

I am of opinion that so much of the judgment as is appealed from must be reversed.

BRETT, L. J., agreed.

Here we have another proof that the American courts, and not the English, have adopted the true doctrine in regard to the acquisition of a right to light, by what is called a prescriptive enjoyment of it; for in all analogous instances the English courts themselves act upon the same rule which we apply to a claim of a right to light. All the arguments in favor of establishing a right to light by long use of it apply equally in favor of acquiring a right to air by the same length of enjoyment; all the considerations against gaining the rights in the latter case are equally forcible in the former. It is impossible to be acquiring prescriptive rights against another by a series of acts, or a long continuation of enjoyment which the other party has no legal right to complain of, or prevent by any known legal remedy. The very foundation of a prescriptive right—the most essential of all others—the *adverse*

use, is wanting. If a person can not acquire by prescription a right to a continued flow of air to his windmill, as decided in *Webb v. Bird*, nor to a free current of air to his chimney-tops, as held in our principal case, how can he any more gain such right to a continued flow of light into his windows?

If a house-owner can not acquire by any length of time a prescriptive right to support from his adjoining neighbor's soil, as held in *Angus v. Dalton*, 17 Am. Law Reg. 645, why should he be allowed to do so by mere overlooking his neighbor's ground? The argument of Chief Justice COCKBURN, in *Angus v. Dalton*, is unanswerable, and, although a majority of the judges in the Court of Appeal did not agree with it (see 27 Weekly Rep.) it remains to be seen whether it will not be finally held to be the common law of England.

EDMUND H. BENNETT.

ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS OF EQUITY.¹

SUPREME COURT OF ILLINOIS.²

COURT OF CHANCERY OF NEW JERSEY.³

SUPREME COURT OF VERMONT.⁴

AGENT. See *Broker*.

ATTORNEY.

Authority to receive Money for Client—Possession of Mortgage-Deed executed by Client.—The mere fact that a solicitor is in possession of a mortgage-deed executed by his client, does not authorize him to receive the mortgage-money for the client; *Ex parte Swinbanks*, Law Rep. 11 Ch. Div.

¹ Selected from recent numbers of the Law Reports.

² From Hon. N. L. Freeman, Reporter; to appear in 89 Ills. Rep.

³ From John H. Stewart, Esq., Reporter; to appear in 31 N. J. Equity Rep.

⁴ From J. W. Rowell, Esq., Reporter; to appear in 51 Vt. Rep.

If the client has not received the money, the mortgagee cannot maintain the validity of the mortgage-deed, by showing that he paid the money to the solicitor, unless he can show that the solicitor was expressly authorized by the client to receive it: *Id.*

Viney v. Chaplin, 2 DeG. & J. 468, followed. *Barker v. Greenwood*, 2 Y. & C., Ex. 414, distinguished: *Id.*

BANK AND BANKER.

Agent—Following Money—Priority.—A banking company were employed as agents to collect money and to remit it to their employers. The bank received the money in cash, placed it with the other cash of the bank, and informed their employers that the money had been remitted; but before the money was actually remitted, the bank went into liquidation: *Held*, that the money was part of the general assets of the bank, and that the employers of the bank were not entitled to be paid, in priority to the other creditors: *In re West of England and South Wales District Bank*, Law Rep. 11 Ch. Div.

Pennell v. Deffell, 4 D. M. & G. 372, considered: *Id.*

BROKER.

• *Finding a Purchaser—Specific Performance—Agent.*—A person was employed to find a purchaser for a piece of property, the price to be fixed by the vendor. Having found a purchaser, with whom the vendor agreed as to the price; *held*, that the conduct of the agent having been fair, no further duty was imposed upon him in the matter, by reason of such special, qualified agency: *Hughes v. Young*, 31 N. J. Eq.

The purchaser was to give a mortgage for part of the purchase-money. He offered to pay the whole in cash, if desired. *Held*, that, under the circumstances, the fact of his insolvency would not avail as a defence against specific performance: *Id.*

The buyer did not disclose the fact that he was, in fact, purchasing for another person. *Held*, that he was under no duty to disclose his principal: *Id.*

CLUB.

Power of Expulsion—Rights of Member—Misconduct—Injunction.—The committee of a club, being a quasi-judicial tribunal, are bound in proceeding under their rules against a member of the club for alleged misconduct, to act according to the ordinary rules of justice, and are not to convict him of an offence warranting his expulsion from the club, without giving him due notice of their intention to proceed against him and affording him an opportunity of defending or palliating his conduct; and the court will, at the instance of any member so proceeded against, restrain the committee by injunction from interfering with his rights of membership: *Fisher v. Keane*, Law Rep. 11 Ch. Div.

COMMON CARRIER. See *Stoppage in Transitu.*

Limitation of Liability.—The right of a carrier to limit its common-law liability by contract, if made fairly and advisedly on behalf of the shipper cannot be denied; but the mere fact that the bill of lading given, contains a clause exempting the carrier from the loss of goods by fire, cannot be held conclusive of such a contract: *Merchants' Desp. Trans. Co. v. Leysor*, 89 Ills.

