Cross v. *Guthery*, 2 Root 90; *Patton* v. *Freeman*, 1 Coxe 113; *Piscataqua Bank* v. *Furnley*, 1 Miles 312; 8 W. & S. 77; 41 Penn. St. 42; *Alison* v. *Bank of Virginia*, 6 Rand. 204, a valuable case on this point; *Story* v. *Hammond*, 4 Ham. 376; *Blassingame* v. *Glaves*, 6 B. Mon. 38; *Lofton* v. *Vogles*, 17 Ind. 106; *Short* v. *Baker*, 23 Id. 148; *Nash* v. *Primm*, 1 Mo. 178; *Mann* v. *Trabue*, Id. 709; *Ballew* v. *Alexander*, 6 Humph. 432; *White* v. *Fort*, 3 Hawks 251; *Robinson* v. *Culp*, 3 Brev. 302; *Cannon* v. *Barris*, 1 Hill, S. C. 372; *Mitchell* v. *Mims*, 8 Tex. 6.

A few American courts seem to have followed the English lead, as to some crimes, forgetful of the maxim, *cessante ratione*, &c.: *Foster* v. *Tucker*, 3 Greenl. 458; *Boody* v. *Keating*, 4 Id. 164; *Crowell* v. *Merrick*, 19 Me. 392; *Belknap* v. *Milliken*, 23 Id. 381; *McGrew* v. *Cato*, Minor 8; *Middleton* v. *Holmes*, 3 Porter 424; *Martin* v. *Martin*, 25 Ala. 201; *Bell* v. *Troy*, 35 Id. 184; *Adams* v. *Barrett*, 5 Geo. 404; *Neal* v. *Farmer*, 9 Geo. 555. In Maine, and perhaps some other states, statutes have been passed, modifying what was held by the courts to be the common law on this point. See *Nowlan* v. *Griffin*, 68 Me. 235.

EDMUND H. BENNETT.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

SUPREME COURT OF MICHIGAN.[3]

SUPREME COURT OF NEW JERSEY.[4]

SUPREME COURT COMMISSION OF OHIO.[5]

SUPREME COURT OF VERMONT.[6]

ACTION.

New Promise to remove Discharge.—The promise by which a discharged debt of a bankrupt is revived must be clear, distinct and unequivocal. It may be an absolute or a conditional promise, but in either case it must be unequivocal, and the occurrence of the condition must be averred if the promise be conditional: *St. John* v. *Stephenson*, 90 Ill.

BANKRUPTCY. See *Action.*

BILLS AND NOTES.

Due Diligence to charge Endorser.—Where a notary makes inquiry at the bank where paper is payable, and receives information from the cashier as to the residence of the endorser, upon faith of which the notary addresses the notice of protest, the jury are justified in finding that he has used due diligence: *Herbert* v. *Servin*, 12 Vroom.

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1879. The cases will probably be reported in 10 or 11 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 90 Ills. Reports.

[3] From Henry A. Chaney, Esq., Reporter; to appear in 38 Mich. Reports.

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

[5] From E. L. De Witt, Esq., Reporter; to appear in 33 Ohio St. Reports.

[6] From J. W. Rowell, Esq., Reporter; to appear in 51 Vermont Reports.

An agreement between the holder of the note and a creditor of the maker, by which the holder was to accept fifty per cent. of his claim, to be secured by mortgage, which said assumption by the creditor so secured should be in full satisfaction of the holder's claim against the maker, does not discharge the endorser because the maker is a stranger to the agreement: *Id.*

Partnership Note in lieu of Note of a Prior Firm.—Where parties succeeding in a partnership to all the rights and liabilities of a former firm, give new notes in lieu and satisfaction of a debt of such firm, the payment of which they had assumed, their liability to pay the debt will be a sufficient consideration for the notes: *Silverman* v. *Chase*, 90 Ills.

Constitutional Law.

Construction of State Constitution by United States Courts—Decisions of State Courts followed.—Where the U. S. Supreme Court construes a state constitution in ignorance of the fact that the highest tribunal of the state has given a different construction it will in a subsequent case follow the construction given by the state courts when it appears that such construction has become a rule of property and that no rights have been acquired which will be affected by the change of decision: *Fairfield* v. *County of Gallatin*, S. C. U. S. Oct. Term 1879.

