they had an unquestionable legal right to do, and that the defendants should be enjoined from cutting the wires, or otherwise unlawfully interfering with them.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

ENGLISH COURTS OF EQUITY.[2]

SUPREME COURT OF MICHIGAN.[3]

SUPREME COURT OF MISSOURI.[4]

SUPREME COURT OF OHIO.[5]

ATTORNEY.

Power of Attorney to confess Judgment.—A power of attorney, attached to a sealed note payable to bearer, authorizing the waiving of process and the confession of judgment in favor of the *holder* of the note, may be executed in favor of an equitable owner and *holder*, to whom the note may be transferred by delivery, but without indorsement thereon: *Clements* v. *Hull*, 35 Ohio St.

BAIL.

Enlargement of Time to surrender the Debtor.—Where suit is brought on an undertaking given before judgment in a civil action for discharge from arrest, the court in which the cause is pending has power, at any time before judgment is rendered on the undertaking, to grant the bail further time in which to surrender the judgment-debtor: *Whetstone* v. *Riley*, 7 Ohio St. 514, explained and qualified: *Wright* v. *Coller*, 35 Ohio St.

BANKRUPTCY. See *Payment.*

Transfer by Bankrupt pending Proceedings—Title of Assignee—Effect of Amendment after Petition of Transfer.—A creditor's petition was filed February 23d 1875. An answer filed, denied that enough creditors had joined. On April 22d new creditors joined, and the petition was amended by adding a different act of bankruptcy. In the meantime on March 20th, the bankrupt had transferred some property. Upon a bill by the assignee in bankruptcy, *Held*, that the title of the assignee related back to the filing of the original petition, and that the transfer was invalid as against him: *International Bank* v. *Sherman*, S. C. U. S., Oct. Term 1879.

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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] Selected from late numbers of the Law Reports.

[3] From Henry A. Chaney, Esq., Reporter; to appear in 39 Mich. Reports.

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

[5] From E. L. De Witt, Esq., Reporter; to appear in 35 Ohio St. Reports.

BILLS AND NOTES. See *Attorney; Payment.*

Sealed Notes—Scrawl Seal.—Where the form of a promissory note, with blank spaces, payable to payee or bearer, was printed, and after the spaces were filled, the maker signed his name in front of a device consisting of a bracket and the word seal therein, thus, "[seal,]" which device was also a part of the form and was printed in ink, *Held*, 1. that the device mentioned is a "scrawl seal," and under the statute of this state has the effect of a common law seal. 2. That by affixing his signature in front thereof, the maker adopted the device as his seal: *Osborn* v. *Kistler*, 35 Ohio St.

Such a sealed note is only negotiable by virtue of the statute which requires the negotiation to be by "endorsement thereon." S. & C. 862. *Id.*

In an action on such a note in the name of the holder to whom it was transferred by mere delivery, the maker may set up any defence he could have made against the payee: *Id.*

Exchange—Attorney Fee.—A provision in a promissory note for the payment of current exchange or express charges is nugatory, and does not add to or vary a surety's liability, since the promisor must be liable for the expense of transmitting the money to the place where the note is payable: *Bullock* v. *Taylor*, 39 Mich.

A provision in a promissory note for an "attorney fee," in case of proceedings to collect it, is a stipulation for a penalty and is void: *Id.*

A surety's promise cannot be enlarged in the slightest particular without his consent: *Id.*

Contract of Maker and Endorser are separate—Joint Judgment cannot be entered.—The contracts of the maker of a note and the endorser are several and do not warrant a joint judgment upon lawful service on only one: *Church* v. *Edson*, 39 Mich.

CLUB.

Conduct of Member—Power of Expulsion after Inquiry—General Meeting—Insufficiency of Notice—Majority of Two-Thirds of Members Present—Injunction.—The rules of a club provided that in case the conduct of any member should, in the opinion of the committee, after inquiry, be injurious to the welfare and interests of the club, the committee should call upon him to resign, and in the event of his refusal to do so, should call a general meeting, which was to be called on giving a fortnight's notice, at which it should be competent for the votes of two-thirds of those present to expel such member. The committee having called on the plaintiff, a member of the club, to resign on the alleged ground that his conduct was injurious to its interests, and the plaintiff having refused to do so, a general meeting was summoned by notices issued on the 1st of November for the 14th of November, when 117 members were present, of whom 115 voted—77 in favor of a resolution for expelling the plaintiff, and 38 against it. The resolution was declared to be carried. On a motion to restrain the committee from interfering with the enjoyment by the plaintiff of the use and benefit of the club, *Held*, on the facts of the case, that the committee had acted without full inquiry and without giving the plaintiff notice of any definite charge; that the general meeting was summoned without proper

notice: that the resolution was carried by an insufficient majority; and that the plaintiff was entitled to an injunction: *Labouchere* v. *Earl of Wharncliffe*, Law Rep. 13 Chan. Div.

