, the public authorities, in the absence of any statutory provision to the contrary, have a reasonable time given them, after the ascertainment of the expense of the scheme, to decide whether to accept or refuse the land at the price fixed: *O'Neill* v. *Freeholders of the County of Hudson*, 12 Vroom.

Commissioners duly appointed by force of a special statute, having reported a valuation of certain lands intended to be added to the premises connected with the county jail, &c., and a motion being made at a meeting of the board of freeholders to accept such lands at the price thus fixed, and such motion being rejected, *held*, that such vote

was a rejection of the scheme, and was a finality, and that the power given by the act was exhausted: *Id.*

Evidence.

Laws of Foreign Country—Interpretation of Writings.—Courts do not take judicial notice of the laws of a foreign country, but they must be proved as facts. The unwritten law of a foreign country must be shown by the oral testimony of witnesses skilled therein, and the published reports of the decisions of such country: *State* v. *Lung Louis*, S. C., Oregon.

The construction and legal effect of a written agreement, when introduced in evidence, is a question of law for the court, and should not be left to the determination of the jury: *Id.*

Execution

Money in Custodia Legis.—Money in the hands of the sheriff collected on execution is *in custodia legis*, and is not subject to levy on a subsequent execution against the plaintiff in the first: *The State ex. rel. Kansas City National Bank* v. *Boothe*, 68 Mo.

Personal property of W. was seized under an attachment, and being of a perishable nature, was sold by the sheriff and the proceeds deposited in a bank on his general account. The attachment was afterwards dissolved, and an execution issued for the amount of the debt, which was delivered to the sheriff with directions to levy the same on the money in his hands: *Held*, that the money so held by the sheriff could not be seized on execution: *Id.*

Foreign Law. See *Evidence.*

Frauds, Statute of. See *Action; Specific Performance.*

Guaranty.

For Rent—Meaning of "Occupy."—B. signed an agreement by which he guaranteed the payment of M.'s rent "so long as said M. shall occupy said premises." *Held*, that the word "occupy" denoted the whole period of tenancy: *Morrow* v. *Brady*, 12 R. I.

Husband and Wife.

Sale of Wife's Goods by Husband.—Where a husband takes the personal property of his wife and sells the same to a third person, and she is not present at the sale, or afforded an opportunity to give notice of her rights, and has made no sale to her husband, or delivery to him under any contract of sale, she will not be estopped from asserting her title as against the purchaser, though he had no notice of her title. A vendor usually cannot transfer any better or greater title than he himself holds: *Klein* v. *Seibold*, 89 Ills.

International Law. See *Admiralty.*

Landlord and Tenant.

Notice to Quit.—The defendant was tenant to the plaintiff from year to year of a shop and premises: the plaintiff gave the defendant notice

in writing to quit on a day terminating the tenancy. The notice contained the following clause: "And I hereby further give you notice that should you retain possession of the premises after the day before mentioned the annual rental of the premises now held by you from me will be 160*l.*, payable quarterly, in advance." *Held*, by BRAMWELL and COTTON, L.JJ., BRETT, L. J., dissenting, that the notice to quit being otherwise sufficient, it was not rendered invalid by the additional clause: *Ahearn* v. *Bellman*, Law Rep., 4 Exch. Div.

MASTER AND SERVANT. See *Negligence.*

MORTGAGE. See *Action; Debtor and Creditor; Receiver.*

Notice of an Unrecorded Mortgage.—Any fact or circumstance that tends to give notice or informs a party that there is an encumbrance upon land, is sufficient to charge him with notice of its existence. And where an administrator's deed, under which the purchaser claimed, recited a decree which required a mortgage to be given, and that the purchaser had complied with the decree, this is sufficient notice to any one dealing with such purchaser of the existence of an unrecorded mortgage given by such purchaser: *Ætna Life Ins. Co.* v. *Ford*, 89 Ills.

Parties.—A bill to foreclose a mortgage should be brought in the name of the equitable owner of the notes, and not in the name of the payee for his use, but the objection that it is brought in the payee's name should be urged in the court below to afford an opportunity to obviate by amendment: *Irish* v. *Sharp*, 89 Ills.

MUNICIPAL CORPORATION.

A municipal corporation will not be allowed to purchase realty in order by controling it to compel a taxpayer to abandon or compromise his litigation with the municipality: *Place* v. *City of Providence*, 12 R. I.