Contract.

When not Implied for Services—Family Relation.—When one person goes to reside with another as a member of his family, with the understanding that he is simply to go and come as he pleases, and work as he pleases, and be treated and entertained as a member of the family, there is no presumption that he intends to charge for what he does, nor that he is to be charged for what he receives. If he designs to change this relation, he must notify the other party: *Dunlap* v. *Allen*, 90 Ills.

Implied Promise.—Plaintiff proposed to defendant that he take plaintiff and his wife to board, and, as defendant's wife, who owned the place where she and defendant lived, wished to repair and alter her house before taking them, offered to let defendant have money for that purpose. He accordingly paid defendant money to be so expended, and paid money for labor and materials so used, and delivered to defendant certain wood, hay, grain and sugar. Defendant was then insolvent, and known by plaintiff to be so, and he never expressly promised plaintiff to pay him for any of the charges, but plaintiff expected to be paid in full, either by board, or by board and money, from defendant's wife, to make up the deficiency. *Held*, that as the money, &c., expended on the house, was furnished not at the request, nor for the benefit, nor on the credit of the defendant, but on the credit of the wife, and for her benefit and the benefit of her separate property, the law would imply no promise on defendant's part to repay it; but that as the wood, &c., was furnished to defendant for the use of his family, it was for his benefit, and the law would imply a promise on his part to pay therefor: *Roberts* v. *Kelley*, 51 Vt.

Corporation. See *Mandamus; Receiver.*

Subscribers to Stock—Cannot release themselves as against Creditors.—Subscribers to the capital stock of a corporation cannot release them-

selves from payment, when such subscriptions are necessary for the payment of corporate debts: *Gaff* v. *Flesher*, 33 Ohio St.

If the corporation has been regularly authorized, creditors having dealt with it, may enforce payment of subscriptions, although the subscribers may have notified the company that they would not be liable for debts, upon the assumption that the corporate existence was without authority of law: *Id.*

Covenant.

Agreement by Grantee to pay Encumbrance.—A person taking, as grantee, a deed of conveyance containing a stipulation that he will pay the money due on a certain mortgage then on the property, may be sued by the grantor in covenant for the breach of such stipulation: *Golden* v. *Knapp*, 12 Vroom.

Quere. As to the amount of damages recoverable if the mortgage has not been paid off by the grantor: *Id.*

Criminal Law.

Conspiracy.—A conspiracy to slander a person by charging him with a criminal offence is indictable: *State* v. *Hickling et al.*, 12 Vroom.

The statute, in requiring an overt act, does not require full execution of the conspiracy in order to make it punishable: *Id.*

Crimes arising under the Revenue Laws—Statute of Limitations.—The offence of falsely entering goods at the custom house, defined by sect. 5445, U. S. Rev. Stat., is a crime "arising under the revenue laws," within the meaning of sect. 1046; but the offence of conspiring to defraud the United States, defined by sect. 5440, is not. An indictment for the latter offence must, therefore, be found within the three years limitation prescribed by sect. 1044: *United States* v. *Hirsch et al.*, S. C. U. S. Oct. Term 1879.

Damages. See *Libel.*

Nuisance to Property by Railroad Tracks.—In an action to recover damages caused to a house and lot by the construction and operation of railroad tracks in a street in close proximity to the plaintiff's property, the true measure of damages is the loss sustained by the nuisance, the injury from jarring the building, and the throwing of cinders and smoke upon the plaintiff's premises, and the depreciation of the value of the property by these causes may be considered, but not general depreciation in value from other causes, such as mere inconvenience in approaching or leaving the property, or the noise and confusion in the vicinity. The injury must be physical: *C. M. & St. P. Railroad Co.* v. *Hall*, 90 Ills.

Election.