Conflict of Laws.

Locality of Contract of Sale.—Prohibitory Liquor Law—Delivery to Carrier.—A verbal order for liquors was given in Michigan to the agent of a Wisconsin firm, subject to the approval of the firm, and to the acceptance or rejection of the goods on their arrival in Michigan. The Wisconsin Statute of Frauds avoids all verbal contracts of sale involving more than $50, unless the buyer accepts and receives a part of the goods. *Held*, that under the agreement as to their acceptance, the delivery of the liquors to a carrier in Wisconsin did not complete the sale, as a Wisconsin contract, within the meaning of the statute, and that as a Michigan contract, it was void under the prohibitory liquor law: *Rindskopf* v. *DeRuyter*, 39 Mich.

Contract.

When involving Personal Association, not Assignable.—Waste.—K. owned certain land and W. agreed to work it on shares with him, and stipulated that his wife should cook and wash for K. Becoming tired of the arrangement, Mrs. W. left, and W. afterwards assigned his contract to his father, who notified K. that *his* wife was ready to do his work, and entering upon the land began to cut and remove timber. At about the same time the owner sold the land, and his grantee filed a bill to stay waste and obtained relief. The decree was affirmed. The contract was practically rescinded by W.'s action and no longer bound K.; it contemplated personal association and was therefore not assignable, and the grantee on obtaining his deed was justified in proceeding without delay to restrain waste: *Litka* v. *Wilcox*, 39 Mich.

Corporation. See *Laborer*.

Misuse of Corporate Powers—Forfeiture.—Where a corporation has abused or misused its corporate powers, but not in any particular as to which it is declared by statute, the act shall operate as a forfeiture of its charter, the court is vested with a discretion to determine whether the corporation shall be ousted of its franchise to be a corporation, or only from the exercise of the powers illegally assumed: *State* v. *Building Association*, 35 Ohio St.

Deed.

Delivery—Inferrible from Circumstances—Destruction of Deed by Consent of Parties—Husband and Wife.—Although there may have been no manual delivery of a deed, nor anything said in terms about its delivery, yet the fact of delivery may be found from the acts of the parties preceding, attending and subsequent to the signing, sealing and acknowledgment of the instrument: *Dukes* v. *Spangler*, 35 Ohio St.

Where real estate is conveyed by a husband to his wife, through the intervention of a trustee, the destruction of the unrecorded deeds by the husband, with the assent of the wife and the trustee, will not, of itself, estop the wife as against the grantor's heir, to claim the land under such conveyance: *Id.*

EQUITY. See *Injunction.*

Bill of Particulars—Practice—Discovery.—In an action for dissolution of partnership in the business of surgeons, plaintiff alleged that the defendant "for some time past and since from about" a certain date "so behaved and conducted himself towards the plaintiff in the presence of * * * many of the patients of the partnership" as to make it impossible for the plaintiff to carry on practice with him. An interrogatory by the defendant calling upon the plaintiff to set forth the particulars and circumstances of the occasions on which the defendant had so behaved and conducted himself, allowed: *Lyon* v. *Tweddell*, Law Rep. 13 Chan. Div.

An interrogatory as to the names of the persons in whose presence the defendant had so behaved and conducted himself, disallowed: *Id.*

Department of the Interior—Conclusiveness of Decisions—When Equity will Relieve.—A court of equity will relieve against a clear mistake of law by the officers of the Department of the Interior, but where the case involves mixed questions of law and fact and the court cannot separate them so as to see clearly where the mistake of law is, it will not relieve: *Marquez* v. *Frisbie*, S. C. U. S., Oct. Term 1879.

Administrator's Sale—Insufficient Deed—Purchaser's Equity for a Deed.—In an action of ejectment it appeared by the records of the probate court, that a sale of several parcels of land had been made by an administrator, in obedience to an order of the court, and had been approved by the court. It appeared, also, that the purchase-money had been paid in full, and the purchaser had been put in possession of the tract in controversy by the administrator, but the deed, which he received, did not in terms describe the land. It did, however, use the description employed in the report of sale, which, after enumerating several tracts by their numbers, stated that they contained in the aggregate, three hundred and fifty-three and seventy-four one hundredth acres. It was shown by parol evidence that all the lands of the decedent amounted to exactly three hundred and fifty-three seventy-four one hundredth acres, including the tract in controversy, and that they constituted a farm, the dwelling-house and orchard of which were on this tract. Defendants claiming under this sale: *Held*, that as *bona fide* purchasers, they had rights which a court of equity would enforce; that although for want of explicitness in the description, the administrator's deed might not convey the legal title, yet, the same degree of particularity is not required in a report of sale as in a deed, and since it sufficiently appeared that the tract in controversy was in point of fact sold and paid for, as against the plaintiffs, who were heirs of the decedent, defendants were entitled to the land, and accordingly there was a decree vesting the title in them; *Gilbert* v. *Cooksey*, 69 Mo.

