American Union; and if the rule is rationally examined in all its bearings and aspects, we can come to no other conclusion than that the rulings of the court in the principal case are sound reason and good law.

C. M. DUNBAR.

Waterloo, Iowa.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF IOWA.[2]

SUPREME COURT OF KANSAS.[3]

SUPREME COURT OF MISSOURI.[4]

SUPREME COURT OF WISCONSIN.[5]

ACTION.

Privity of Contract—Damages for Breach.—The owner of property in a city, which is destroyed by fire, cannot maintain an action to recover damages for its loss, from a water company, on the ground that the loss occurred through a failure of the company to furnish water as required by the terms of its contract with the city, there being no privity of contract between the parties to such action: *Davis* v. *Clinton Water Works Co.*, 54 Iowa.

Filling up Artificial Ditch by Railway Company.—The fact that a railway company, in constructing its road-bed, has filled up an artificial ditch on the land of a third person, by which surface water was conducted from plaintiff's premises to a river, and has thus turned back the water upon said premises, is no cause of action: *O' Connor* v. *The Fond du Lac, Amboy and Peoria Railway Co.*, 54 Iowa.

AMENDMENT. See *Equity.*

ASSUMPSIT.

Services rendered to one on request of another.—Where the testimony shows that A., a physician, is called by B. to render professional services, without any specification as to whom or on whose account such services are to be rendered, and in response thereto goes to B.'s house and renders such services in medical attention to one who is the father of B. and a member of his family, all the time looking to B. alone for compensation, and after the services are rendered presents his bill therefor to B., who makes no objection thereto, but promises to pay it: *Held*,

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1880. The cases will probably be reported in 13 Otto.

[2] From Hon. John S. Runnells, Reporter; to appear in 54 Iowa Reports.

[3] From A. M. F. Randolph, Esq., Reporter; to appear in 25 Kansas Reports.

[4] From Thomas K. Skinker, Esq., Reporter; to appear in 72 Mo. Reports.

[5] From Hon. O. M. Conover, Reporter; to appear in 52 Wis. Reports.

that such testimony makes out a *prima facie* case against B. for the amount of the bill: *Hentig* v. *Kernke*, 25 Kans.

ATTORNEY.

Knowledge of Attorney as affecting his Client.—Knowledge acquired by an attorney while acting for one client, will not affect another client for whom he is acting at the same time in a different case: *Ford* v. *French*, 72 Mo.

BILLS AND NOTES.

Signature by two Makers.—A promissory note in the form, "I promise to pay, &c.," signed by two or more persons, is joint and several: *Dill* v. *White*, 52 Wis.

Negotiable Note with Mortgage as Collateral.—Where a mortgage on real estate is given to secure the payment of a negotiable note, and before the maturity of the note, the note and mortgage are transferred by endorsement thereon to a *bona fide* holder, the mortgagor, although having no notice whatever of such assignment and transfer, cannot thereafter pay off the note or mortgage to the mortgagee so as to defeat the real owner and holder thereof from recovering. Such a holder takes the mortgage as he did the note: *Burhaus* v. *Hutcheson et al.*, 25 Kans.

The *bona fide* holder of negotiable paper transferred to him by endorsement thereon before maturity, and secured by real estate mortgage, need not record the assignment of the mortgage, or bring home to the mortgagor actual notice of such assignment, in order to protect himself against payments made after the assignment without his knowledge or consent by the mortgagor to the mortgagee: *Id.*

Fraud as a Defence—Order of Evidence.—When the maker of a negotiable note proves that the instrument had its origin in fraud, or was fraudulently put in circulation, it is incumbent upon the holder, before he can recover, to prove that he received it *bona fide*, before maturity and for value: *Johnson* v. *McMurry*, 72 Mo.