CORPORATION.

Liability of a Corporation in the Hands of Trustees.—Where a railroad is in the hands of trustees exercising the same function the corporation is formed to exercise, and who were selected by the corporation as well as its bondholders, and are operating the road to earn money to be applied in payment of the debts of the corporation, the trustees will be regarded as the agents of the corporation, so far as relates to the transaction of business with third persons, and such persons may sue the corporation and recover damages in respect to transactions had with such trustees, and will not be compelled to sue the trustees: *Grand Tower Manf. Co. v. Ullman*, 89 Ills.

Garnishment of a Stockholder.—A stockholder in an incorporated company, who owes the company for unpaid stock, upon which a call has been made and notice given, is liable to be garnisheed on a judgment recovered against the company: *Meints v. East St. Louis Rail Mill Co.*, 89 Ills.

DEED.

Rectification of in Equity—Mistake.—Relief prayed by a bill to rectify a deed, whereby through the mutual mistake of the parties, a lot of land was conveyed instead of an adjoining one, can only be granted by transferring to such adjoining lot the encumbrances put on the former by the parties: *Weston v. Wilson*, 31 N. J. Eq.

DOWER.

Right as against Heir taking by Deed—Measure of Value where Improvements made.—There is no difference in the legal effect of a conveyance to a stranger for a valuable consideration and one to a child for a good consideration, as regards the right of the grantor's widow to dower in the premises conveyed. In assessing the value of her dower, in such case, she will be confined to the improvements on the land, at the time of the conveyance, although after the conveyance, the grantor may have erected a house on the premises with his own means: *Stookey v. Stookey*, 89 Ills.

EQUITY. See *Deed*.

Practice—Cross-Bill.—A cross-bill is not necessary in a suit between partners, wherein the complainant seeks a dissolution and an account from the defendant, to enable the latter to get an account from the former, or to obtain relief against fraudulent practices of the complainant in giving the note of the firm without consideration, for his own benefit, and in buying up the paper of the concern at a discount, for his advantage, with a view to obtaining the full amount thereof out of the assets of the firm. Such a bill will not be sustained on demurrer: *Johnson v. Buttlar*, 31 N. J. Eq.

EXECUTOR AND ADMINISTRATOR. See *Sale*.

Trustee Process Summoning Administrator.—An administrator holding money, proceeds of a settled estate, is chargeable as trustee of one entitled thereto in distribution of such proceeds, on trustee process summoning him in his personal and not in his representative capacity: *Hoyt v. Christie*, 51 Vt.

GUARANTY.

Absolute undertaking—Surety.—B. sold certain property to W., taking W.'s notes therefor, signed by W. and by H. as surety, agreeing that if W. should sell the property, the indebtedness might be transferred to his purchasers. W. sold the property to L. and E., they agreeing to assume his indebtedness. B. met the parties pursuant to a notice from S. W., who acted in that matter as agent for W., and was asked to transfer the debt. He suggested that as it would take some time to compute the notes, it would be as well for L. and E. to assume the debt by writing on the notes themselves, to which all assented, whereupon L. and E. wrote on the back of each note, "We hereby assume and agree to pay this note," and dated and signed the same. S. W. then understood that L. and E. had assumed the debt absolutely, and that the signers of the notes were relieved from further liability. B., when afterwards inquired of by the defendants, said, in effect, that the defendants need have no concern, as the debt was that of other parties. *Held*, that the undertaking of L. and E. was absolute; and that as the contract to substitute the indebtedness of L. and E. for that of H. and W. was executed in a manner satisfactory to B., H. and W. were relieved from all liability on account of the original indebtedness: *Nelson v. Wells*, 51 Vt.

HUSBAND AND WIFE.

Wife's Chose in Action—Reduction into Possession—Receipt by Agent of Husband and Wife.—The receipt by an agent, appointed by husband and wife, of money forming part of the estate of an intestate of which the wife is administratrix, amounts to a reduction into possession by the husband of the wife's distributive share of the money. *Huntley v. Griffith*, F. Moore 452; *Goldsborough* 159, followed: *In re Barber*, Law Rep. 11 Ch. Div.

INFANT.

Contract—Fraudulent Representations.—Plaintiff, falsely representing himself to be of full age, bought a wagon of defendant, paying part of the purchase-money, and giving his promissory note secured by a lien on the wagon for the remainder. After plaintiff had used the wagon until the use he had had of it was worth more than what he had paid, and until it had depreciated by more than a like sum, he made default in payment, whereupon defendant took the wagon under his lien, and sold it at auction. Plaintiff thereupon brought assumpsit for the money he had paid. *Held*, that as defendant retook the wagon, plaintiff was relieved of the duty of returning it or rescinding the contract, and might recover, notwithstanding the depreciation and the value of the use of the wagon; and that it made no difference that plaintiff falsely represented himself of age, as such a representation could add nothing to the obligation of the contract: *Whitcomb v. Joslyn*, 51 Vt.

INSURANCE.