Interference as between Parties not in pari delicto.—Where one who reposes confidence in another has been induced by the fraudulent misrepresentations of the latter to attempt the perpetration of a fraud, the two are not in *pari delicto*, and as between them the rule in favor of the possessor cannot be invoked, to prevent equity from interfering on behalf of the former: *Poston* v. *Balch*, 69 Mo.

The plaintiff and his wife having determined to separate, agreed upon

a division of property, and she accepted a portion in lieu of alimony and other claims against his estate. Previous to this, she had instructed her attorney to institute a suit on her behalf for a divorce. The attorney not being apprised of the financial settlement, inserted in the petition a claim for alimony. The husband not knowing that this was done by mistake, became greatly alarmed. While in this state of mind he visited the present defendant, who was an old acquaintance and apparently warm friend. During the visit he disclosed his troubles with his wife, and requested the defendant's intercession to induce her to withdraw her claim. The defendant undertook the mission, but instead of carrying it out in good faith, urged her to insist upon her claim. She, however, declined and declared her purpose of standing by the arrangement already made. The defendant, nevertheless, reported to the plaintiff that she would insist on the claim as made in the petition, and suggested to him, as a means of defeating her, that he should put his property into the hands of a friend. Acting on this suggestion, plaintiff did, for a nominal or at least an inadequate consideration, transfer all of his property to defendant. Having subsequently discovered the fraud practised upon him, plaintiff brought this suit to set aside the transfer and to subject certain real estate, for which defendant had exchanged the property, to a lien for its value. *Held*, that the parties were not *in pari delicto* and equity would afford the relief sought: *Id.*

ERRORS AND APPEALS.

Error not working Injury—Allowance of improper Cross-examination—Judgment will not be reversed on the ground that the court allowed a witness to be cross-examined on a matter not within his testimony in chief unless it appears that the party complaining suffers injury thereby: *Wills* v. *Russell*, S. C. U. S., Oct. Term 1879.

ESTOPPEL. See *Deed.*

EXECUTORS AND ADMINISTRATORS.

Settlement of Account—Including Debt due the Estate—Effect of in Suit against Debtor.—The settlement of an executor's account in which he has charged himself with the amount of a debt due the estate is not conclusive evidence of its payment in a subsequent suit by him against the debtor: *Butterfield* v. *Smith*, S. C. U. S., Oct. Term 1879.

GOVERNMENT. See *Equity.*

HUSBAND AND WIFE. See *Deed.*

Separate Estate of a Married Woman with Power of Appointment by Will only—Debts of Married Woman—Power exercised in favor of Volunteers—Property liable for Debts.—Property was settled on a married woman for her separate use for life, with remainder for such persons as she should by her will appoint, with remainder in default of appointment, for her children or her next of kin, and the married woman made a testamentary appointment in favor of her daughter. *Held*, that the appointed property was liable to the payment of the appointor's debts as if it were her separate estate: *In re Harvey's Estate; Godfrey* v. *Harben*, Law Rep. 13 Chan. Div.

London Chartered Bank of Australia v. *Lamprière*, Law Rep. 4 P. C. 572, followed: *Id.*

Vaughan v. *Vanderstegen*, 2 Drew. 165, not followed: *Id.*

INJUNCTION.

Contempt—Breach of Injunction—Notice—Telegram—Sheriff.—Sufficient notice of the granting of an injunction may be given by telegram; but if it is sought to commit for contempt a person, who, after receiving such a notice disregards it, the court must decide upon the particular facts whether he had in fact notice of the injunction, and it is the duty of those who ask for the committal to prove this beyond reasonable doubt: *Ex parte Langley; In re Bishop*, Law Rep., 13 Chan. Div.

