of title thereto, and of unconditional power of disposition over it, the case is vastly different." By the negligence of the pledgor in signing and delivering the blank bill of sale and power, an innocent purchaser for value is deceived; hence, the familiar principle comes into play, sanctioned alike by equity and common sense, that when one of two innocent parties must suffer from the tortious act of a third, he who gave the aggressor the means of doing the wrong must alone bear the consequences of the act: *Bank of Kentucky* v. *Schuylkill Bank*, 1 Pars. Eq. 248. Surely, this is no new principle of law: *Taylor* v. *Gitt*, 10 Barr 428; *McMullen* v. *Wenner*, 16 S. & R. 21; *Mott* v. *Clark*, 9 Barr 405.

Are pledgors, then, to be at the mercy of pledgees? By no means. Their check upon an unauthorized disposition of their stock by the pledgee is to make the certificate "pledged" or "collateral," stating, if necessary, the amount for which it is pawned. Thus, any subsequent purchaser would readily become affected with notice, and much difficulty be thereby avoided.

FRANCIS A. LEWIS, Jr.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

SUPREME JUDICIAL COURT OF MAINE.[3]

COURT OF ERRORS AND APPEALS OF MARYLAND.[4]

SUPREME COURT OF MISSOURI.[5]

COURT OF CHANCERY OF NEW JERSEY.[6]

SUPREME COURT OF TENNESSEE.[7]

SUPREME COURT OF VERMONT.[8]

ACKNOWLEDGMENT.

Impeachment of—Proof Necessary.—To impeach the certificate of the acknowledgment of a deed, the proof must show a conspiracy between the officer taking the acknowledgment and the grantee, or that the officer practiced imposition or fraud upon the grantor, and the testimony of the grantor alone is not sufficient to overcome the certificate and the officer's testimony in support of the same: *Fitzgerald* v. *Fitzgerald*, 100 Ill.

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1881. The cases will probably appear in 14 or 15 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 100 Illinois Reports.

[3] From J. W. Spaulding, Esq., Reporter; to appear in 72 Maine Reports.

[4] From J. Shaaff Stockett, Esq., Reporter; to appear in 54 and 55 Md. Reports.

[5] From T. K. Skinker, Esq., Reporter; to appear in 73 Missouri Reports.

[6] From Hon. John H. Stewart, Reporter; to appear in 34 N. J. Eq. Reports.

[7] From Hon. Benjamin J. Lea, Reporter; the cases will probably appear in 5 or 6 Lea.

[8] From Edwin F. Palmer, Esq., Reporter; to appear in 53 Vermont Reports.

Officer de facto —The sufficiency of the acknowledgment of a deed was questioned on the ground that the deputy clerk who took the acknowledgment had not been legally appointed. The law required deputy clerks to take an oath for the faithful discharge of the duties of their offices. It appeared that in this instance the deputy was only verbally appointed as such, that he was never sworn into office, nor executed any bond as deputy, but that he was acting as such deputy. and had taken other acknowledgments in the same manner. It was *held*, the deputy was at least an officer *de facto*, and his act in taking the acknowledgment was valid: *Sharp* v. *Thompson*, 100 Ill.

ACTION. See *Husband and Wife.*

AGENT.

Notice—Knowledge of Agent before Employment.—A notice to a bank director or trustee, or knowledge obtained by him while not engaged either officially or as an agent or attorney in the business of the bank, is inoperative as a notice to the bank: *Fairfield Savings Bank* v. *Chase*, 72 Me.

Knowledge of an agent obtained prior to his employment as agent, and which he has no personal interest to conceal, will be an implied or imputed notice to the principal, when the knowledge is so fully in mind that it could not at the time have been forgotten, and relates to a matter so material to the transaction as to make it the agent's duty to communicate the fact to his principal. In such case, the presumption that an agent will do what it is his duty to do, having no personal motive or interest to do the contrary, is so strong that the law does not allow it to be denied: *Id.*

ASSUMPSIT. See *Sale.*

ATTACHMENT. See *Fraud*

Garnishee—Cannot contest Judgment.—A garnishee cannot contest the validity of the judgment, on which the garnishment is based, because of the failure to comply with all the provisions of the code in relation to judgments by confession: *Cowan* v. *Lowry*, 5 or 6 Lea.