Votes for Office not known to be Vacant by the Body of Voters.—At an election for city officers, held in Plainfield, in December 1878, the relator received twenty-six votes out of a poll of over eight hundred. The relator claims that there was a vacancy in the office of city judge, and that therefore he was duly elected, having received twenty-six of the twenty-nine votes cast for that office. There is a dispute as to whether the term of the incumbent, Good, had expired. A number of voters,

including the officers of election, testify that they did not know that such an officer was voted for until the polls had closed and the votes were counted. *Held*, that votes cast in such a manner can confer no title to the office, and cannot entitle the relator to the interposition of this court in his attempt to obtain possession of it, or to displace the incumbent: *State ex rel. Bolton* v. *Good*, 12 Vroom.

Eminent Domain.

Damage to Property not taken for Public Use.—To be recoverable, must be physical and real, and not speculative, and it must depreciate the value of the property or its use. The depreciation is to be determined by comparing its value before and after the structure which produces the injury, and any benefits thus conferred should be considered as well as the injury inflicted by the structure in estimating the damages: *C. M. & St. P. Railroad Co.* v. *Hall*, 90 Ills.

Equity.

Bill of Review—When it can be Filed.—Before a bill of review can be filed the decree must be first obeyed and performed: *Ricker* v. *Powell*, S. C. U. S., Oct. Term 1879.

When such a bill is founded both on newly-discovered matter and on errors of law, it can only be filed by leave of the court: *Id.*

Fraud—Representations calculated to deceive.—Representations made with knowledge that they will be received in a sense that makes them deceptive, constitute fraud: *Match* v. *Hunt*, 38 Mich.

Equity takes cognisance of cases in which a party is deceived as to material things, by means fitted to cause the deception, and which the party using them had reason to know actually caused it: *Id.*

Parol misrepresentations are not so merged in written ones as to be excluded from evidence, in an action for fraud: *Id.*

Errors and Appeals.

Authentication of Record.—Since the Act of June 8th 1872 (17 Stat. 330; Rev. Stat. 558, 624, 678), authorizing the appointment of deputies of the clerks of the Courts of the United States, a transcript of the record is sufficiently authenticated for purposes of appeal if it is signed by the deputy in the name of and for the clerk and sealed with the seal of the court: *Garneau* v. *Dozier*, S. C. U. S., Oct. Term 1879.

Joint and several Appellants—Separate Bonds—Practice.—In ejectment, against numerous defendants, there was a judgment against all of them jointly for the recovery of the land, and separate judgments against certain of them for damages, for withholding the specific portions found to be in their respective possession. A writ of error was taken by all the defendants jointly; *Held*, that the court below might take from one of the defendants a separate bond, with security for the amount of the separate judgment, against him, and stay proceedings against the land which had been found to be in his separate possession: *Ex parte French*, S. C. U. S., Oct. Term 1879.

Evidence. See *Equity*.

Fixtures.

Fixtures brought within a Mortgage.—A mortgage included with the real estate the manufacturing establishment and buildings for the purpose to be erected thereon. The lessees of the factory, after putting in machinery, purchased the reversion of the land on which it stood, subject to the mortgage. *Held*, that they united the title to the realty and fixtures in one person, and the fixtures became subject to the mortgage: *Jones* v. *Detroit Chair Co.*, 38 Mich.

Foreign Corporation.

Jurisdiction over.—In assumpsit by residents of New Hampshire on a policy of insurance against fire, issued in Vermont for the benefit of plaintiffs, on property in Vermont, by an insurance company that was incorporated and organized under the laws of Massachusetts, and that had complied with the requirements of No. 1, Sts. 1874, the writ was served on one of the insurance commissioners, in accordance with sect. 8 of that statute. *Held*, that the court thereby acquired jurisdiction of defendant, and that it made no difference that plaintiffs resided out of the state: *Osborne* v. *Shawmut Ins. Co.*, 51 Vt.

Former Adjudication.

Contract—Breach—Damages.—Plaintiff agreed "to construct all the culvert masonry, cattle-passes, paving and excavating foundation pits" on certain sections of railroad, for which defendants agreed to pay at prescribed rates. Defendants discharged plaintiff from performance before it was completed, and plaintiff brought an action for loss of prospective profit on that part of the work that he was not permitted to do, but, in alleging the agreement to do the work, he omitted to include the paving in the enumeration of the several kinds of work, so that it was not alleged that he agreed to do the paving, nor that defendants agreed that he might do it, but merely that defendants agreed to pay him at a certain rate for what he did. On that declaration plaintiff was adjudged entitled to recover for loss of profit on culvert masonry, &c., but not on paving, and for the latter he thereupon brought another action. *Held*, adjudicated: *Morey* v. *King*, 51 Vt.

