Vt. 162; *Hunt* v. *Hoover*, 24 Iowa 231; *Nash* v. *Lull*, 102 Mass. 60. We have been referred to the case of *Elmer* v. *Pennel*, 40 Me. 430, as sustaining the view of appellant and as asserting the want of jurisdiction of state courts even although the validity of a patent arises collaterally. The opinion in that case was not concurred in by APPLETON, C. J., and in the case of *Nash* v. *Lull*, *supra*, it is said of it that it was inconsistent with the authorities upon that subject. We think it, therefore, clear that the trial court had jurisdiction in this case to pass on the validity of the patent, and that it was justified in predicating the invalidity of the patent on the facts stated in the various instructions. That it was so justified is abundantly shown by the following cases, into an analysis of which we deem it unnecessary to enter: *Darst* v. *Brockway*, 11 Ohio 462; *McClure* v. *Jeffrey*, 8 Ind. 79; *Cross* v. *Huntley*, 13 Wend. 385; *Head* v. *Stevens*, 19 Id. 411; *Hotchkiss* v. *Greenwood*, 4 McLean 456; 1 Mass. 447, 473; *Rowe* v. *Blanchard*, 18 Wis. 441; Curtis's Law of Patents, §§ 253, 256.

The last of the authorities referred to justified the court in giving the second instruction complained of.

Judgment affirmed.

HOUGH, J., having been of counsel, did not sit.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
ENGLISH COURTS OF COMMON LAW.[2]
SUPREME COURT OF OHIO.[3]
SUPREME COURT OF PENNSYLVANIA.[4]
SUPREME COURT OF WISCONSIN.[5]

ADMIRALTY. See *Shipping*.

ASSIGNMENT.

For the Benefit of Creditors.—Claim of Exemption by Assignor—Out of what Property allowed.—The general right of an assignor to

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

[2] Selected from late numbers of the Law Reports.

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

[4] From A. Wilson Norris, Esq., Reporter; to appear in 90 Penn. St. Reports.

[5] From Hon. O. M. Conover, Reporter; to appear in 49 Wis. Reports.

except and reserve from an assignment for the benefit of creditors, property to the value of $300, is undoubted. He cannot do so, however, out of land, to the injury of one holding a lien for the purchase-money, or a judgment lien in which the exemption from execution is waived. His claim must be restricted to some property which he owned, or in which he had an interest at the time of the assignment, or at the furthest, to the proceeds of that property sold. It cannot extend to money made by the assignor's care, management and use of the assigned property: *Bausman's and Herr's Appeal*, 90 Penn. St.

Assignees received rent for the use of a farm, after an assignment, not on a term existing at the time of the assignment, but on a letting afterwards. They also sold the land, but the sum realized therefrom was insufficient to pay the judgment liens for purchase-money. There was a reservation of the $300 exemption in the assignment. The assignor claimed it out of the rents. *Held*, that the claim could not be allowed: *Id.*

Bank.

National Bank—Guarantee of Note—Act of Congress—Construction of—Authority of Officer—Estoppel.—Under the National Banking Act (Rev. Stat, sect. 5136), a national bank may guarantee the payment of a promissory note transferred by it: *Peoples' Bank of Belleville* v. *Manufacturers' Nat. Bank of Chicago*, S. C. U. S., Oct. Term 1879.

Where such guarantee is signed by the vice-president, with the knowledge and consent of the president and cashier, the bank is estopped from denying the authority of the vice-president to give the guarantee: *Id.*

Bankruptcy.

Assignee—Motion to be made Party to Suit—When denied—Estoppel.—When an assignee in bankruptcy stands by, while the bankrupt prosecutes to final appeal to the Supreme Court, a claim against the government, for the benefit of certain creditors, to whom he had conveyed the claim as collateral, the latter court will not, upon the assignee's motion to be made a party, decide his rights as against such creditors, by giving him control of the suit: *United States* v. *Peck*, S. C. U. S., Oct. Term 1879.

Bill of Sale.