ATTORNEY.

Retainer Fee—Usage.—The proper scope and application of the right to charge retainers, is to remunerate counsel for being deprived, by being retained by one party, of the opportunity of rendering services for and receiving pay from the other: *McLellan* v. *Hayford*, 72 Me.

There is no such general usage or custom among lawyers in Maine, to charge retainers in all contested cases in which they are employed, as to justify an instruction to the jury, as a matter of law, that in contested cases and for reasonable amounts such fees were a legal charge in each case in which he was engaged. And such an instruction, in an action by an attorney at law, for services and disbursements in behalf of a client, is erroneous, when the account sued embraces, besides the charges of retainers in each contested case, other charges covering all the services actually performed, and disbursements made in behalf of his client: *Id.*

BANK.

Account by Depositor as Agent—Deposit of Trust Moneys therein—

Not subject to Lien for Debt due Bank.—When a bank account is opened in the name of a depositor, as general agent, and it is known to the bank that he is the agent of an insurance company; that conducting its agency is his chief business; that the account was opened to facilitate that business, and used as a means of accumulating the premiums on policies collected by him for it, and of making payment to it by checks; the bank is chargeable with notice of the equitable rights of the company, although the depositor deposited other moneys in the same account, and drew checks upon it for his private use. And the insurance company may enforce, by bill in equity, its beneficial ownership therein against the bank claiming a lien upon the balance thereof for a debt due to it from the depositor, contracted for his individual use: *Central National Bank of Baltimore* v. *Conn. Mutual Life Ins. Co.*, S. C. U. S., Oct. Term 1881.

A banker's lien ordinarily attaches in favor of the bank, upon the securities and moneys of the customer, deposited in the usual course of business for advances which are supposed to be made upon their credit, not only against the depositor, but against the unknown equities of all others in interest. But it cannot be permitted to prevail against the equity of the beneficial owner, of which the bank has notice, either actual or constructive: *Id.*

BILLS AND NOTES. See *Evidence.*

Promissory Note—Liability of Signers among themselves—One who signs a note after it has been delivered, and after the consideration has passed between the original parties, incurs no liability thereon: *McMahan* v. *Geiger*, 73 Mo.

One who signs a note after others, and without any knowledge or explanation as to the character in which they have signed, may assume that they are joint-makers, and he will become liable either as surety or guarantor for all of them; but whether as surety or guarantor is not decided. As against him it cannot afterward be shown that one of the original signers was a surety, for the purpose of charging him as a co-surety: *Id.*

Blank Endorsement—Construction—Evidence.—The contract entered into by a blank endorsement of a promissory note will receive such a construction as will give effect to the intention of the parties, and parol evidence will be admitted to show and explain what liabilities were intended to be assumed at the time of the transaction: *Owings* v. *Baker*, 54 Md.

A third party who places his name on the back of a note before it is endorsed by the payee, may avoid the liability of a joint promissor which the law, in the absence of proof to the contrary, attaches to such an endorsement, by proving a different understanding of all the parties at the time of the transaction. But an agreement to such effect between the drawer and a blank endorser alone, without the assent of the payee, will not suffice: *Id.*

BROKER.

Duties—Compensation—A broker is entitled to compensation when he has found for his employer one who makes a written contract for the purchase or sale of the property to be bought or sold: *Veazie* v. *Parker*, 72 Me.

It is no part of the broker's duty to direct or advise as to the terms of the contract between the parties, or explain the meaning of the words used by them: *Id.*

Conversations between buyer and seller before and after the making of the contract are not admissible to affect the broker's right to compensation: *Id.*

CHARITY.

School of Learning—Foreign Charity.—A gift of a fund to establish and maintain a school of learning is a charitable trust: *Taylor's Exr's* v. *Trustees of Bryn Mawr College*, 34 N. J. Eq.

This court will not administer a foreign charity; but, where such a charity is valid by the laws of this state, and by the laws of the state where it is to be executed, and the trustees have the legal capacity to receive the fund and carry out the charity, this court will order its payment to them: *Id.*

COMMON CARRIER.