The proper order of proof in such cases is for the plaintiff, after defendant has offered his evidence of fraud, to meet it by evidence of *bona fides* on his part. He is not required, however, to prove that he had no knowledge of the specific facts which impeach its original validity; but may make general proof that he received it before due, *bona fide* and for value. It will then be for defendant to prove that plaintiff had actual notice of the specific facts; and if he fails in this plaintiff must recover: *Id.*

COLLATERAL SECURITY. See *Bills and Notes.*

CONSIDERATION. See *Debtor and Creditor.*

CONSTITUTIONAL LAW. See *Railroad.*

CONTRACT.

Illegal Agreement—Part Performance—Recovery of Money paid in pursuance of—Subscription to Stock proposed to be issued in violation of State Statutes.—Money paid by one party to another in part performance of an illegal contract not *malum in se*, can be recovered back if the other party has not performed the contract, and both parties have aban-

doned it before consummation: *Congress & Empire Spring Co.* v *Knowlton*, S. C. U. S., October Term 1880.

A corporation proposed to issue new stock and invited subscriptions from its original stockholders, promising to issue to each subscriber a full paid certificate upon payment of eighty per cent. of his subscription This plan was in violation of state statutes and therefore void. One of the stockholders, who was an officer of the company, but who had no knowledge of the illegality of the scheme, subscribed for the additional stock and paid to the company twenty per cent. of his subscription. The plan was afterwards abandoned. *Held*, that the stockholder could recover from the corporation the money paid: *Id.*

Agreement between Father and Son for Conveyance in Consideration of Service and Support—Specific Performance.—A father and son agreed together that if the son would remain with and support the father and his wife (the son's step-mother) during their lives, and work the farm under the father's directions, the farm should, at his death, belong to the son. The son, on his part, carried out the agreement during a period of seventeen years, and until both the father and step-mother were dead. The father, for the purpose of carrying out the agreement on his part, made and delivered to the son a will devising the farm to him. The will made no mention of the testator's other children, and for that reason was void. *Held*, that the son was entitled to have the agreement enforced against the other children. The failure of the attempt to carry it out by will could not be allowed to prejudice his rights: *Hiatt* v. *Williams*, 72 Mo.

CORPORATION. See *Contract.*

CRIMINAL LAW. See *Juror.*

Evidence—Privilege of Witness.—The refusal of a witness in a criminal trial to answer a question, upon the ground that he may thereby criminate himself, cannot be shown as a circumstance against him in a subsequent trial of the witness for the same offence: *State* v. *Bailey*, 54 Iowa.

Evidence of one Offence on Trial for Another.—Upon the trial of one offence, evidence of an entirely distinct offence is inadmissible; but if the evidence tends to prove the commission of the offence for which the prisoner stands indicted, it is no valid objection to it that it also tends to prove another and distinct offence. Thus, where the two offences are committed at the same place and within a few minutes of each other, under such circumstances as together to constitute a single and continuous accomplishment of a fixed and common design, evidence of both is admissible upon a trial for one: *State* v. *Greenwade*, 72 Mo.

DEBTOR AND CREDITOR.

Fraudulent Grant—Consideration paid by Grantee—Moral obligation to Pay.—One who takes a voluntary absolute conveyance of valuable property, knowing that the grantor is largely in debt and unable to pay his debts without subjecting such property to their payment, is guilty of a fraud in the law against the creditors of his grantor, and the conveyance is void as against them: *First National Bank* v. *Bertschy*, 52 Wis.

The fact that the grantee of land in such a case assumes to pay a subsisting mortgage on the land, which is confessedly worth a much larger sum than the mortgage debt, does not deprive the conveyance of its voluntary character as respects the mortgagor's remaining interest in the land: *Id.*

If the maker of a note, which does not specify the rate of interest, has orally agreed to pay a higher rate (not usurious or unusual) than the note would otherwise bear, his payment of such agreed rate is not a fraud as against his creditors: *Id.*

A mortgage of land is not in fraud of creditors if given to secure payment of sums which the mortgagor has promised to pay the mortgagee, where the invalidity of the promise arises merely from the fact that it is not in such form or evidenced in such manner as the law requires: *Id.*