Consolidation of Mortgage with—Execution Creditor—Right to Surplus Proceeds of Goods, after discharging Bill of Sale—The doctrine of consolidation of mortgages does not enable the grantee, by a registered bill of sale of goods seized under a *fi. fa.*, to tack a prior mortgage of other property of the grantor, and claim that the surplus proceeds of the goods, after discharging the sum secured by the bill of sale, shall be applied in satisfaction of the prior mortgage, so as to defeat the right of the execution creditor to such surplus: *Chesworth* v. *Hunt*, Law Rep. 5 C. P. Div.

Bills and Notes. See *Lunatic; Mortgage; Partnership.*

Duress of Maker—Right of Endorser to prove.—Where a promissory note was obtained by duress of the maker, and endorsed in good faith, without any knowledge of the duress on the part of the endorser, in a suit by the payee, who was guilty of the duress, against the endorser,

the latter may set up the duress of the maker, as a defence to the action: *Griffith et al.* v. *Sitgreaves*, 90 Penn. St.

Accommodation Note—Admissibility of Evidence to show Agreement that Endorser should incur no liability—Evidence of surrounding circumstances.—In an action by the holder against the endorser of a check, the defendant alleged that he permitted the use of his name as payee, and endorsed the check at the request of and as a matter of accommodation to the plaintiff, not only without consideration, but upon the express promise and agreement that he should incur no liability by reason of his endorsement. *Held*, that it was competent, as between the immediate parties to the transaction, to prove these allegations: *Breneman* v. *Furniss*, 90 Penn. St.

The defendant offered to prove the facts above stated, together with circumstances connected therewith, as explanatory of the transaction. The court permitted him to prove the naked fact that the "check was given with the understanding that he should incur no liability thereon," but studiously excluded all testimony, tending to show the circumstances under which he permitted the use of his name as payee, and became endorser of the check, or the purpose for which it was done. *Held*, that this was error: *Id.*

COMMON CARRIER. See *Railroad.*

Goods destroyed by Fire.—When Carrier ceases to be liable as such and becomes a Warehouseman.—A package of goods was delivered to the Great Western Railway Company, and another to the London and North Western Railway Company, for carriage to the station of the former company at W., both packages being addressed to the plaintiff "to be left till called for." One of the packages arrived at W. on the 24th of March, the other on the 25th. On their arrival they were placed in the station warehouse to await their being called for. The defendants did not know the address of the plaintiff, who travelled about the country with drapery goods. The goods had not been called for, when, on the morning of the 27th of March, a fire having accidentally broken out, the warehouse was burned down and the goods were consumed by fire. The plaintiff on the same day after the fire called for the goods, and, not receiving them, brought actions against the defendant companies, as common carriers, to recover their value. *Held*, that after the interval of time which the plaintiff had suffered to elapse since the arrival of the goods, the liability of the defendants as common carriers in respect of the goods had ceased, and they had become mere warehousemen of them, and, consequently, that the actions were not maintainable in the absence of any evidence of negligence on the part of the defendants: *Chapman* v. *Great Western Railway Co.*, Law Rep., 5 Q. B. Div.

CONFLICT OF LAWS. See *Insurance.*

CONSTITUTIONAL LAW.

Statute—Construction of—Exemption from Taxation—Charter—Reservation of Power to alter—Effect of.—Exemptions from taxation will not be enforced unless granted for a valuable consideration and expressed in clear and unambiguous terms: *Union Passenger Railway Co.* v. *Philadelphia*, S. C. U. S., Oct. Term 1879.

The right of a state to impose a future tax cannot be taken away by implication arising from a direction to pay a certain sum: *Id.*

Where a constitutional amendment reserves to the legislature the right to alter charters, a subsequent act of incorporation must be construed as if the amendment was embodied in it: *Id.*

Such reserved power to alter charters cannot be used to impair vested rights, but may be exercised to almost any extent to carry into effect the original purposes of the grant, and to protect the rights of the public and of the corporators: *Id*

An amendment to a state constitution reserved to the legislature the right to alter charters. Subsequently a street railway company was incorporated, its charter providing that it should pay to a city "such license-fee for each car * * * as is now paid by other passenger railway companies." At this time the annual license-fee fixed by the city ordinances was $30 per car. Afterwards the legislature enacted that all the railway companies in the city should pay a license-fee of $50 per car. *Held*, that the railway company was bound to pay the increased license-fee: *Id.*

Power of Legislature to relieve Property from Illegal Taxation—Special Legislation.—Where a municipal corporation, in exercising the power of assessment to pay for a public improvement, levies the assessment upon property which was not subject to be charged therewith, and, in a suit brought to enforce the assessment, the property thus charged was ordered to be sold to pay the same, it is competent for the legislature to relieve the property thus ordered to be sold, and to require the amount improperly charged thereon to be paid out of the funds of the corporation: *State* v. *Hoffman*, 35 Ohio St.

