

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹SUPREME COURT OF ILLINOIS.²COURT OF ERRORS AND APPEALS OF MARYLAND.³SUPREME COURT OF MISSOURI.⁴SUPREME COURT OF RHODE ISLAND.⁵AGENT. See *Fraud*.

ASSIGNMENT.

Voluntary Assignment for Benefit of Creditors.—A voluntary assignment for the benefit of creditors provided that the dividends of such creditors as did not execute a release within three months from the date of the assignment, should be paid to the assignors or their appointees. Certain creditors of the assignors exhausted their remedy at law against the assignors, and filed a bill in equity to establish a lien on the dividends of such non-releasing creditors in the hands of the assignee: *Held*, that they were entitled to the relief claimed; *Held, further*, that the lien on the equitable assets dated from the filing of the bill: *Smith v. Millett*, 12 R. I.

Assignee's Title.—A voluntary assignee for the benefit of creditors takes the assignor's estate, subject to all existing equities: *Williams v. Winsor*, 12 R. I.

ATTORNEY.

City Attorney—Powers cannot be Delegated.—The charter of the City of Kansas provided, that "a warrant shall issue in favor of the city * * * for a violation of any ordinance * * * when any person shall make oath or affirmation that such a violation has been committed or upon information by the city attorney." Neither the charter nor any ordinance of the city authorized the appointment of a deputy city attorney. *Held*, 1st, that the power thus provided for must be exercised by the city attorney in person, and could not be delegated to a deputy; 2d, that a complaint made by a deputy could not afterwards be adopted by the city attorney as his own: *City of Kansas v. Flanagan*, 69 Mo.

BASTARDY.

Bastardy complaints, though in form criminal proceedings, are in effect civil: *State v. Sullivan*, 12 R. I.

BILLS AND NOTES.

Renewals—When amounting to a new Loan.—Certain outstanding notes with the accommodation endorsement of B. & S. were held by

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 J. Shaaf Stockett, Esq., Reporter, to appear in 49 Md. Reports

⁴ From T. K. Skinker, Esq., Reporter, to appear in 69 Mo. Reports.

⁵ From Arnold Green, Esq., Reporter, to appear in 12 R. I. Reports.

banks. At their maturity it appeared that other notes for the same amount and with the same endorsements, were offered for discount and accepted; that the proceeds of the discount were placed to the credit of the makers, who thereupon drew their checks for such proceeds; and with these checks paid their former notes, which were returned to them stamped "paid;" *Held*, that this transaction made a new credit and a new loan, and that these latter notes were not renewals of the former: *Merriman v. Social Manufacturing Co.*, 12 R. I.

CONFLICT OF LAWS.

Sale—Delivery in another State.—H. sold to J. certain goods. The sale took place in Rhode Island, and the contract was valid there. The delivery was to take place in New York, and the contract was invalid by the Statute of Frauds of that state. In assumpsit, brought by H. against J. for breach of this contract, *held*, that H. was entitled to recover: *Hunt v. Jones*, 12 R. I.

CONTRACT.

Novation.—B. agreed to work for C., the amount of B.'s wages to be paid to A., who was to credit the amount against B.'s indebtedness to A.; *Held*, not a contract by novation, but that B. was the agent of A., who virtually sold B.'s services to C.: *Dwyer v. Gaylord*, 12 R. I.

CORPORATION. See *Fraud*.

Right of Pre-emption of Stock.—The charter of a corporation contained the following provisions: "But no stockholder shall sell his or her stock, or any portion of the same, without first giving the corporation the refusal of the same for ten days at the price he is willing to sell." *Held*, that this provision did not apply to a sheriff's sale on execution against a stockholder: *Barrows v. National Rubber Co.*, 12 R. I.