Where A. loans moneys to sons of B. without any request or knowledge on B.'s part, and without any reasonable expectation on A.'s part that B. will repay such loans if the sons do not, there is no moral obligation upon B. to repay the loans or any part of them; and a subsequent promise of B. to pay them, without any request from the borrowers that he will guaranty the payment in order to get an extension of time, is without consideration, and is void, whether made in writing or in parol, and is not a sufficient consideration to uphold a subsequent transfer of B.'s property to A., as against creditors: *Id.*

The mere fact that, some eighteen years before such loans were made, B. had in fact repaid a loan made by A. to another son, under like circumstances, remarking that "he did not want A. to lose anything on his (B.'s) sons," *held*, not sufficient evidence that the subsequent loans were made with any reasonable expectation that B. would repay them if his sons did not: *Id.*

A subsequent loan was made by A. to another son of B., under circumstances which satisfy this court that it was procured by such son from A. by direction of B., and with a reasonable belief on A.'s part that B. would pay it if the borrower did not; but there was no written promise and therefore no legal obligation on B.'s part. The son failed to repay the loan. *Held*, that B. might treat it as a debt due from him to A., and pay it by a transfer of property to A. in preference to other creditors: *Id.*

No actual intent to defraud being shown, and there being a valuable consideration for the deed here in question, but not sufficient to uphold it as an absolute conveyance, against creditors, it is treated in equity as a security for the sums due from the grantor to the grantee: *Id.*

EJECTMENT. See *Equity.*

EQUITY.

Ejectment—Change of Legal to Equitable Cause of Action.—One in the actual and exclusive possession of real estate, cannot maintain ejectment against a person not in possession, who claims title thereto: *Carmichael* v. *Argard*, 52 Wis.

A complaint setting up a purely legal cause of action (as one in ejectment), cannot be amended (either as of course or by leave) so as to set up a cause of action in equity (as one to remove a cloud upon title): *Id.*

The right to change the action from one purely legal to one purely

equitable cannot be claimed under sect. 2832, R. S., on the ground of mistake, where there was no mistake of facts, but merely an erroneous belief of counsel that upon the facts a legal action would lie: *Id.*

ERRORS AND APPEALS.

United States Supreme Court—Writ of Error to—Cannot issue from State Court—What Defects not Amendable.—A writ of error to the Supreme Court of the United States, issued in the name of the chief justice of the Supreme Court of a state, bearing the *teste* of that chief justice, signed by the clerk of the state courts and sealed with its seal, is void, not being in conformity with sect. 1004 Rev. Stat., and its defects cannot be remedied by amendment under sect. 1005 Rev. Stat: *Bondurant* v. *Watson*, S. C. U. S., October Term 1880.

ESTOPPEL. See *Municipal Bonds; Railroad.*

EVIDENCE.

Material Alteration in Written Instrument—Burden of Explaining.—When a material alteration is apparent on the face of a written instrument offered in evidence, the question as to the time of such alteration is in the last instance, one for the jury. It is like any other fact in the case, to be settled by the trier or triers of the facts. Generally, in such a case, the instrument may be given in evidence, and may go to the jury, or trier of fact upon ordinary proof of its execution, leaving the parties to such explanatory evidence of the alteration as they may choose to offer: *Neil, Adm'rx* v. *Case*, 25 Kans.

EXECUTION. See *Sheriff.*

FRAUD. See *Debtor and Creditor*

FRAUDS, STATUTE OF.

Sufficiency of Written Memorandum.—A written memorandum of an agreement is not sufficient within the meaning of the Statute of Frauds and Perjuries, that is merely a piece of paper containing the date thereof, the name of the place where written, the names of certain parties and figures, and signed by the party intended to be charged thereby: *Reid* v. *Kenworthy*, 25 Kans.