Where the statute granting such relief does not confer corporate power, it may be a special act: *Id.*

CORPORATION. See *Constitutional Law; Taxation.*

Insolvency—Right of Officers, who are also Creditors, to execute Notes to themselves—Attempt to obtain Preference.—An insolvent corporation being indebted to its officers and directors, they executed the notes of the corporation in their own favor, and having obtained judgment by default, issued execution thereon. In the distribution of the proceeds of the sheriff's sale of the personal property of the corporation, *Held*, that this conduct of the officers was a fraud in law, which gave them no preference over general creditors in the distribution: *Hopkins's and Johnson's Appeal*, 90 Penn St.

Transfer of Stock—Loss of Certificates—Issue of New Certificates—Liability of the Company—Dividends—Statute of Limitations.—On the 9th of September 1854, the Cleveland and Mahoning Railroad Company issued to V. certificates of its capital stock, which declared upon their face that the stock was transferable on the books of the company upon the surrender of the certificates. On the 16th of September 1854, the stock was sold to F. by V., who delivered to him the certificates, with blank powers of attorney to enable him to have the stock transferred. The certificates were mislaid by F., and were not discovered until December 1871. In the meantime, on May 8th 1863, the board of directors of the railroad company, on the application of V., issued to

B. & P., to whom V. assumed to sell the stock, new certificates of stock, on the supposition that the original certificates had been lost by V. On the application of the administrators of F. for a transfer of the stock to their names, and for an account of the dividends, the company refused the application, on the ground of the issue of the new certificates to B. & P. The by-laws provided that no new certificates should be issued until the previous certificate was surrendered and cancelled; and also that certificates might be issued on the special order of the board of directors, in the place of lost certificates, on proof of such loss, and on indemnity to the company. *Held*, that the issuing of the new certificates to B. & P., and the allowing the transfer of the stock to them, was a breach of the duty which the company owed to F., and created a liability on the company to replace the stock to which F. was entitled, or to account for its value. *Held, further*, that the company was not liable for the dividends paid on the stock, before it had notice of the transfer of the certificates to F. *Held, further*, that until the transfer of the stock to the holders of the original certificate was refused, or they had notice of the transfer of the stock to other parties, the Statute of Limitations did not begin to run: *Cleveland and Mahoning Railroad Co.* v. *Robbins*, 35 Ohio St.

Criminal Law. See *Husband and Wife*

Motion for New Trial—Right of Accused to hearing before the Judge who tried the Cause.—A person accused of crime, after verdict against him, has a right to the solemn opinion of the *judge before whom the cause was tried*, after a careful hearing of all that may be alleged against the justice of the verdict, that it ought to stand: *Ohms* v. *The State*, 49 Wis.

Where, therefore, the evidence upon which a verdict of guilty of murder in the first degree was found, was not overwhelming, and the accused was unable to obtain a proper hearing of his motion for a new trial, because it was inconvenient for the trial judge (who sat in place of the judge of the circuit in which the trial was had) to remain and hear the same, and such judge erroneously supposed that the motion might properly be heard by the judge of the circuit, this court reverses the judgment, and orders a new trial, without determining whether the verdict was against the weight of evidence, or whether there was error in the instructions given to the jury: *Id.*

Jury—Return to Court for Instructions as to Evidence.—The jurors in a criminal case, after retiring to consider their verdict, returned into court and requested the judge to state his recollection of the evidence of a witness who had given material testimony on the trial. *Held*, that to comply with the request is not error: *Hulse* v. *The State*, 35 Ohio St.

Debtor and Creditor.

Transfer of Debtor's whole Property—When Valid.—If a creditor, knowing that his debtor is in failing circumstances, takes a transfer of such debtor's whole property, with an honest design to secure the payment of the debt due himself, and without any intent to defraud other creditors, the transfer is valid as against them: *Gage* v. *Chesebro*, 49 Wis.