Railroad—Extent of Liability—Deposit in Warehouse.—The duty of a railroad company is to convey freight to the place directed, and to deliver it to the party entitled, if there ready to receive it, and, if not, to store it for him. The liability of the company, as a common carrier, ceases when the freight is deposited in a warehouse, and is not extended by the Act of 1870, c. 17, Code, sect. 1993, j., requiring the company to give prescribed notice to the consignee: *Butler* v. *Railroad Co.*, 5 or 6 Lea.

CONFLICT OF LAWS.

Law of Sister State—Evidence.—The law of a sister state is a question of fact, to be proved, like any other fact, by appropriate evidence. In the absence of such evidence, it will be presumed that the common law is in force: *Meyer* v. *McCabe*, 73 Mo.

CONSTITUTIONAL LAW. See *Taxation.*

CONTRACT.

Substitution—Novation.—A owed B, and C owed A: by agreement of the three, C gave his note to B, and was substituted in place of A as B's debtor. C was insolvent at the time, but this fact was unknown to all the parties. *Held*, that the loss fell on B: *Cadens* v. *Teasdale*, 53 Vt.

CORPORATION.

Insolvency—Assets—Trust Fund.—The assets of an insolvent corporation are not turned into a trust fund for the benefit of creditors by the mere knowledge of its officers of its insolvency, but only by some positive acts of insolvency, such as the making of a general assignment, the filing of a bill to administer its assets, or the permanent cessation of business; and it is only what remains due from a customer, after the settlement of mutual debts, that would constitute the trust fund: *Comfort* v. *McTeer*, 5 or 6 Lea.

Where, therefore, after knowledge of its insolvency, but two days before it ceased to transact business, the officers of a bank entered a credit on the account of one of its customers, which was justified by the dealings between the parties, it was held that the assignee of the

bank, under a general assignment for the benefit of creditors, subsequently made, was bound by the transaction: *Id.*

CRIMINAL LAW.

Ignorance of the Law no Excuse—Larceny.—Sect. 1315 Rev. Stats. 1879, makes it larceny for the finder of lost property to make way with or secrete the property with intent to convert it to his own use, with intent to defraud the owner. In an indictment founded on this section: *Held*, that evidence offered by the defendant to show that it was a general belief among the colored people that property found, having no marks upon it to indicate its ownership, belonged to the finder, was properly excluded. Ignorance of the law is no excuse for its violation: *State* v. *Welch*, 73 Mo.

DAM. See *Waters and Watercourses.*

DEBTOR AND CREDITOR. See *Injunction.*

Composition—Bona Fide Purchaser—Estoppel.—If creditors enter into a composition agreement with their debtor and sign a receipt for the agreed amount, and a third party relying upon this, in good faith advances money to the debtor to enable him to settle with his creditors, and in consideration of the advances, receives a transfer of property from the debtor, the transfer will be valid as against the creditors, though they are in fact never paid. This is not upon the principle of estoppel, but because the transferee is a *bona fide* purchaser: *Kuhn* v. *Weil*, 73 Mo.

Trust Assignment—Acceptance—Attacking Creditor.—The acceptance by the trustee of a general assignment for the benefit of creditors, before the filing of a bill attacking the validity of the assignment, would enure to the benefit of such of the secured creditors as might, within a reasonable time, come in under the assignment, and give them a prior right to the attacking creditor, whose bill was filed in advance of their formal acceptance: *Nailer* v. *Young*, 5 or 6 Lea.

The presumption of the acceptance by the beneficiaries of a trust assignment in their favor, which the law implies when the conveyance is made with the formalities necessary to pass the title to the property, or perfect the trust, would perhaps be equally effective, and certainly if supplemented by actual acceptance within a reasonable time: *Id.*

DEED.

Inconsistent Descriptions—Construction.—It is a rule of construction that where there is a doubt as to the construction of a deed, it shall be taken most favorably for the grantee. If there are two descriptions in a deed of the land conveyed, and they do not coincide, the grantee is at liberty to elect that which is most favorable to him: *Sharp* v. *Thompson*, 100 Ill.

ELECTION.

Irregularities in Conducting, not Fatal.—Mere irregularities in conducting an election and counting the votes, not proceeding from any wrongful intent, which deprive no legal voter of his vote and do not change the result, will not vitiate the election so as to justify the rejec-

tion of the entire poll of the town or precinct in which the irregularities occurred: *Hodge* v. *Linn*, 100 Ill.