A person who has violated an injunction will not be committed for contempt. when he swears, that though he had received notice of it by telegram, he *bona fide* believed that no injunction had been granted, and the circumstances show that such a belief was not unreasonable: *Id.*

It is the duty of a sheriff's officer who receives notice by telegram, purporting to be sent by solicitors in London, of an injunction being granted by the Court of Bankruptcy to restrain a sale in the country under an execution, to telegraph to the Court of Bankruptcy, or to the London agents of the sheriff to ascertain whether an injunction has really been granted: *Id.*

This, however, is not the duty of the auctioneer who is conducting the sale; he is only bound to communicate with the sheriff's officer who has instructed him to sell: *Id.*

A sheriff's officer who is not himself present at the sale, and who has no actual notice of the injunction, is not responsible for the act of his deputy, who allows the sale to be continued after receiving notice by telegram: *Id.*

A London solicitor who obtains an order from the Court of Bankruptcy in London, restraining a sale under an execution in the country, ought, instead of telegraphing the order to the sheriff's officer, to telegraph it to a solicitor at the place, as his agent, asking him to give notice of it to the persons affected: *Id.*

Restrictive Covenants—Mandatory Injunction.—An estate was laid out for building and sold in lots, and the purchasers of the different lots executed a deed by which they covenanted with vendor not to erect any buildings beyond a certain line, the covenant being subject to a proviso that it should not be personally binding on any one, except in respect of breaches committed during his sole or joint seisin of the lot to which it related. In 1872, the purchaser of lot B built upon it a bake-house beyond the line. The plaintiff about the same time bought the opposite lot A. No complaint appeared to have been made by any one of the erection of the bake-house until this action was commenced. In 1876, the defendant purchased the residue of a mortgage term in lot B, and in 1877, commenced building upon that plot a wooden stable beyond the line. The plaintiff, as soon as he heard of this, wrote to complain on the 17th of March 1877, at which time the stable was built up to the eaves. The defendant proceeded to complete the stable,

which was finished on the day on which the plaintiff commenced an action for an injunction to restrain the defendant from allowing any buildings to continue on his land beyond the line:—

Held, by BACON, V. C., that a mandatory injunction ought to be granted to compel the removal of all the erections on the defendant's plot beyond the line. *Held*, on appeal, that the injunction ought not to extend to the building which had been allowed to remain for five years without complaint, but must be confined to buildings erected since the defendant acquired his title: *Gaskin* v. *Balls*, Law Rep. 13 Chan. Div.

Baxter v. *Bowers*, 23 W. R. 805, explained: *Id.*

LABORER.

Corporation—Engineer.—An assistant chief engineer of a railroad company is not a "laborer" within the meaning of the constitutional and statutory provisions making stockholders liable for the labor debts of the corporation: *Brockway* v. *Innes*, 39 Mich.

LIMITATIONS, STATUTE OF.

Concealment—When it takes Case out of the Statute—Proof of.—Where a Statute of Limitations excepts cases of concealment, the party seeking to avail himself of the exception must show that the concealment was by contrivance and not by mere silence; that he had not the means of knowledge and that his delay was consistent with reasonable diligence. He must also show fully the circumstances of the discovery: *Wood* v. *Carpenter*, S. C. U. S., Oct. Term 1879.

MANDAMUS. See *Removal of Causes.*

MUNICIPAL CORPORATION.

Ordinance—Repeal—Condition.—A city power, under its charter, to pass ordinances, may likewise repeal them on such conditions as are reasonable and just. The repeal of an ordinance to suppress gaming, except as to offences committed and forfeiture incurred previous thereto, held valid: *City of Kansas* v. *White*, 69 Mo.

Duty to build Sidewalks—Evidence.—It is the duty of a city, whenever the public convenience or necessities require it, to put the sidewalks of its streets in a reasonably safe condition, and if, instead of performing this duty, it permits the proprietors of adjoining property to construct sidewalks of their own in the street, it will be liable for all damages resulting from their unsafe condition. The passage of ordinances reciting that the common council deem it necessary that a particular sidewalk shall be constructed, and providing for its construction, amounts to an admission by the city that the public necessities require it: *Oliver* v. *City of Kansas*, 69 Mo.

OFFICER. See *Equity.*

PARTNERSHIP.

Rescission of Partnership Agreement—Fraud—Lien on Assets for Purchase-Money.—The plaintiff was induced by the fraud of the defendant to purchase a share of his business and to enter into partner-

ship with him. Judgment being given for the rescission of the agreement and the dissolution of the partnership:—

Held, that the plaintiff was entitled in respect of the purchase-money which he had paid, to a lien on the surplus of the partnership assets, after satisfying the partnership debts and liabilities, and that, in respect of any sums which he had paid or might pay in satisfaction of partnership debts, he was entitled to stand in the place of the partnership creditors to whom he made the payments: *Mycock* v. *Beatson*, Law Rep. 13 Chan. Div.