DEED.

Acknowledgment of Payment of Purchase-money— When prima facie Evidence—Sheriff's Deed.—A deed executed to a purchaser of lands sold under an execution, by the sheriff, under an order of the court, after confirmation of the sale, in which the payment of the purchase-money is acknowledged, is *prima facie* evidence of such payment; but a deed containing a like acknowledgment by the grantor, at a private sale, is no evidence of such payment as against a prior, unrecorded deed: *Morris* v. *Daniels*, 35 Ohio St.

DURESS. See *Bills and Notes.*

ERRORS AND APPEALS. See *Trial.*

Evidence—Presumption in favor of Charge—Necessity of Prayer for Instructions— When Answer to Question must be shown.—When the correctness of the charge depends upon evidence, not shown by the record, the presumption is that the evidence sustains the charge: *Lovell* v. *Davis*, S. C. U. S., Oct. Term 1879.

Where a party is not satisfied with a mere statement in the charge, of the general rule of law, he should ask for more definite instructions: *Id.*

Where a question is objected to, it is the evidence and not the question which constitutes the error, and if the answer is not shown by the record the Appellate Court will not reverse: *Id.*

ESTOPPEL. See *Banks; Bankruptcy.*

Receipt in full upon Decision of lower Court—Subsequent Reversal increasing Amount due.—After a determination by judgment of the Circuit Court, of the several amounts to which plaintiffs were entitled as legatees, they received those amounts and gave receipts in full. Afterwards they appealed from the judgment, which was reversed here, and a construction given to the will by which they were entitled to larger amounts. *Held*, that the receipts were not conclusive of their rights: *Catlin* v. *Wheeler's Ex'r*, 49 Wis.

EVIDENCE. See *Bills and Notes; Deed; Lunatic.*

FIXTURES. See *Landlord and Tenant.*

GUARANTEE. See BANK.

HUSBAND AND WIFE.

Clothing of Wife—When Property of Husband—Indictment for Larceny of—Value.—Necessary and suitable clothing furnished by a husband to his wife, or purchased by her with money or means given to her by her husband, for that purpose, does not become her separate property, within the meaning of the Ohio statute, concerning the rights and liabilities of married women: *Pratt* v. *State of Ohio*, 35 Ohio St.

But articles of personal clothing, purchased by a wife with her separate money or means, are made her separate property by the Act of March 30th 1871 (68 Ohio L. 48); and a conviction for the larceny

of such goods, under an indictment laying the property in the husband cannot be sustained: *Id.*

In proving the value of personal clothing, on a trial for the larceny thereof, the testimony should not be confined to current prices among dealers in second-hand clothing: *Id.*

Where the separate property of a wife has been stolen from the family residence, such fact alone will not authorize a conviction under an indictment laying the property in the husband: *Id.*

INJUNCTION. See *Tax; Taxation.*

INSURANCE. See *Pleading; Shipping.*

Ship—Loss by Perils of the Sea—Payment in respect of Bottomry Bond—Foreign Law how far applicable to English Policy.—A policy of marine insurance was effected with English underwriters, by an English merchant, upon goods shipped in a French ship, and it was thereby provided, that general average was to be payable, as per judicial foreign statement. The ship was damaged by a collision and put into port for repairs, the cargo, however, being uninjured. The master, not having funds to do the necessary repairs, gave a bottomry-bond, on ship, freight and cargo. The ship and freight proving insufficient to satisfy the bond, the assured had to pay the deficiency, in order to obtain possession of his goods. *Held*, that the policy was not to be construed according to French law, except so far as the parties had expressly stipulated that it should be, and that there being no loss by perils of the sea, according to English law, the assured could not recover from the underwriters the amount which he had paid as above mentioned: *Greer* v. *Poole*, Law Rep., 5 Q. B. Div.

Agreement of Compromise—Subsequent Discovery of Breach of Conditions.—Where, after a loss by fire of insured property, and after an opportunity to investigate it, the insurer, without any deception or fraud practised upon it by the insured at the time of such investigation, agrees with the insured that it shall pay and he receive a certain sum in full, on account of such loss, a recovery of that sum cannot be defeated, by showing a breach of a warranty in the policy, though unknown to the insurer at the time of such agreement: *Stache* v. *The St. Paul Fire and Marine Ins. Co.*, 49 Wis.