Fraud. See *Equity*.

Frauds, Statute of.

Equity—When it will Interfere.—The fraud against which equity will grant relief, notwithstanding the Statute of Frauds, consists in the refusal to perform an agreement upon the faith of which the plaintiff has been misled to his injury, or the defendant has secured an unconscionable advantage, and not in the mere moral wrong involved in a refusal to perform a contract, which, by reason of the Statute of Frauds, can not be enforced by action: *Watson* v. *Erb*, 33 Ohio St.

A., in pursuance of a parol engagement for that purpose with B., who desired to become the owner of a certain tract of land adjoining his, and for personal reasons was not to be known in the transaction, but was to save A. harmless from all loss or trouble, purchased the land, made a cash payment thereon, took the title in fee to himself, as per the agreement, and gave to the seller his own several promissory notes and mort-

gage back, to secure the deferred payments. After the contracting for the land, but before making the cash payment or receiving the title, A. repudiated his agency, and gave notice to B. that he would purchase for himself, with his own money, and refused to receive from B. the money to make the cash payment, but consummated the purchase for himself. *Held*, that the breach of the verbal contract to convey to B. is not such a fraud upon him as authorizes a court of equity to decree a trust in the land, and compel its execution: *Id.*

Even if such contract could be enforced in equity, it could not be done until adequate indemnity was tendered against the notes and mortgage of A. outstanding, as well as an offer to pay or refund the cash payment: *Id.*

Highway.

Injury on Highway—Contributory Negligence.—In case for injury on a public highway, it appeared that the injury was received on a winter road between fifteen and thirty rods in length that ran along by the regular highway and connected with it at each end, and had been generally travelled during part of each winter for thirty or forty years, when the regular highway was impassable from drifts, and had been broken out by the highway surveyor at different times for thirteen years next before the injury complained of, and had been repaired by him within a week of that time. There was no evidence that it was ever opened by the selectmen or by their direction, or in any way, except as above. *Held*, that it was inferable that the road was so broken out, used, and repaired by authority of the selectmen, and that the plaintiff might recover as for an injury received on a public highway on a declaration alleging the injury to have been so received: *Coates* v. *Town of Canaan*, 51 Vt.

The injury was claimed to have been caused by a cradle-hole and a snow-drift extending diagonally across the travelled track of the road. Plaintiff testified that he had known of the condition of the road and the existence of the cradle-hole for three weeks, and knew that the place in question was a dangerous place. *Held*, that plaintiff was not necessarily guilty of negligence in driving into the cradle-hole, and that in driving into and through it he was bound to the exercise of ordinary care only—such care as a man of ordinary prudence would exercise under like circumstances: *Id.*

Husband and Wife.

Liability of Husband for Necessaries.—To recover of a husband who lives apart from his wife for necessaries furnished to the wife, it must be shown that they live apart either by mutual consent or by reason of the fault of the husband. Thus, where plaintiffs sought to recover for medicine furnished to a wife on a physician's prescription while she was living apart from her husband under circumstances showing that she had deserted him without apparent fault on his part, it was *held* that the wife could not pledge the husband's credit, and that the plaintiffs could not recover: *Thorne* v. *Kathan*, 51 Vt.

Injunction. See *Waters and Watercourses.*

To restrain a Provoked Injury Denied—Nuisance.—Injunctions are to prevent irreparable mischief and stay consequences that could not be adequately compensated; their allowance is discretionary and not of

right, calls for good faith in the petitioner, and may be withheld if likely to inflict greater injury than the grievance complained of: *Edwards* v. *Allouez Mining Co.*, 38 Mich.