City Ordinance may be shown to be Unreasonable.—A city ordinance is not conclusive, but may be shown to be unreasonable. In a suit on a special tax bill for the building of a sidewalk, evidence is admissible to show that the ordinance authorizing its construction was unnecessary and oppressive—it being located in an uninhabited portion of the city and disconnected with any other street or sidewalk: *Carrigan* v. *Gage* 68 Mo.

Debts of Execution against.—A writ of *fieri facias* may issue, under the code of West Virginia, against a political public municipal corporation, upon a judgment for a debt or damages rendered by a court of competent jurisdiction: *Brown* v. *Gates*, 14 W. Va.

But by implication the taxes and public revenues of such corporations are exempt: *Id.*

It seems that such a corporation may sometimes own some descriptions of property strictly private, or interests in such property, or have debts of a strictly private nature due to it which are subject to levy and to the lien of such writ of *fieri facias*. But perhaps property charged with public trusts, or owned or used by such corporation for public purposes, such as fire-engines, &c., are not subject to levy or to

the lien of a *fieri facias*, upon the same principle that the taxes and revenues of such corporation are not subject to the levy or lien of a *fieri facias*, but as that question is not involved in this case it is not now decided: *Id.*

NEGLIGENCE. See *New Trial; Railroad.*

Master and Servant—Defective Machinery.—In an action brought by a workman against the corporation which employed him, to recover compensation for injuries which the plaintiff alleged were caused by the negligence of the defendant in not keeping in proper repair certain machinery operated by the plaintiff, in not keeping this machinery properly protected and boxed, and in not keeping the room in which this machinery was placed, properly lighted, it appeared that the plaintiff was a man of mature years and ordinary intelligence, and had worked at the machinery in question for four years; that the room was lighted as usual; that he had operated the machinery for weeks in its imperfect state without protest or complaint; and that no statute in Rhode Island required such machinery to be boxed: *Held*, that the plaintiff could not recover: *Kelly* v. *Silver Spring Company*, 12 R. I.

Held, further, that one voluntarily entering a dangerous service, knowing the danger, himself assumes the risk of his employment: *Id.*

Held, further, that one continuing to work exposed to a known danger, without complaint, without any promise that the danger shall be removed, and not under stress of special exigency, consents to the risk of his employment: *Id.*

Use of Noxious Gas—Injury to Plants.—Plants in the plaintiff's green-house connected with the public sewers, were injured by illuminating gas which escaped from the mains of the Gas Company, the defendant, into the sewers, and thence found its way to the green-houses. It appeared that when the sewers were built by the city of Providence, the earth was not properly packed, and the subsequent settling opened a leak in the gas pipes, which caused the injury complained of. In an action against the Gas Company: *Held*, that being in charge of a dangerous material, the Gas Company was bound both itself to exercise due care proportioned to the risk, and also to use similar care in preventing careless interference with its pipes by others. The company could not prevent the construction of the sewer, but was bound to see that the earth was properly put back; that the pipes were properly supported, and that all needful repairs were made with reasonable speed. *Held*, further, that the jury was to decide whether the company had exercised such care. *Held*, further, that evidence of the presence of gas in other green-houses connected with the same sewers was properly admitted: *Butcher* v. *Providence Gas Company*, 12 R. I.

NEW TRIAL.

Insufficiency of Damages—Negligence.—The court will grant a new trial, in an action for personal injuries sustained through the defendants' negligence, on the ground of the inadequacy of the damages found by the jury, when it appears upon the facts proved that the jury must have omitted to take into consideration some of the elements of damage properly involved in the plaintiff's claim: *Phillips* v *Railway Co.*, L. R., 4 Q. B. Div.

PARTNERSHIP.

Style of—Name of Individual Member—Signature to Bill of Exchange —Liability of Firm.—If the name of a partnership firm be merely the name of an individual partner, proof that he signed such name to a bill of exchange is not enough to make the firm liable on the bill. To establish the liability, the holder of the bill must further prove that the signature was put to it by the authority and for the purposes of the firm: *Yorkshire Banking Co.* v. *Beatson,* L. R., 4 C. P. Div

POSSESSION. See *Specific Performance.*

POST. See *Contract.*

RAILROAD.