Provision against Assignment—Assignment after Loss.—A provision in an insurance policy, avoiding it in case of its assignment without the consent of the company, applies only to an assignment made before a loss under the policy: *Dogge* v. *Northwestern National Ins. Co.*, 49 Wis.

JOINDER OF ACTIONS. See *Parties.*

LAND.

Sale by Government—Effect of—Subsequent Patent to adverse Claimant—Validity of.—Where the right to a patent has become vested in a purchaser of public lands, it is equivalent, so far as the government is concerned, to a patent actually issued, and a subsequent patent to another person would be void so long as the first sale remained in force: *Simmons* v. *Wagner*, S. C. U. S., Oct. Term 1879.

LANDLORD AND TENANT.

Lease — Covenants — Under-lease — Fixtures.—An under-lease of a nursery-ground contained an express covenant by the under-lessee, to deliver up all landlord's fixtures thereon at the end of the term. *Held*, that a representation and covenant by the grantors of the under-lease, that the under-lessee should be at liberty, without hindrance from any one, to remove trade fixtures during the term, and that the grantors had not entered into covenants inconsistent with such right, could not be implied: *Porter* v. *Drew*, Law Rep., 5 C. P. Div.

LARCENY. See *Husband and Wife.*

LIMITATIONS, STATUTE OF. See *Corporation.*

Mutual Account—Application of Payments.—An account running through more than six years, included items for services and materials of various kinds furnished by plaintiff, as required for defendant's use, and items of lumber, &c., furnished by defendant to plaintiff, and in one instance, a buggy, carriage and sum of money taken from defendant in exchange for another carriage. *Held*, that this was an open, mutual account, and the Statute of Limitations did not commence to run until the date of the last item charged: *Hannan* v. *Engelmann*, 49 Wis.

Payments on account, not applied by either party at the time, will be applied by the court as equity may require; and in case of an open, running account, would be applied to the earlier items, if that were necessary, to prevent the running of the statute: *Id.*

LIS PENDENS. See LUNATIC.

LUNATIC.

Promissory Note—Purchaser for Value—Inquiry into Consideration —Evidence—Lis Pendens.—The principle that the consideration of a negotiable note cannot be inquired into in the case of a holder for value, does not apply to the case of such paper made by a lunatic: *Moore* v. *Hershey*, 90 Penn. St.

In a suit by the endorsee of a promissory note made by a lunatic, the latter or his committee may defend, on the ground that the endorser had knowledge of the maker's lunacy, or that the note was obtained by fraud or without proper consideration: *Id.*

Where the endorsee of a promissory note has been notified that he will be required to prove the consideration paid by him for the note, and he takes the stand to prove that he is a *bona fide* holder, it is proper on cross-examination, to ask such questions as will tend to discover whether the endorsee knew that the note was originally obtained without proper consideration: *Id.*

The defendant lunatic may also prove that he received no consideration for the note; that it was given pending proceedings in lunacy, and that plaintiff admitted that defendant had not received value for the note: *Id.*

Per PAXSON, J.—A *lis pendens* is undoubtedly constructive notice in questions of title and property, but that it should be so as to a man's mental condition is much to be doubted: *Id.*

Mechanics' Lien.

Architect—When not entitled to Lien.—An architect who simply provided the plans and specifications for a building, is not entitled to a lien against said building for his labor. *Bank* v. *Gries*, 11 Casey 423, distinguished: *Price* v. *Kirk*, 90 Penn. St.

Lien on Improvements—Description of Property—Personal Judgment —Amendment.—When a special security and remedy are given to a favored class of creditors, they must conform with reasonable accuracy to the provisions of the law designed for their benefit: *Ely* v. *Wren*, 90 Penn. St.