While the form of the memorandum is not material, it must state the contract with reasonable certainty, so as the substance can be made to appear and be understood from the writing itself; or by direct reference to some intrinsic instrument or writing, without having recourse to parol proof: *Id.*

INFANT. See *Railroad.*

Executory Contract—Disaffirmance on Coming of Age.—An infant's executory contract is ordinarily voidable; that is, he may, if he choose, refuse to execute and comply with its provisions, and may at any time when he is sued upon it before he comes of age, or within a reasonable time thereafter, disaffirm the same. But after he becomes of the age of twenty-one years, he cannot disaffirm his contract, without returning to the other party what he may have received under it, if he then still possesses or had within his control what he so received: *Burgett* v. *Barrick*, 25 Kans.

The language, "capable of contracting," in sect. 3, c. 67, p. 553, Comp. Laws 1879, is to be understood as "legally capable of contracting," and not that a minor is mentally and physically capable of contracting: *Id.*

INSURANCE.

State Superintendent—Vesting in, of Assets of Dissolved Company—Right to Sue in another State—Removal of Causes.—A superintendent of the insurance department of a state in whom, under the laws of the state, all the assets of a dissolved insurance company vest in fee-simple for the benefit of those interested therein, may, as the statutory successor of the corporation, sue or become party to a suit in another state relating to assets of the company; and may, on account of his not being a citizen of the state in which suit was brought, remove the case to the federal courts: *The Life Association of America* v. *Rundle*, S. C. U. S., October Term 1880.

INTOXICATING LIQUORS.

Interpretation of Statute—Questions of Law and Fact—While in order to determine the true scope and meaning of a statute, its letter is to be first examined and considered, yet courts should also have regard to the evil sought to be remedied, for that which is within the letter though not within the spirit of the statute is not in legal contemplation a part of it: *State* v. *Holmes*, and *State* v. *Rowley*, 25 Kans.

The evil sought to be remedied by said chapter 128 was the use of intoxicating liquors as a beverage. This purpose interprets the law: *Id.*

Whatever is generally and popularly known as intoxicating liquor, such as whiskey, brandy, gin, &c., is within the prohibitions and regulations of the statute, and may be so declared as matter of law by the courts: *Id.*

Whatever, on the other hand, is generally and popularly known as medicine, an article for the toilet, or for culinary purposes, recognised, and the formula for its preparation prescribed in the United States Dispensatory, or like standard authority, and not among the liquors ordinarily used as intoxicating beverages; such as tincture of gentian, pare goric, bay rum, cologne, essence of lemon, &c., is without the statute, and may be so declared as matter of law by the courts, and this notwithstanding such articles contain alcohol, and in fact and as charged may produce intoxication: *Id.*

As to articles intermediate between these two classes, articles not known to the United States Dispensatory or other similar standard authority, compounds of intoxicating liquors with other ingredients, whether put up upon a single prescription and for a single case, or compounded upon a given formula and sold under a specific name as bitters, cordials, tonics, &c., whether they are within or without the statute is a question of fact for a jury and not of law for the court. The rule or test is this: If the compound or preparation be such that the distinctive character and effect of intoxicating liquor is gone, that its use as an intoxicating beverage is practically impossible by reason of the other ingredients, then it is outside of the statute. But if, on the other hand, the intoxicating liquor remain as a distinctive force in the compound, and such compound is reasonably liable to be used as an intoxicating beverage, then it is within the statute: *Id.*

JUROR.

Not Disqualified by having read Newspaper Reports.—A person is not disqualified from serving as a juror by reason of the fact that he has read newspaper accounts of the case, which created impressions that would require evidence to remove: *State* v. *Greenwade*, 72 Mo.

MANDAMUS.

For what purpose not used—Discretion of Court below—Refusal of Attachment against Witness.—A writ of mandamus will not be issued to an inferior tribunal to reverse its decision, refusing a motion for an attachment against a witness who has disobeyed a *subpœna duces tecum*: *Ex parte Burtis*, S. C. U. S., October Term 1880.

MORTGAGE. See *Bills and Notes.*

MUNICIPAL BONDS.