Ticket issued by One Company—Train of Another—Negligence—Liability of Carriers.—The defendants have running powers over the South Western Railway between Hammersmith and the New Richmond station of the South Western Railway Company. Above the booking office at the New Richmond station are the words, "South Western and Metropolitan Booking Office and District Railway." The plaintiff took from the clerk there employed by the South Western Railway a return ticket to Hammersmith and back. The ticket was not headed with the name of either company, but bore on it the words "Via District Railway." On his return journey from Hammersmith to Richmond the plaintiff travelled with his ticket in a carriage of a train belonging to the defendants and under the management of their servants. The carriage being unsuited for the New Richmond station platform, the plaintiff, on alighting there, fell and was hurt. He brought an action against the defendants, and the jury found negligence in them. *Held,* that having invited or permitted the plaintiff to travel in their train, the defendants were bound to make reasonable provision for his safety; and that there was evidence of their liability, even assuming the ticket not to have been issued by or for them, but by the South Western Company: *Foulkes* v. *Metropolitan District Railway Co.*, Law Rep. C. P. Div.

RECEIVER.

Of Rents and Profits in Foreclosure Cases.—A court of chancery may, where the security afforded by a mortgage is inadequate and the mortgagor is unable to pay the deficiency, and a foreclosure proceeding is pending, appoint a receiver to collect the rents and profits of the mortgaged premises, if there are circumstances of fraud or bad faith on the part of the mortgagor, or other facts involved which would render a denial of the relief sought inequitable and unjust: *Haas* v. *Chicago Building Soc.*, 89 Ills.

RIPARIAN OWNER.

Navigable Stream—Meandered River—Accretions.—Where a navigable river was meandered in making the public surveys, and the United States has granted the land bounded by the meander line, the grantee takes to the river. The stream, and not the meander line, is the true boundary line of the riparian owner. Accretions to such land belong to the riparian owner, and cannot be selected as swamp and

overflowed land. An application filed in the office of the secretary of state to purchase such accretions as swamp and overflowed lands is a mere nullity, and casts no cloud on the title of the riparian owner: *Minto* v. *Delaney*, S. C., Oregon.

SALE. See *Husband and Wife.*

Contract, not Divisible.—The plaintiffs contracted to sell to the defendants twenty-five tons (more or less) Penang pepper, October $\frac{\text{and}}{\text{or}}$ November shipment, name of vessel or vessels, marks and particulars to be declared within sixty days from date of bill of lading. Within the stipulated time the plaintiffs declared twenty-five tons by a vessel called the B., only twenty tons of which complied with the terms of the contract as to shipment, and made no further declaration. The defendants declined to accept any portion of the pepper: *Held* (by COTTON and THESIGER, L.JJ., BRETT, L. J., dissenting), that the contract was entire, and that the defendants were not bound to accept the twenty tons, but were entitled to insist upon the delivery of twenty-five tons, according to the contract: *Reuter* v. *Sala*, L. R., 4 C. P. Div.

SALVAGE. See *Admiralty.*

SHERIFF.

Garnishment of Money Deposited by a Sheriff.—Where a sheriff has moneys deposited in bank as such sheriff belonging to various execution creditors, and the bank is garnisheed for an individual debt of the sheriff, he may, as trustee for and on behalf of the persons for whose use he holds such moneys interplead, showing the facts of the case, and thereby protect the fund for those entitled to the same: *Meadowcroft* v. *Agnew*, 89 Ills.

SPECIFIC PERFORMANCE.

Parol Contract for Sale of Land—Possession.—A court of equity will not be justified in decreeing the specific performance of a parol contract for the sale of land, unless such contract is explicit in its terms; nor unless the boundaries of the land are already defined. Where possession is relied on as an act of part performance of a parol contract, in order to take the case out of the operation of the statute requiring contracts in relation to the sale of lands to be in writing, such possession must be visible, notorious and exclusive on the part of the vendee, and must have been taken under and in pursuance of the parol agreement: *Brown* v. *Lord*, S. C., Oregon.

STATUTE.

Intention to Govern in Interpretation of.—Statutes are sometimes extended to cases not within the letter of them, and cases are sometimes excluded from the operation of statutes, though within the letter, on the principle that what is within the intention of the makers of the statute is within the statute, though not within the letter, and that what is not within the intention of the makers, is not within the statute, it being an acknowledged rule in the construction of statutes that the intention of the makers ought to be regarded: *Brown* v. *Gates*, 14 W. Va.

City Ordinance—Effect of Repeal on Pending Prosecution.—The repeal of an ordinance pending a prosecution under it operates to release the defendant, unless it is otherwise provided in the repealing ordinance: *City of Kansas* v. *White*, 68 Mo.

Effect of Repeal.—The general rule is that when an act of the legislature is repealed without a saving clause, it must be considered, except as to transactions passed and closed, as if it had never existed: *Curran* v. *Owens*, 14 W. Va.