Where a claim is filed, under the provisions of the Act of February 17th 1858, extending the Mechanics' Lien Law in certain counties to certain improvements, engines, &c., put up by tenants of leased estates on lands of others, the property against which the lien is given must be so accurately described, that when judgment is obtained on the *scire facias* a separate schedule will not be required to be annexed to the *levari facias* for the guidance of the sheriff: *Id.*

It seems, that it was informal to enter judgment against the defendants personally in such a proceeding: but if there was no other difficulty in the way, this might be treated as amended: *Id.*

St. Clair Coal Co. v. *Martz*, 25 P. F. Smith 384, followed: *Id.*

Mortgage. See *Bill of Sale.*

Agreement to extend Time—Effect of.—Where, by the original condition in a mortgage, the debt secured by it was payable sixty days after demand, a new agreement extending the time of payment to a day certain, when binding, has the effect in equity, of modifying the original condition of the mortgage to the same extent as if the terms of the new agreement were incorporated into the condition: *Union Central Life Ins. Co.* v. *Bonnell*, 35 Ohio St.

Given to secure Promissory Note—When demand of Payment unnecessary.—In the condition of a mortgage, given to secure the payment of a promissory note, payable on demand, it was provided that, if the mortgagor should pay said note, or cause the same to be paid, the mortgage-deed should be void. *Held*, that demand of payment of the note, before suit, was not a necessary condition to a right of action on the mortgage: *Union Central Life Ins. Co.* v. *Curtis*, 35 Ohio St.

Date—Not conclusive—Parol Evidence to show time of Execution—Effect of Recording—Notice to Purchaser.—As to time, the date of a mortgage, as it appears on the registry of the mortgage, is not to be conclusively taken to be the date or time of its execution, and parol evidence is admissible to show, that in point of fact, it was subsequently executed and delivered: *Parke* v. *Neeley*, 90 Penn. St.

As a general rule, a purchaser is not bound to look beyond a judgment-docket, for liens that should there appear. It is different, however, with the registry of deeds and mortgages. The chief object of recording them is to give actual as well as constructive notice to everybody of title and encumbrances thereon; and apart from notice, the only effect given to recorded instruments by the statute, is to make certified copies thereof evidence; and in case of mortgages, to provide that they shall

not be liens, until left for record, except mortgages for purchase-money, which continue to be liens from the date of their execution, if recorded within sixty days thereafter: *Id.*

A mortgage, on its face, showed that it was taken to secure purchase-money of the land therein described. It was not recorded until sixty-two days had elapsed from its execution and delivery. It appeared further, that it was not acknowledged until two days before the date of recording. There were other facts relating to the acknowledgment, from which it would be naturally inferred that the acknowledgment was on the same date as the execution and delivery. *Held*, that these circumstances, all of which appeared on the face of the papers, were sufficient to rebut the inference, which would otherwise have arisen from their dates, and were quite sufficient to put the purchaser at a sheriff's sale upon inquiry, and visit him with notice. *Held, further*, that there was no error in admitting parol evidence to prove the actual date of delivery : *Id.*

Municipal Bonds.

In aid of Railroad—Survey—Change of Route—Recital—Estoppel.—A statute authorized townships along the route, or at the termini of a certain railroad to issue bonds in aid of its construction. A township, which was at one of the intended termini of the road, issued bonds before the route had been actually surveyed. Subsequently, under an amendment to its charter authorizing an extension, the road changed its plans and surveyed a route through instead of to the township. The bonds on their face recited that they were issued in pursuance of the original statute. *Held*, that the bonds were properly issued: *Held, further*, that as against a *bona fide* holder the township would be estopped, from denying the recital: *Township of Pompton, &c.*, v. *Cooper Union, &c.*, S. C. U. S., Oct. Term 1879

Negligence. See *Railroad.*

Railroad—Presumption of Negligence—When not raised.—While it is the duty of a railroad company to provide safe and convenient means of ingress and egress to and from the cars, it is equally the duty of passengers to use the means thus provided with reasonable circumspection and care: *Del., Lack. & Western Railroad Co* v. *Napheys*, 90 Penn. St.