It is an irreparable injury to create intolerable smells near the homestead of a neighbor, or undermine his house by excavations, or cut him off from the street by buildings or ditches, or otherwise destroy the comfortable, peaceful and quiet occupation of his homestead; also, to break up his business, destroy its good-will and inflict damages that cannot be measured because the elements of reasonable certainty are wanting in computing them. A nuisance may threaten irreparable injury even to unoccupied land where it is devoted to some special use or where the person causing the nuisance is irresponsible: *Id.*

Where, by inviting an injury, one places himself in a position to call for an equitable remedy, his motives can be inquired into, even though he grounds himself on strict legal right: *Id.*

A man bought for speculation certain bottom lands upon which large quantities of sand were being deposited by a stream which operated a stamp-mill higher up. He put a valuation upon the land of from three to five times what it cost him and tried to sell it to the corporation that owned the mill, but it declined to buy. Then he prayed for an injunction to restrain the corporation from sanding his land and polluting the stream. *Held*, that an injunction would not lie, and that the speculator was entitled to such remedy as the law would give him and no more: *Id.*

INSURANCE.

Who may Sue on a Policy of Insurance—Burning by one not Interested in the Policy.—On a policy of insurance issued to A. and B. against loss by fire, which contains a provision "loss if any, first payable to A. as his interest may appear," where B. paid no part of the premium and was not aware the policy had been issued, A. may maintain an action in his own name for any loss he may sustain. The person who pays the premium and to whom the loss is payable is the proper party to sue for the loss: *Westchester Fire Ins. Co.* v. *Foster*, 90 Ill.

The fact that a person having no interest in a policy of insurance caused the building insured to be burned, without the knowledge or assent of the assured, cannot affect the right of the latter to recover for the loss: *Id.*

INTEREST.

Judgment against the United States—Court of Claims.—The Court of Claims has no power to give judgment against the United States for interest on a claim, although it appears that payments on the contracts held by the claimant had been unreasonably delayed: *Tillson* v. *United States*, S. C. U. S., Oct. Term 1879.

JURY.

Misconduct of—What will be sufficient to vitiate a Verdict.—Where there has been irregularity or misconduct on the part of the jury, which might affect its judgment, or improperly influence the verdict, a new trial should be granted. Where, however, it clearly appears that no

improper effect could arise from the alleged misconduct, the verdict should stand: *Armleder* v. *Lieberman*, 12 Vroom.

A separation of the jurors, after the jury has retired to the jury-room to consider of the verdict, induced by a sudden alarm of fire in the near vicinity of the jury-room, is not, of itself, such misconduct as will vitiate the verdict made on reassembling: *Id.*

A juror separated from his fellows, and privately asked an attorney, in no way connected with the case or parties thereto, "How are we to get along without those books or papers?"—saying, "they have not let us have them." To which the attorney replied, in substance: You must do the best you can; he could give him no advice; that the juror could send up and have the court advise them. *Held*, although such conduct on the part of the juror was a violation of his duty, yet, as it did not show any bias or prejudice for or against either party, that would affect the verdict, it was not sufficient cause for a new trial: *Id.*

Libel.

Newspaper—Negligence of Publisher—Damages.—The publication of court proceedings is not so far privileged as to justify a sensational accompaniment of defamatory comments upon the character of those in relation to whom the proceedings are taken: *Scripps* v. *Reilly*, 38 Mich.

Where there is evidence tending to show that the proprietor of a newspaper has retained employees who ought not to have been kept, and that through their recklessness or malice a libel has been published, the proprietor will be held liable; but the burden of proving such negligence is on the plaintiff: *Id.*

Every publisher in whose paper a libel appears is liable for estimated damages to credit and reputation, and such special damages as may appear, and also for such damages on account of injured feelings as must be inferred considering the standing and circulation of the paper: *Id.*

Damages for injury to the feelings are allowed where the act is mischievous in its very nature, or where there is malice, wilful or wanton misconduct, or negligence so great as to indicate a reckless disregard of the rights or safety of the injured party; they are measured largely by the degree of fault, and where there is no malice or negligence and injury happened in spite of proper precaution, they are reduced to what would have resulted from the injury itself: *Id.*

In an action for newspaper libel, the haste incident to issuing the paper, the time at which the libellous article was handed in, and the sufficiency of the force employed on the paper for gathering the news and preparing and supervising articles for publication, may be considered as bearing on the question of the publisher's negligence: *Id.*

Limitations, Statute of.