Irregularity in Election—Subsequent Issue of New Bonds—Estoppel.—After a county has issued new bonds in place of bonds issued in aid of a railroad under a valid law, it is estopped from setting up an irregularity in the calling of the election at which the vote was taken, authorizing the issue of the original bonds: *County of Jasper* v. *Ballou*, S. C. U. S., October Term 1880.

MUNICIPAL CORPORATION.

Nuisance—Failure to carry off Drainage.—A city in grading its streets, and constructing gutters thereon for carrying off surface water, is not bound to provide against extraordinary storms such as private persons of ordinary prudence do not usually anticipate and provide against: *Allen* v. *City of Chippewa Falls*, 52 Wis.

Negligence—Contributory—When a Question of Law.—When the facts are undisputed, the question of negligence is one of law: *McLaury* v. *City of McGregor*, 54 Iowa.

Where the plaintiff, while walking upon a sidewalk five feet in width, and while in the enjoyment of sufficient light and such eyesight as to enable her to discern the limits of the walk, stepped off into a ditch and was injured, it was held that she was guilty of contributory negligence, precluding a recovery from the city: *Id.*

Occupation of Streets by Railroads—Use of Steam Motors in Streets Negligence.—In an action against a city to recover for personal injuries caused by the frightening of plaintiff's horse by a steam motor, used upon a street railway by permission of the city council, it was held that, in the absence of express statutory authority, a city has no power to authorize or permit the use of steam motors upon its streets, either upon ordinary railroads or street railways, and the grant of such authority or permission constitutes negligence, which will render the city liable for damages caused thereby: *Stanley* v. *The City of Davenport*, 54 Iowa.

The fact that the action of the city council in granting such a right was without authority would not protect the city from liability, corporations being responsible for the acts of their officers and agents done

within the apparent scope of their authority, and the streets of a city being under the control of the city council: *Id.*

ADAMS, J., dissenting, holds that the use of a street for the operation of a street railway thereon, is not open to the same objection as its use for the purposes of an ordinary railroad, but is a legitimate use for street purposes: that it may as such be permitted by the city council under their general power to regulate the use of streets, and that they may properly allow the use thereon of cars drawn by horses, steam power or such other motors as in their judgment will best subserve the public convenience: *Id.*

NEGLIGENCE. See *Municipal Corporation*; *Railroad.*

Agent to Collect Draft Accompanying Bill of Lading for Grain—Deposit of Grain in Drawee's Elevator—Question for Jury.—A bank received a draft, accompanied by a bill of lading for grain, with instructions to deliver to the drawees upon payment of the draft. The drawees were the proprietors of a grain elevator, and the bank, after acceptance, but before payment of the draft, endorsed on the bill of lading an order on the carrier to deliver the grain at the drawee's elevator, for account of, and subject to the order of the bank, which was done. The drawees sold the grain and failed before payment of the draft. In an action against the bank by the sender of the draft, *Held*, that the above facts constituted evidence of negligence, upon which the question of the bank's liability should have been submitted to the jury: *Milwaukee Nat. Bank* v. *City Bank*, S. C. U. S., October Term 1880.

NOTICE. See *Attorney.*

OFFICER.

Bond—Surety—Regularity of Election.—After a public officer has served through his term, neither he nor his sureties can escape liability upon his bond on the ground of the illegality of his election: *Boone County* v. *Jones et al.*, 54 Iowa.

The sureties upon the bond of a public officer can make no defence that could not be made by their principal: *Id.*

De facto Officer—Contract—Election.—The rule as to the validation of the acts of *de facto* officers is one of policy, and may be applied, not only where there is no *de jure* officer, but where the legal office itself no longer exists. Where the person claiming to hold the office is not a mere usurper, but owing to a mistake of fact held under a perfect color of right, which justified men in concluding that he was a legal officer holding a legal office, and where the fact that the office was abolished remained for a long time unknown owing to a false announcement of election returns, his acts as such officer, done after the abolition of the office and before the fact was known, may be validated for the purpose of supporting contracts made with him where money and labor have been expended on the faith of his authority to act and contract as such officer: *Adams* v. *Lindell*, 72 Mo.