If a passenger seated in a railroad car is injured by a collision, or by a defect in any part of the machinery, a *prima facie* case of negligence is established, and the onus of disproving it is cast upon the company: *Id.*

Where the train has come to a stop, and a passenger, on stepping from the lowest step of the platform of the cars to the ground, fractures her knee-cap, without any apparent external cause, no presumption of negligence is raised: *Id.*

New Trial. See *Criminal Law.*

Several Issues—Erroneous finding on Some—Refusal of Court to set aside.—Where, in an action involving several issues of fact, the finding is in favor of the defendant on all the issues, when it should have been in his favor on one only, it is error for the court, on motion therefor, to refuse to set aside the finding on the issues so erroneously determined, where the effect of the judgment rendered on said issues is different

from what it would have been if only rendered on the issue rightly determined, and where said judgment may prove prejudicial to the plaintiff: *Union Central Life Ins. Co.* v. *Sutphin*, 35 Ohio St.

When granted—Discretion of Court—What Evidence considered—Costs.—The mere fact that there was some evidence in plaintiff's favor, so that the court could not properly order a compulsory nonsuit or direct a verdict for the defendant, does not show that there was any abuse of discretion in granting a new trial after a verdict in plaintiff's favor; and this where defendant had offered no evidence: *Jones* v. *C. & N. W. Railway Co.*, 49 Wis.

Evidence offered for the party in whose favor the verdict is rendered, though improperly rejected, cannot be considered in determining the propriety of granting a new trial: *Id.*

Where the verdict does not appear to be perverse, a new trial should be granted only upon terms that the moving party pay the taxable costs of the former trial: *Id.*

PARTNERSHIP.

Name of Individual Member—Signature to Bill of Exchange—Liability of Firm—Evidence.—Where a signature is common to an individual and a firm of which the individual is a member, a *bona fide* holder for value, without notice whose paper it is, of a bill of exchange with such signature attached, has not an option to sue either the individual or the firm. But there is a presumption that the bill was given for the firm and is binding upon it, at least, where the individual carries on no business separate from the business of the firm of which he is a member; this presumption, however, may be rebutted by proof that the bill was signed, not in the name of the partnership but of the individual for his private purpose, and it is immaterial that the *bona fide* holder took the bill as the bill of the proprietors of the business carried on by the partnership, whoever they might be, and not merely as the bill of the individual: *Yorkshire Banking Co.* v. *Beatson*, Law Rep. 5 C. P. Div.

B. & M. carried on business in partnership. M. was a dormant partner, and B. was the only ostensible partner, the business being carried on in his name alone. B. entered into accommodation transactions for his private purposes, and without the authority of M. accepted and endorsed bills of exchange, in his own name only. B., in becoming party to these bills, did not intend to bind M., but he considered the bills as private transactions and signed them merely on his own behalf. The plaintiffs became *bona fide* holders for value of the bills signed by B., and took the bills as the bills of the proprietors of the business carried on by the partnership and not merely as the bills of B. Besides the business of the partnership, B. was not engaged in any business. *Held*, affirming the judgment of the Common Pleas Division, that the plaintiffs could not hold M. liable upon the bills accepted and endorsed by B.: *Id.*

PARTIES.

Legatees claiming by same Right.—Legatees named in a will, whose legacies depend upon the same right and would be affected alike by the judgment, may properly join as plaintiffs; while the executors and the legatees who controvert the plaintiff's right, should all be made defendants: *Ca'lin* v. *Wheeler, Ex'r*, 49 Wis.

PATENT.

Equivalents—Combination of old Elements—Prior Use.—A patentee of an invention, consisting merely of a combination of old ingredients, is entitled to equivalents, and a party is an infringer who merely substitutes for one ingredient another which performs the same function and was, at the date of the patent, well known to be adaptable to that use: *Imhaeuser* v. *Buerk*, S. C. U. S., Oct. Term 1879.

An infringement of such a patent cannot be justified, by proof that each of the elements could be found separately in some prior patent, printed publication or machine: *Id.*

PLEADING.

Petition and Answer—General denial—Proof of Allegations not specifically denied.—In a suit upon a policy of life insurance, the petitioner set forth the policy, the death of the insured and proper notice to the company. The answer of the company, after a general denial of all the allegations in the petition tending to give a right of action, averred special defences not including want of notice. *Held*, that plaintiff might recover without proof of such notice: *Knickerbocker Life Ins. Co.* v. *Schneider*, S. C. U. S., Oct. Term 1879.