Public—Amendment to Charter.—In 1797 the General Assembly of Rhode Island granted a charter to certain persons, and all others who should by them be admitted as members, to buy and support a fire-engine, with the right to levy taxes on themselves, and on all of the inhabitants in the compact part of the town of E. In 1850 the charter was amended so as to make all persons, not minors, who held a present freehold title to buildings within certain limits, members of the corporation, and so as to give to it power to levy, under certain conditions, taxes on all the buildings in those limits. *Held*, that the corporation was a public or quasi municipal corporation. *Held, further*, that the corporation being a public or quasi municipal one, the amendment to its charter took effect without acceptance by the corporation. *Held, further*, that the court would take judicial cognisance of the acts of incorporation and amendment: *Cole v. Fire Engine Co.*, 12 R. I.

CRIMINAL LAW.

Indictment.—An indictment bad on demurrer must be also held bad on a motion to arrest judgment: *State v. Corbett*, 12 R. I.

DAMAGES. See *Negligence*.

Should be Compensation for Injury received—Mill-dam.—The general rule governing the measure of damages is that damages should com-

pensate for the injury received. Hence, in trespass on the case brought for the destruction of the plaintiffs' dam, caused by the defendant's negligence, the damages properly include the value to the plaintiff of the dam and water privilege from the time the dam was destroyed up to the time when with reasonable diligence it might have been rebuilt: *Whipple v. Wanskuck Co.*, 12 R. I.

DEBTOR AND CREDITOR. See *Execution*.

DEED.

Condition—When Valid—Intoxicating Liquors.—A condition in a deed conveying land, that intoxicating liquors shall never be manufactured, sold or otherwise disposed of as a beverage, in any place of public resort on the premises, and that if this condition be broken by the grantee, his assigns or legal representatives, the deed shall become void and the title revert to the grantor, is not repugnant to the estate granted nor is it unlawful or against public policy: *Cowell v. Colorado Springs Co.*, S. C. U. S., Oct. Term 1879.

EQUITY. See *Injunction*.

Practice—Bill to Redeem.—A bill to redeem is not a proceeding in rem: *Boston, &c., Railroad Co. v. New York, &c., Railroad Co.*, 12 R. I.

In a suit to redeem, a receiver will not be appointed so long as there is a balance due to the mortgagee, unless the mortgagee is mismanaging the property: *Id.*

ERRORS AND APPEALS.

Conclusiveness of finding of Fact by State Courts.—Where two state courts have found in the same way on a question of fact, the Supreme Court will not disturb such finding unless the error is clear: *Lammers v. Nissen*, S. C. U. S., Oct. Term 1879.

Mandamus—Not granted to correct Errors in the Progress of the Cause.—The Supreme Court cannot by mandamus correct the judicial errors committed by an inferior court in the progress of the cause, even though a resort to a writ of error or appeal would involve an inconvenient delay: *Ex parte Perry*, S. C. U. S., Oct. Term 1879.

ESTOPPEL.

Grantee from Corporation—When he cannot deny Corporate Existence of Grantor or Validity of its Title—Condition.—When the grantee of land from a corporation by a deed, containing a condition, that if liquors are sold on the premises, the title shall revert to the grantor, goes into possession under the deed, he is estopped in an action of ejectment by the grantor upon breach of condition, from denying the corporate existence of the grantor or the validity of the title conveyed by the deed: *Cowell v. Colorado Springs Co.*, S. C. U. S., Oct. Term 1879.

EXECUTION.

Exemption—What is a Family.—Under the law exempting certain property from levy and sale, a widow keeping a boarding house, having a lady friend residing with her as one of the family and female servants, is the head of a family within the meaning of the statute, and the friend

and servants are a part of the family. Whether a person be the head of a family is a question of fact for the jury: *Race v. Oldridge*, 90 Ills.

Exemption—Married Woman—Attachment.—The exemption under Wagner's Statute, sect. 24, p. 935, of the rents, issues and products of the real estate of a married woman, is a personal right and must be claimed by herself. If waived by her it cannot be set up by a creditor: *Abernathy v. Whitehead*, 69 Mo.

Wagner's Statute, sect. 52, p. 192, which provides, that in attachment proceedings "any person claiming property, &c., may interplead," includes only those who claim to own the property attached. A garnisher of a debt has no such claim: *Id.*

FRAUD. See *Sale*.