A right of action which does not exist at common law but depends solely upon statute, falls with the repeal of the statute without a saving clause or a general law saving pending suits, unless that right has been carried into judgment: *Id.*

Whether the legislature, by its Repealing Act, intended to affect suits pending, in the absence of a general law upon the subject, must be gathered from the Repealing Act itself: *Id.*

If the Repealing Act does not substantially re-enact a section of the law repealed which gave the right of action, and there is no saving clause as to pending suits, and no general law on the subject, the legislative intent is clear that all suits brought upon the repealed act fall unless carried into judgment: *Id.*

But if the section in the old act which gave the right of action is substantially re-enacted in the repealing statute, so that there is no moment of time when the repealed section was not the law, although no reservation is made as to pending suits, the re-enacted section continues in uninterrupted operation, and suits brought thereon are saved, but otherwise, as in this case, if not substantially re-enacted: *Id.*

SURETY.

Misrepresentation of Facts to.—When, with the knowledge and assent of the creditor, there is a misrepresentation with regard to material facts, and had the real facts been known and not misstated, they might reasonably have prevented the security from entering into his contract of suretyship, such contract will not be binding on the surety, though such misrepresentation was not made with a fraudulent purpose: *Warren* v. *Branch*, 14 W. Va.

Unless inquired of by a surety, a creditor is under no obligation to disclose facts in no manner connected with the business which is the subject of the suretyship, though such facts would probably have a decided influence on the surety in determining whether he would enter into the contract, but if a material fact connected with the contract of suretyship which might influence the surety in entering into the contract, is *fraudulently* concealed with a view to benefit the creditor, such concealment, though no inquiry is made by the surety, would discharge him: *Id.*

But though the simple failure of a creditor to communicate to a surety a fact material for the surety to know, and though this fact be connected with the contract of suretyship, will not generally vitiate the contract unless the concealment by the creditor was fraudulent even though the principal in procuring the security to enter into the contract acted fraudulently, yet if the dealings are such as fairly to lead the creditor, if a reasonable man, to believe that the principal must have used

fraud by suppressing facts or otherwise, in procuring the surety to enter into the contract, and such fraud has been used, it will vitiate the contract as to the surety though no act of fraud be traced to the creditor: *Id.*

TAXATION.

When Enjoined.—A court of chancery has jurisdiction to enjoin the collection of a tax, and will exercise it in all cases where the tax has been levied without authority of law, or where the property is not subject to taxation: *Kimball* v. *Merchants' Savings Loan and Trust Co.*, 89 Ills.

TENDER.

Bringing Money into Court.—A party who, in a court of equity or law, relies on a tender of money in satisfaction of a debt, must bring into court when he files his pleading setting up such tender, the amount of money so tendered, unless this production of the money is waived by the other side. And if he fails to do so, this defence to the payment of the debt and any proof in relation thereto will be disregarded by the court: *Gilkeson* v. *Smith*, 14 W. Va.

TRUST AND TRUSTEE.

Resulting Trust—Parent and Child.—Where a father purchases a tract of land in the name of a son, and in the written contract the vendor is required, upon the payment of the purchase-money, to convey the land to the son, and the father pays the purchase-money, the son can, in a court of equity, compel the vendor to convey the land to him, there being in such case no resulting trust in the father: *Lorentz* v. *Lorentz, Ex'r*, 14 W. Va.

VENDOR AND PURCHASER. See *Action.*

Lien of Vendor.—A married woman bought certain realty of K., and in part payment gave her sole note secured by her sole mortgage. The note not being paid and the record title to the realty remaining in her name unencumbered, K. filed a bill in equity against her and her husband to establish his vendor's lien for the purchase-money on the realty in question. *Held*, that he was entitled to the relief claimed: *Kent* v. *Gerhard*, 12 R. I.

VERDICT.

Juror—Impeachment of Verdict.—A juror will not be allowed to impeach his verdict by his affidavit that he would not have found the defendant guilty, if he had known that the punishment fixed by law for the crime charged was death: *The State* v. *Shock*, 68 Mo.

WILL.

Undue Influence.—When a will is shown to have been duly executed, the law presumes competency in the testator, and that it contains his unconstrained wishes in regard to distribution of his property, but this presumption may be rebutted by showing that it was obtained by fraud and undue influence: *Greenwood* v. *Cline*, S. C., Oregon.

What constitutes undue influence is one of those inquiries which, in its nature, cannot be referred to any general rule, but depends upon the circumstances of each case: *Id.*