Payment.

By one of Joint Makers of a Note—Bankruptcy of Party paying—Surety.—The holder of a promissory note, accepted in good faith from one of the principal makers thereof, who, to the knowledge of the holder, was insolvent at the time, a conveyance of a parcel of land in payment of the note. Subsequently and within four months from the time of the conveyance, the holder of the note, on demand therefor, surrendered the property conveyed to an assignee in bankruptcy of the grantor. *Held*, that such conveyance did not operate as payment of the note, nor to discharge a surety thereon: *Harner* v. *Batdorf*, 35 Ohio St.

Possession.

Change from Friendly to Adverse..—Proceedings for the partition of land, brought by persons holding possession under license from the true owner and to which he is no party, followed by a sale to one of the petitioners, and continued exclusive possession by him will not give the possession an adverse character. In order to convert a friendly or subordinate into an adverse possession, in any case, the intention to make the change must be distinctly made known to the true owner: *Budd* v *Collins*, 69 Mo.

Removal of Causes.

Right of Citizen of another State who Intervenes in Suit between Citizens of same State.—The city of Chicago filed a bill in equity against A. and B., citizens of Illinois, praying for the sale of property conveyed to A., as trustee, to secure the indebtedness of B. to the city. Afterwards C., a citizen of Alabama, obtained judgment against B. and upon his petition was made party defendant to the bill. He thereupon filed an answer denying the indebtedness of B. to the city. Afterwards he filed a petition for removal to the United States Court, on the ground of the citizenship of the parties. *Held*, that the suit was not removable: *Ayres* v. *City of Chicago*, S. C. U. S., Oct. Term 1879.

What must be shown by Petition or Record—Time of Removal—Act of March 3d 1875 (18 Stat. 470).—In order to remove a cause from the state courts to the United States courts on account of prejudice or local influence, the petition or record must show that the party opposed to petitioner is a citizen of the state in which the suit is brought: *American Bible Society* v. *Grove*, S. C. U. S., Oct. Term 1879.

To effect a removal under the Act of March 3d 1875 of a cause then pending, the petition must have been filed at the first term thereafter at which the cause could have been tried: *Id.*

Mandamus.—Where a cause has been regularly removed and the court from which it has been transferred assumes to treat it as still within its jurisdiction, and vacates the order of removal, mandamus lies to compel it to vacate the latter order: *People ex rel. Rankin* v. *Wayne Circuit Judge*, 39 Mich.

Sale.

Optional Contract.—An agreement was made with an artist for a portrait that need not be taken or paid for if unsatisfactory. *Held*, that however good the picture is, the customer is the only judge whether it suits him or not, and if not, he cannot be compelled to pay for it: *Gibson* v. *Cranage*, 39 Mich.

Seal. See *Bills and Notes.*

Surety. See *Bills and Notes; Payment.*

Official Bond.—Failure of Principal to Sign.—Sureties are not liable on an official bond signed by them alone, and without their knowledge or consent accepted without the signature of a principal who is named upon its face as the primary debtor. And the burden of proving their consent to its being so accepted is on those who try to enforce it: *Johnston* v. *Township of Kimball*, 39 Mich.

A township treasurer should be a party to his own official bond: *Id.*

A surety can insist that he will not be bound except upon his own terms, and his obligation cannot fairly be extended beyond the scope of his written contract, as under the Michigan Statute of Frauds his agreement must be in writing: *Id.*

Vendor and Purchaser.

Misdescription—Conditons of Sale—Compensation after Conveyance.—Where, in an agreement for the sale of land, the conditions provided that if any error or misstatement should be found it should not annul the sale, but that compensation should be made in respect thereof and an error in the quantity of the land was discovered after the conveyance had been executed. *Held*, that the purchaser was entitled to compensation: *In re Turner and Skelton*, Law Rep. 13 Chan. Div.

Manson v. *Thacker*, 7 Ch. D. 620, not followed: *Id.*

Waste.

Tenant for Life—Equitable Waste—Ornamental Timber.—An equitable tenant for life, unimpeachable for waste, is entitled to the proceeds of ornamental timber cut by him, where the timber so cut is such as the court would itself direct to be cut for the preservation and improvement of the remaining ornamental timber; but it does not follow that the court will not, at the instance of the remainderman, grant an injunction restraining the tenant for life from cutting any ornamental timber which it has become necessary and proper to cut, and direct that the cutting be done under its supervision: *Baker* v. *Sebright*, Law Rep. 13 Chan. Div.

The doctrine of equitable waste considered: *Id.*

Form of inquiry as to ornamental timber: *Id.*