Sale—Fraudulent Representations—Liability for False Representations of Agent—Corporations.—If representations are fraudulently made to induce a purchaser to buy, and he is induced thereby to purchase, and sustains damage, he will be entitled to recover for the tort, fraud or deceit; and besides, the fraud would constitute ground for a court of equity to refuse to ratify the sale: *Lamm v. Port Deposit Homestead Ass.*, 49 Md.

False representations made by an agent, authorized by his principal to make them, render both principal and agent liable: *Id.*

A representation false in fact, if innocently made by a party, believing in the truth of what he asserts, will afford no ground of action; the concurrence of fraudulent intent and false representation and damage resulting therefrom constitute the ground of action: *Id.*

Natural persons are liable for the wrongful acts and neglects of their servants done in the course of their employment; and private corporations upon the same grounds of public policy are amenable to the same extent: *Id.*

An agent's authority must be measured by the extent of his employment, and his principal is liable to third persons in a civil suit for the frauds, deceits, concealments, misrepresentations, torts, negligences and omissions of duty of his agent, in the course of his employment: *Id.*

HUSBAND AND WIFE.

Purchase of Land with Wife's Money—Resulting Trust.—If a husband purchase an estate with the money of his wife, there is a resulting trust, and the husband holds the property as trustee for the benefit of his wife: *Thomas et al. v. Standiford*, 49 Md.

To establish a trust of this sort, strong and convincing proof is always required: *Id.*

INJUNCTION.

Against a Judgment.—Before a court of equity will enjoin the enforcement of a judgment regular on its face, the complainant must aver and prove some injustice in the judgment, and this can only be shown by stating a valid defence to the original claim. It is not sufficient to aver that the complainant's attorney thinks his defence a good one. The defence should be stated that the court may decide upon its value: *Sauer v. City of Kansas*, 69 Mo.

INTEREST.

What Rate allowed after Maturity of Contract providing for Special Rate—Mortgage.—The rule applied by the Supreme Court of the United States has been, in the absence of any local rule on the subject, to give the contract rate up to the maturity of the contract, and thereafter the rate prescribed by law, in cases where no rate is fixed. A mortgage for a definite period is within this rule, and after the mortgage becomes due interest is allowed at the rate fixed by law, unless a continuance of the special rate is provided for in the mortgage: *Holden v. Freedman's Savings and Trust Co.*, S. C. U. S., Oct. Term 1879.

JUDGMENT. See *Injunction*.

JUDICIAL SALE.

Correctness of Decree and Formality of Trustee's Bond as affecting validity of Sale—Conduct of original Trustee as affecting Sale made by his Successor.—The validity of a sale, as a general rule, does not depend upon the judicial correctness of the decree or the formal execution of a sufficient bond by the trustee; the one may be erroneous in law and the other informal and insufficient, and yet the sale be above exception: *Dungan v. Vondersmith*, 49 Md.

The misconduct of the original trustee, if proved, cannot avail to set aside a sale made by his successor: *Id.*

LANDLORD AND TENANT.

Right to eject Tenant.—A landlord has no right, even if there is rent due and unpaid, to forcibly enter into possession of the demised premises, and eject the tenant without proper process, nor can he give such right to another; and if he takes forcible possession he cannot give another such possession as will be lawful against the tenant: *Hubner v. Feige*, 90 Ill.

MANDAMUS. See *Errors and Appeals*.

MARRIED WOMAN. See *Execution*.

MORTGAGE. See *Equity*.

MUNICIPAL CORPORATION. See *Corporation*.

Liability of a City for Damages occasioned by construction of Railroad in a Street.—If a city is authorized by law to grant rights of way over its streets to railroad companies, it incurs no liability for damages done to real estate by the occupation of the street upon which it fronts, for a railroad, with its permission, unless they are such as would not have resulted if the road had been properly constructed and operated: *Svenson v. City of Lexington*, 69 Mo.