Proposal for Policy on Life—Concealment.—In a proposal by M. to an assurance office for an assurance on his life, in answer to the question, "Has a proposal ever been made on your life at any other office or offices? If so, where? Was it accepted at the ordinary premium, or at an increased premium, or declined?" his answer was, "Insured now

in two offices for 16,000*l.* at ordinary rates. Policies effected last year." The proposal was accepted, but the office having subsequently ascertained that the life of M. had been declined by several offices: *Held*, that there had been a material concealment, and that the office was entitled to have the contract set aside. *London Assurance v. Mansel*, Law Rep. 11 Ch. Div.

LEGAL REPRESENTATIVES.

Term defined—The term "legal representatives," in its strict and literal acceptance, means executors or administrators, but it is frequently used in a different sense, even in statutes, as well as in wills, deeds, contracts, &c., and, therefore, the question of intention is to be considered in its construction—not gathered solely from the instrument itself, but, in part from concomitant circumstances, and the existing state of things, and the relative situation of the parties to be affected by it: *Bowman v. Long*, 89 Ills.

LIMITATIONS, STATUTE OF.

Evidence—Burden of Proof.—In debt on judgment of a court of another state rendered more than eight years before action brought, defendant gave notice of reliance on the Statute of Limitations, and on the fact that during more than eight years of that time he had resided in this state and had known attachable property therein. *Held*, that the allegation as to residence and the possession of property was surplusage as part of the defence, and needed not to be proved; and that the burden was on plaintiff to prove whatever he relied on to show that the statute had not run: *Cipen v. Woodrow*, 51 Vt.

SALE. See *Stoppage in Transitu*.

Executor's Sale—Caveat Emptor.—In the absence of actual fraud on the part of an executor to induce the purchase of land of his testator, the rule of *caveat emptor* applies in all its strictness. The general rule is, that in such sales a purchaser taking no covenants to cover defects in title, is absolutely without relief, unless a fraud has been practised upon him, sufficient to vitiate the contract: *Bond v. Ramsey*, 89 Ills.

SHERIFF'S SALE.

If requirements substantially complied with Purchaser will take Title.—Where the proceedings of an officer on an execution are in substantial compliance with the law, and operate by their legal force, unaided by any consent of the judgment-debtor, to transfer to the purchaser the title of the property sold thereunder, the sale though somewhat informal and defective, is a good sheriff's sale, and will protect the purchaser in his right to the property without a change of possession: *Fitzpatrick v. Peabody*, 51 Vt.

SPECIFIC PERFORMANCE. See *Broker*.

STOPPAGE IN TRANSITU.

End of Transit—Delivery to Purchaser—Contract to deliver Goods free on board Ship to be named by Purchaser.—Delivery of goods by the vendor to a carrier, even though the carrier be nominated and hired by the purchaser, is only constructive, not actual delivery to the pur-

chaser, inasmuch as the contract with a carrier to carry goods does not make the carrier the agent or servant of the person with whom he contracts: *Ex parte Rosevear Clay Co.*, Law Rep. 11 Ch. Div.

Till the goods are in the actual possession of the purchaser the transit is not at an end, and it makes no difference that their ultimate destination has not been communicated by the purchaser to the vendor: *Id.*

SUBROGATION.

Volunteer Creditor.—A mere stranger or volunteer cannot, by paying a debt for which another is bound, be subrogated to the creditor's rights in respect to the security given by the real debtor, but if the person who pays the debt is compelled to do so for the protection of his own interests and rights, then the substitution should be made: *Young v. Morgan*, 89 Ills.

TRUST AND TRUSTEE.

Discharge of Trustee—Unwillingness to Act.—A trustee is at liberty to apply to this court for his release from the trust, on the sole ground of unwillingness to act further therein: *Green v. Blackwell*, 31 N. J. Eq.

The fact that he is one of two trustees, and that the deed of trust provides that, in case of the death of one, the survivor shall nominate, and with the consent and approbation of the parties to the settlement or the survivors or survivor of them, appoint a new trustee in the place of the one who has died, will not induce the court to refuse the release. The court will supply the place of the trustee released: *Id.*

That a very large and unexpected addition to the trust estate has been made, is in itself, a good reason for releasing an unwilling trustee: *Id.*

TRUSTEE PROCESS. See *Executor*.

USURY.

Who may raise the Question.—The right of action to recover for money paid as usury is personal to the contracting party. The purchaser of property subject to a mortgage given to secure notes drawing usurious interest, who assumes to pay such notes, cannot, therefore, recover money paid for such interest thereon: *Spaulding v. Davis*, 51 Vt.

VENDOR AND PURCHASER.

Rescission for Fraud.—To resist the payment of the purchase-money of land for fraud, the purchaser must elect to rescind the contract, and it is doubtful whether his grantees after his death can reconvey the property so as to work a rescission of the contract and enable him to resist payment: *Bond v. Ramsey*, 89 Ills.

WILL.

Devises and Descent regulated by Statute.—The rules providing for the descent of property have their origin in municipal regulation, and so too the power to dispose of property by will is conferred by statute, and may be curtailed or enlarged from time to time as the legislative department may deem wise and for the best interest of the people: *Emmert v. Hays*, 89 Ills.