PARENT AND CHILD.

Maintenance of Child—Step-Child.—While in general a parent is bound to maintain and educate his children at his own expense, yet,

where the circumstances of the parties are such as to render it necessary or proper, the courts may make an allowance to the parent from the child's property to defray in whole or in part the expense of his maintenance: *Gerdes* v. *Weiser*, 54 Iowa.

Where a man receives into his family, as a member thereof, the child of his wife by a former marriage, he stands in *loco parentis* to such child, and is bound for its support the same as though it were his own

PAUPER.

Aid furnished by County—Recovery for, from Estate.—The aid furnished by a county to a pauper is a charity to which the latter is entitled under the statute, and there is no promise implied on his part to reimburse the county therefor, nor will the fact that such aid is furnished give the county a right of action against the estate of the recipient: *Bremer County* v. *Curtis*, 54 Iowa.

PRACTICE.

Nunc pro tunc Entries.—In the absence of anything to show that an order or judgment, as made by the court, was different from that actually entered, no correction can be made in the latter by a *nunc pro tunc* entry at a subsequent term. A mere erroneous judgment cannot be thus corrected: *Fetters* v. *Baird*, 72 Mo.

RAILROAD. See *Action*.

Sale of State Bonds Exchanged for Railroad Bonds—Unconstitutionality of State Bonds—Estoppel of Railroad from alleging—Enforcement of Statutory Lien to Secure—Constitutionality of Part of Statute—Rights of bona fide Holder of Bonds.—A statute authorized a state to issue its bonds to a railroad company in exchange for the latter's bonds, and gave to the state as security, therefor, a statutory lien on the road in the nature of a first mortgage. Under this statute, the company issued bonds and exchanged them for state bonds, which were afterwards fraudulently disposed of by the officers of the company, and sold to *bona fide* purchasers. Each of the state bonds contained an endorsement by the governor, reciting, that it was secured by first mortgage bonds of the railroad. The state courts afterwards decided, that the state bonds were unconstitutional and void. Upon a suit by holders of the state bonds to enforce the statutory lien given as security therefor, *Held*, that the question as to the unconstitutionality of the bonds, was peculiarly within the province of the state courts, whose decision would not be departed from by the federal courts, except for imperative reasons. *Held further*, that although the bonds were void as to the state, yet the railroad company were, under the circumstances, estopped from denying their validity. *Held further*, that the part of the statute giving a statutory lien for the money borrowed, could be sustained, notwithstanding the unconstitutionality of the part authorizing the issue of state bonds therefor. *Held further*, that the *bona fide* holders of the bonds, were not confined in their recovery against the railroad to the amounts paid by them for the bonds: *Florida Central Railroad Co.* v. *Schutte*, S. C. U. S., October Term 1880.

Negligence.—In an action by C. against a railroad company, for injuries caused through the negligence of the railroad company, it is error for the

court to give an instruction to the jury, which makes the conduct of the plaintiff the only condition upon which his right of recovery depends; and which virtually says, that if the plaintiff was careful and prudent that he may recover, whether the defendant was negligent or not: *Atchison, Topeka & Santa Fe Railroad Co.* v. *Combs*, 25 Kans.

Infant—Injury to while on the Track—Question of Contributory Negligence.—Where a child two years old strays away from his home, without the knowledge or consent of his parents, and goes upon a railroad track, which is about one hundred feet from his home, and within three minutes after leaving his home he is injured by a car belonging to the railroad company, running over him. *Held*, that it cannot be said, as a matter of law, that the failure of the parents to keep the child away from the railroad track, was *per se* culpable negligence contributing to the injury: *Smith* v. *Atchison, Topeka & Santa Fe Railroad Co.*, 25 Kans.