If a city has such authority it incurs no liability by reason of the fact that a company authorized by it to build and operate its road upon a street, has so constructed an embankment in the street as to cause a pond of water to be formed upon adjacent land, provided the embankment conforms to the established grade of the street, and is otherwise so constructed as to cause no damage or inconvenience beyond that necessarily occasioned by the appropriation of a portion of the street for the purpose: *Id.*

NEGLIGENCE.

Defect in Highway—Damages.—In an action to recover damages for injuries sustained by reason of the defective condition of a bridge over which the plaintiff was riding on horseback, the jury, should they find a verdict for the plaintiff, in estimating damages, should consider the health and condition of the plaintiff before the injury complained of, as compared with his present condition, in consequence of said injury, and whether said injury was in its nature permanent, and also the physical and mental suffering to which he was subjected by reason of said injury, and should allow such damages as in their opinion would be a fair and just compensation for the injury which the plaintiff had sustained, and they should also consider the condition of the plaintiff's horse before the injury complained of, as compared with his subsequent condition in consequence of such injury, and allow the plaintiff such damages as in their opinion the horse had sustained: *Eyler v. County Commissioners of Allegheny County*, 49 Md.

NOTICE.

Constructive Notice from the Record.—A subsequent purchaser of real estate is not chargeable with constructive notice of all instruments of record by whomsoever made, but only of such as lie in the apparent chain of title, or may have been made by one in some way connected with the property involved in interest, and brought to the notice of the purchaser: *Corbine v. Pringle*, 90 Ills.

POSSESSION.

Title by.—Uninterrupted possession of land under claim of ownership for ten years, confers such title as will enable the possessor to maintain an action of damages for injury done to the land by the improper construction of a railroad adjacent to it, provided the possession is continued down to the institution of the suit: *Swenson v. City of Lexington*, 69 Mo

RAILROAD. See *Municipal Corporation*.

Right to eject Passenger from Cars.—Where a passenger tenders a railway conductor a certain amount of fare to be carried to a certain station, which is less than the rate fixed by the company, saying he will pay no more, and the conductor retains a sum sufficient to take the passenger to an intermediate station and returns the balance, the passenger will have the right on reaching such intermediate station to pay the fare demanded from that point to the place of his destination, and upon his offering to pay the same, he cannot be rightfully put off the train: *C. B. & Q. Railroad Co. v. Bryan*, 90 Ills.

RECEIVER. See *Equity*.

SALE. See *Conflict of Laws; Fraud; Vendor*.

Retention of Control by Vendor—Fraud.—Nothing can be more utterly inconsistent with a contract of sale of chattels purporting to be absolute, than the existence of a right or interest in or control over the same in the vendor. If such a reservation be secret, it is evidence of collusion, if open, it tends to hinder and delay creditors and is legal or constructive fraud: *Franklin v. Cloflyn*, 49 Md.

Where a bill of sale of chattels was assailed for fraud, under proceedings in attachment, a prayer was offered by the claimant of the property attached, announcing the general proposition, that if the goods and chattels attached belonged to the claimant at the time of levying the attachment, the verdict must be for the claimant: *Held*, that this prayer, although correct in the abstract, might have misled the jury without a qualification to the effect, that if the sale was made with fraudulent intent or to hinder and delay creditors, the claimant was not entitled to a verdict: *Id*.

Hiring to be converted into Sale by future Payment.—H. leased to G. a piano for a month, and from month to month stipulating that a weekly payment of \$10 should be made, and agreeing that when the weekly or other payments amounted to \$525, G. should have a bill of sale of the piano. The instrument, until \$525 had been paid, was to remain the property of H., and in case of default in any payment, was to be surrendered in good order. This was in February 1872. In 1874, H. assigned his right in the piano to W. G. paid but \$175 of the \$525, although the piano remained in his possession. It was attached March 17th 1875, as the property of G. and was replevied by W., March 27th 1875; *Held*, that G. had no attachable interest in the piano: *Goodell v. Fairbrother*, 12 R. I.