When the Statute begins to run.—Where materials are furnished from time to time, under a special contract to furnish the iron work necessary for a building, and the special contract is abandoned before its full performance, by reason of the destruction of the building in an incomplete state, in an action as upon a *quantum meruit*, the Statute of Limitations will begin to run as against each item or parcel from the time of its delivery, the same as though the materials had been delivered without any special contract at all: *Schillo* v. *McEwen*, 90 Ills.

MANDAMUS.

Against Corporation—Who should be served—Enforcement by Attachment.—If the duty commanded is incumbent upon a corporation, the writ should be directed either to the corporation or to the select body within the corporation, whose province and duty it is to perform the particular act, or put the necessary machinery in motion to secure its performance, and the return must be made by those to whom the writ is directed: *State ex rel.* v. *Pennsylvania Railroad Co.*, 12 Vroom.

The only means of compelling a return to a writ of mandamus, or obedience to its command, is by attachment, which will only go against such persons as have been served with the writ; therefore, to make the writ efficacious, it must be served upon the officers of the corporation who have the power, and whose duty it is to execute it, and against whom an attachment to enforce obedience may issue: *Id.*

A return must be made to a peremptory writ of mandamus as well as to the alternative. The difference is only in the substance of the return In either case the court will require a return, under penalty of an attachment: *Id.*

MASTER AND SERVANT.

Railroad—Injury to Employee—Negligence.—Where a railroad company, engaged in ballasting its road, employed a hand to assist in loading and unloading a gravel train, and in the execution of this service it was necessary for him to ride on the train from the gravel pit to the place of unloading, the train being run under the direction of a conductor, and said hand having nothing to do with its management; *Held*, that such hand, while riding on the train, was a mere employee, and did not assume the character of a passenger; that he and the engineer of the train were engaged in a common service, and that, as he was not under the control or subject to the orders of the engineer, the railroad company can not be held liable for negligence of the engineer, resulting in his death, if it was not guilty of negligence in selecting the engineer: *Kumler* v. *Junction Railroad Co.*, 33 Ohio St.

MILL-OWNER. See *Waters and Watercourses.*

MORTGAGE. See *Fixtures.*

Deed absolute on its Face—Disposing of Equity of Redemption by private Sale.—A deed having been given, absolute upon its face, the grantor claimed it was a mortgage; in a proceeding to establish that claim, it was competent for the grantee to show, that although originally a mortgage, the equity of redemption had been released by a parol agreement: *Shaw* v. *Walbridge*, 33 Ohio St.

There is no rule of law which prevents a mortgagor from disposing of his equity of redemption to a mortgagee by private arrangement, but courts of equity will not permit a mortgagee to take advantage of his position so as to wrest from the mortgagor his equity, by an unconscionable bargain. The transaction will be jealously scrutinized, but if the agreement is a fair one, under all the circumstances of the case, it will be upheld: *Id.*

NEGLIGENCE. See *Highway; Master and Servant.*

Contributory.—Where the plaintiff, seeking to recover for a personal

injury sustained from a fall by stepping into a hole in a sidewalk, knew of the defect in the walk, and was watching to observe it, but it being covered with snow, and a snow storm prevailing at the time, with a high wind, driving the snow in her face so that she did not discover it until she stepped into the hole, and it appearing that other walks leading in the direction of her home were equally unsafe, it was *held*, that she was not guilty of such negligence as would preclude a right of recovery for the injury: *City of Aurora* v. *Dale*, 90 Ills.

NUISANCE. See *Injunction.*

PARTNERSHIP. See *Bills and Notes.*

Election of Creditor to proceed against Estate of deceased Partner, or against Survivor.—A partnership debt being joint and several, the creditor has the right to elect whether to proceed against the assets in the hands of the surviving partner, or against the estate of the deceased member, nor will the *laches* of the creditor in following the assets of the firm, preclude a recovery against the estate of the deceased partner: *Silverman* v. *Chase*, 90 Ills.