Where a railroad track is constructed in a populous neighborhood, near a city, and children and others often go upon the track, and a portion of the track has a steep grade down which cars will run with great force when the brakes are loosened; and the persons operating the road loosen the brakes of a car loaded with coal, and let it run down this steep grade, without any person being on the car, or any means of stopping it, and without first looking to see whether the track was clear, or whether any person was on the track or not; and a child, who was on the track, was run over and injured; and there is a conflict in the evidence as to whether the child could have been seen by the persons operating the road, before they loosened the brakes. *Held*, that the court cannot say, as a matter of law, that the persons operating the road were not guilty of negligence; but it is a question of fact which should be submitted to the jury: *Id.*

Where a railroad company owns a switch track, constructed from the main track to a coal shaft belonging to a mining company; and the railroad company furnishes cars to this mining company to be loaded with coal, and when loaded, permits the mining company to loosen the brakes of the cars, so that the cars will run down the steep grade of the switch track to a point where the track is level; and the mining company after loading a certain car, negligently loosens the brakes thereof and allows the cars to run down the steep grade of the switch track, and over a child, and thereby injures it. *Held*, that the railroad company is responsible for the injury: *Id.*

REMOVAL OF CAUSES. See *Insurance.*

SHERIFF.

Liability of—Execution—Damages.—If the attorney for the plaintiff in an execution, is misinformed by the sheriff's deputy as to the place of sale, and for that reason fails to attend the sale, and no one is present to protect the plaintiff's interest, in consequence of which, property sufficient to pay the debt is sacrificed and plaintiff gets nothing, the sheriff will be liable to the plaintiff for the loss: *State ex rel. Central Type Foundry* v. *Moore*, 72 Mo.

If a sheriff sees that property which he is offering at execution sale is

about to be sacrificed, and knows that it was the intention of plaintiff's attorney to be present and protect plaintiff's interest by bidding, but sees that the attorney is absent, and knows that his absence is owing to erroneous information furnished by his own deputy, he should not permit the sale to go on, but should postpone it; and if he fails to do so, and the property is sacrificed, he will be liable: *Id.*

SURETY. See *Officer.*

TRADE-MARK.

Words in Common Use—Maker's Name.—Words in common use, merely descriptive of the character, composition or quality of the article to which they are applied, cannot be exclusively appropriated and protected as a trade-mark: *Marshall* v. *Pinkham*, 52 Wis.

The office of a trade-mark is to point out the true origin or ownership of the goods to which it is applied, or to designate the dealer's place of business: *Id.*

The ground upon which actions for the infringement of a trade-mark are maintained is, that the law will not allow one person to sell his own goods as and for the goods of another: *Id.*

The fact that an article, prepared according to a certain recipe, but not protected by a patent, has for some time been made and sold only by a certain manufacturer, does not render it unlawful for any other person acquainted with its composition, from manufacturing and selling the same: *Id.*

The proper name of the manufacturer of an article, cannot be made a trade-mark, so as to prevent any other manufacturer of the same name from affixing such name to a similar article made and sold by him, where no unfair means are used to mislead purchasers into a belief, that such article is manufactured by the person who first sold and continues to sell a like article under that name: *Id.*

M., having a recipe (not discovered or invented by himself, or protected by a patent) for a liniment used for the cure of rheumatism and other diseases, communicated it to the various members of his numerous family; and permitted each of them, for his or her own benefit, to manufacture the article, and sell it with a certain label attached (furnished by M.) containing the words "Old Dr. M.'s Celebrated Liniment," and certain other words descriptive of the liniment, and a certain vignette, and with the address of the particular member of the family manufacturing the article at the bottom of such label. Each member of the family engaged in such manufacture, appears to have had, by their mutual agreement, some particular route or routes to which his sales were confined. After M.'s death, his widow continued for some years to manufacture the liniment, and to sell it (with said label attached) on the routes last occupied by M.; and she then sold the material and paraphernalia of her business to the plaintiff, one of the sons of M. *Held*, that plaintiff has no exclusive right as against the other children of M., or their assigns (nor even as against the public generally), to manufacture said liniment, or to the use of said label or the name "Marshall's" as descriptive of the article sold: *Id.*