Held, further, that the question whether H. and W., by allowing G. to remain in possession as ostensible owner of the piano, had estopped themselves from denying G.'s ownership as against G.'s creditors, was a question of fact for the jury: *Id*.

Held, further, that G., having bought the piano on condition and having been allowed to assume the apparent ownership, the burden of proof was on W. to show non-fulfilment of the conditions of sale: *Id*.

SET-OFF.

Validity of Claim is for Jury.—B. executed and delivered to W. a warranty deed. W. was afterward sued in trespass, and alleged that B. agreed to defray the expense of defending the suit, and that under this agreement, an expenditure of \$55 was made. B. subsequently sued W. in assumpsit, and W. pleaded in set-off his expenditure of \$55. The evidence as to the counter-claim was contradictory, and the judge directed the jury not to consider it as a valid set-off; *Held*, error, and that the claim made in set-off should have been submitted to the jury to determine whether W. incurred the expense for himself or as the agent of B.: *Barr v. Walling*, 12 R. I.

SHIPPING.

Liability of Consignee for Demurrage, for delay in discharging Cargo.—It is the duty of a consignee of a cargo by vessel on the lakes to discharge the vessel within a reasonable time after her arrival in the port of destination, and failing to do so he will be liable for the damages sustained by the delay: *Whitehouse v. Halstead*, 90 Ill.

SPECIFIC PERFORMANCE.

When Equity will Refuse.—Where the effect of decreeing the specific performance of a covenant would be to impose upon the defendants, a large expenditure and heavy burden, and produce inconvenience to

public interests, without any practical benefit to the other party, a court of equity, in the exercise of its discretion, will refuse to decree it and leave such other party to whatever remedy he may have at law for the breach of the contract: *C. & A. Railroad Co. v. Schoeneman*, 90 Ills.

STREET. See *Municipal Corporation*.

TRIAL.

Practice—Limiting Arguments of Counsel to the Jury.—On the trial of one for larceny, where four witnesses were examined in chief for the prosecution, three for the defendants and two for the prosecution in rebuttal, it was held error for the court to limit the argument of counsel to five minutes each. Such limitation was held unreasonable, and substantially a denial of the constitutional right of the accused to be heard by counsel: *White v. The People*, 90 Ills.

TRUST AND TRUSTEE. See *Husband and Wife*; *Judicial Sale*.

Patent for Land—Addition of word "Trustee" to Patentee's Name—Effect of upon the Title.—A patent for land issued by the United States, recited that the patentee had purchased the land from the government, but added after the patentee's name, the word "trustee." In ejectment by a grantee of the patentee against a stranger: *Held*, that no trust for the government could be inferred from the use of the word "trustee," and that if any trust was in fact created, it could only be taken advantage of by the *cestui que trust*: *Cowell v. Colorado Springs Co.*, S. C. U. S., Oct. Term 1879.

USURY.

Discounting Paper.—It is not usury to buy a note in the usual course of business at a discount, greater than the rate of interest allowed by law: *Colhoun v. State Savings Institution*, 90 Ills.

VENDOR AND PURCHASER.

Delivery—When Title passes.—A manufacturer contracted to sell one million staves subject to count and inspection by the vendee, who agreed to receive and pay for them as fast as inspected. By a second agreement, it was stipulated that the vendor should deliver the staves properly piled in some convenient place to be controlled by the vendee; that the latter should furnish a man to count them as they were piled, who should give certificates of the amount, which would entitle the vendor to part payment of the price; and that upon the piling and counting of the staves the delivery of them should be complete and the title pass to the vendee. The vendee leased land from the vendor, and on this land all the staves were piled and counted except about 50,000, which were piled on land adjoining. The vendor received the stipulated portion of the price. In a suit by attaching creditors of the vendor, *held*, that the jury were warranted in finding that the property in all the staves had passed to the vendee: *Hatch v. Standard Oil Co.*, S. C. U. S., Oct. Term 1879.