Survivor entitled to Partnership Assets.—A surviving partner is entitled to use the real estate of the partnership as firm assets so far as it is needed to settle the affairs of the firm, and decedent's heirs hold the legal estate only as trustees for the equitable purposes of the firm: *Merritt* v. *Dickey*, 38 Mich.

RAILROAD. See *Damages; Master and Servant.*

RECEIVER.

Title of—Effect of placing Corporate Property in Hands of.—Placing the property of a corporation in charge of a receiver does not work its dissolution, nor is the title of the property changed; a power only is delegated to take charge of it and sell it: *State, N. J. Southern Railroad Co., prosecutors,* v. *Railroad Commissioners*, 12 Vroom.

The receiver of a corporation, appointed by the Court of Chancery, takes its property, including its franchises, in the same condition and subject to all the duties, obligations and liabilities that rested upon the corporation itself, and, in the administration of his office, is under obligation for the performance of every duty and obligation imposed upon the corporation by its charter or by the general laws of the state: *Id.*

SALE.

Increase of Animals conditionally Sold.—Where an animal is sold on condition that it shall remain the property of the vendor until performance of certain agreements by the vendee, the title to such of the increase of the animal as accrues before the performance of the condition will be in the vendor: *Clark* v. *Hayward*, 51 Vt.

SPECIFIC PERFORMANCE.

Payment of part of Purchase-Money.—To authorize a decree for specific performance, on the ground that the party seeking it had contributed to the purchase-money, such contribution must be a definitely ascertainable portion thereof, and the contract, specific performance of which is sought, must so far describe the premises claimed, that the court may ascertain what they are: *Maud* v. *Maud*, 33 Ohio St.

SURETY.

Recovery by Surety of Usurious Interest Paid for Principal.—A surety on a promissory note, who becomes such at the request of the principal, and, with him, agrees to pay interest thereon at a greater than the lawful rate, and who pays the note after it has fallen due, with interest at the agreed rate, may recover of the principal the money he so pays, it being paid, as between him and the principal, at the request and for the use of the principal; and it makes no difference that a part thereof was usurious interest and not collectible of the surety, nor that a part was usurious interest that accrued after the note matured: *Jackson* v. *Jackson*, 51 Vt.

TRADE-MARKS.

Constitutional Law—Validity of Statutes for Protection of Trade-marks.—A trade-mark is not an invention or discovery, within the meaning of the clause of the Constitution empowering Congress to secure to authors and inventors the exclusive right to their inventions and discoveries: *United States* v. *Steffens*, S. C. U. S., Oct. Term 1879. [And see *Leidersdorf* v. *Flint*, 18 Am. Law Reg. N. S. 37.]

If trade-marks are within congressional control at all, under the power to regulate commerce (a question left undecided), the existing statutes for their protection are invalid because not limited in operation to the use of trade-marks, in those classes of commerce over which Congress is given control, viz., commerce with foreign nations, among the several states, and with the Indian tribes: *Id.*

Nor can these statutes be supported to the extent of the use of trade-marks in such commerce because their language is general in its operation, and Congress might have been unwilling to have passed laws only partial in their operation. In such cases, it is impossible to separate the constitutional and unconstitutional parts of the statutes: *Id.*

UNITED STATES. See *Interest.*

USURY. See *Surety.*

WATERS AND WATERCOURSES.

Injunction to regulate the relative Rights.—A court of equity cannot define and secure the rights of one litigant without reference to the corresponding rights of the other: *Hoxsie* v. *Hoxsie*, 38 Mich.

A mill-owner is not entitled to protection against incidental injuries or inconveniences arising from the lawful use of the same stream by another mill-owner higher up: *Id.*

An injunction restraining an upper mill-owner from allowing the water to flow over his dam in quantities greater than is required to run his machinery, but requiring him to allow it to flow into another's mill-pond to the amount of the natural flow of the stream, is erroneous, because it discriminates in favor of the lower owner: *Id.*

Injunction ought not to be granted to regulate the relative rights of mill-owners upon the same stream, except in very clear cases of the intentional violation of those rights; the parties should be left to recover their damages at law: *Id.*