RAILROAD. See *Common Carrier; Negligence.*

Passenger—Ticket issued by one Company—Injury whilst travelling by Train of another—Negligence—Liability of Carriers.—The defendants, a railway company, had running powers between H., a station upon their own line, and R., a station of the S. company, over the line of that company. The defendants and the S. company divided the profits of the traffic between H and R. The plaintiff took a return ticket from R. to H., which was issued to him by a clerk of the S. company. Upon the return journey from H. to R. he travelled in a train belonging to the defendants, and driven by their servants. Owing to the carriage being unsuited to the platform at R., which belonged to the S. company, the plaintiff sustained bodily injury At the trial the jury found that the defendants had been guilty of negligence. *Held*, that an action lay against the defendants, for they, having permitted the plaintiff to trave. by their train, were bound to make provision for his safety: *Foulkes* v *Metropolitan District Railway Co.*, Law Rep., 5 C. P. Div.

Limiting Liability—Reasonable Conditions—A condition that a rail way company will not be liable, "in any case," for loss or damage to a horse or dog, above certain specified values, delivered to them for carriage, unless the value is declared, is not just and reasonable within sect. 7 of the Railway and Canal Traffic Act, 1854, as it is in its terms unconditional, and would, if valid, protect the company even in case of the negligence or wilful misconduct of their servants. The case of *Harrison* v. *London, Brighton and South Coast Railway Co.*, 2 B. & S. 122, deciding that such a condition is reasonable, is overruled by *Peek* v. *North Staffordshire Railway Co.*, 10 H L. Cas. 473: *Ashendon* v. *London and Brighton Railway Co.*, Law Rep , 5 Exch. Div.

SHERIFF. See *Deed.*

SHIPPING. See *Insurance.*

Wages—Set-off on account of Loss by Negligence of Claimant—Pay-

ment by Underwriters.—In an action of wages by master against ship-owner, the defendant, by way of set-off and counter claim, claimed damages for the loss of the ship by the negligence of plaintiff. Reply that the ship was insured against a total loss, and that the underwriters had paid, or agreed to pay, to the owners the whole amount payable by them on a total loss. *Held*, on demurrer, that the reply was bad, because the plaintiff had not pleaded that the money had been actually paid to the defendant, or that the counter claim had been brought without the authority of the underwriters: *The Sir Charles Napier*, Law Rep., 5 Prob. Div.

Charter-party—Misrecital as to location of Vessel—Knowledge of Parties.—A charter-party recited that at the date of its execution the vessel was lying in the harbor of New Orleans. *Held*, that this language was not a warranty but a representation, and the fact that the vessel was then at sea, if known to both parties, did not avoid the charter-party: *Lovell* v. *Davis*, S. C. U. S., Oct. Term 1879.

TAX. See *Constitutional Law.*

Penalty for Non-payment—Not exacted for delay pending Controversy with State as to Title—Injunction.—Where an owner's title to land is disputed, both by the state and the United States, which set up adverse claims to respective portions of the land, and the state, to save unnecessary trouble and expense, forbears to enforce the collection of taxes until the title is adjusted, it cannot, after the owner's title has been established, collect from him the extraordinary compensation exacted by statute for delay in paying taxes, but may be restrained by injunction from collecting more than the arrears of taxes, with legal interest: *Litchfield* v. *County of Webster*, S. C. U. S., Oct. Term 1879.

Illegal Assessment—Injunction—Corporation—Shares of Stock.—Where a board of equalization adds to the return of a tax-payer for taxation an item of property not taxable, and directs the county auditor to carry the amount so added on the duplicate, and assess against it the rate of taxation fixed for state, county and city purposes, an injunction will lie to enjoin the auditor from so doing: *Jones* v. *Davis*, 35 Ohio St.

The personal property which a corporation, organized and doing business under the laws of this state, was required to list for taxation, by section 11 of the Act of May 11th 1878 (75 Ohio L. 436), embraced the capital stock of the corporation, and such being the case, an owner of shares of the capital stock of such company was not required to list his shares for taxation: *Id.*

TRIAL.

Order of Argument—Discretion of Court—Appeal.—In the absence of positive rules on the subject, the order of argument to the jury is matter of practice within the control of the trial judge, and an appellate court will not interfere unless there has been a clear abuse of discretion, to the probable injury of the appellant: *Kaime* v. *Trustees of Village of Omro*, 49 Wis.

UNITED STATES. See *Land.*