EQUITY.

Bills of Review— When Performance of Decree not Essential.—As to bills of review, which relate to errors on the face of the decree alone, and which therefore may be filed without leave, the rule requiring previous performance of the decree, does not apply. Whether the courts will enter upon an inquiry as to the errors, without requiring performance of the decree, depends upon the exercise of a sound judicial discretion applied to the facts of the particular case: *Davis* v. *Speiden*, S. C. U. S., Oct. Term 1881.

Pleading—Presumption of Payment—Demurrer.—A presumption of payment of a mortgage from lapse of time may be raised by a demurrer, and such a demurrer does not admit the allegations of a bill that both the principal and interest of the mortgage are now due and owing, because such allegations are rather conclusions than averments of facts: *Olden* v. *Hubbard*, 34 N. J. Eq.

Any existing circumstances which would repel such presumption must be averred in the bill: *Id.*

Insufficient Pleas—Failure to file Replication—Pleas in equity must allege matters of fact and not mere conclusions of law, and if not traversable for that reason, or if they have been filed irregularly, for lack of the affidavit of the party and certificate of counsel required by the 31st equity rule, they may be disregarded: *Central Nat. Bank* v. *Conn. Mut. Life Ins. Co.*, S. C. U. S., Oct. Term 1881.

When an equity cause has been heard upon the merits upon bill, answer and proofs taken, as upon issue perfected, the want of a formal replication cannot be assigned as error upon appeal: *Id.*

Pleading— Cross Bills.—A cross bill is a mode of defence or an auxiliary suit, and constitutes one cause with the original bill, and a cross bill will not, therefore, lie where there is no connection between the demands or the parties: *Comfort* v. *McTeer*, 5 or 6 Lea.

ERRORS AND APPEALS. See *Equity.*

Admiralty—Omission of finding of Facts—Certiorari to certify findings.—To justify the Supreme Court in returning an admiralty cause, for the purpose of having findings of fact stated and put into the record, it must clearly appear that the omission of such findings was attributable to the fault or neglect of the court and not to the parties: *Winslow* v. *Wilcox*, S. C. U. S., Oct. Term 1881.

Appeal from Circuit Court—Acts of Congress of 1802 *and* 1872.—Under sect 693, Revised Statutes, final judgments of the circuit courts in civil actions wherein there has been a division of opinion of the judges are only reviewable on writ of error or appeal. The Act of 1802 (2 stat. 159, c. 31, sect. 6), which allowed the questions to be certified up before judgment was suspended by the Act of July 1st 1872 (17 stat. 196, c. 255, sect. 1): *Banking House* v. *Trustees of Schools*, S. C U. S., Oct. Term 1881.

EVIDENCE. See *Mortgage; Sale.*

Written Contract—Endorsement of Note—Cannot be varied by Parol.—The contract created by the endorsement and delivery of a negotiable note is not an implied contract, but an express contract, some of the terms of which, according to the custom of merchants and for the convenience of commerce, are omitted. All its terms are certain and well understood. It is therefore subject to the rule which excludes parol proof to alter or vary the terms of an express written agreement: *Martin* v. *Cole*, S. C. U. S., Oct. Term 1881.

Susquehanna Bridge Co v. *Evans*, 4 Wash. C. C. Rep. 480, and *Ross* v. *Espy*, 66 Penna. St. 483, dissented from, and *Davis* v. *Brown*, 94 U. S. 423, distinguished: *Id.*

FOREIGN LAW. See *Conflict of Laws.*

FRAUD.

Attachment—What constitutes fraudulent "disposition" of Property.—Sect. 398 Rev. Stats. 1879, authorizes attachment to issue in the following, among other cases: (7) Where the defendant has fraudulently conveyed or assigned his property so as to hinder or delay his creditors. (8) Where the defendant has fraudulently concealed, removed or *disposed* of his property or effects so as to hinder, &c. *Held*, that the word *disposed*, as here used, covers all such alienations of property as may be made in ways not otherwise pointed out in the statute—for example, pledges, gifts, pawns, bailments and other transfers and alienations which may be effected by mere delivery and without the use of any writing, assignment or conveyance. It does not include any species of conveyance. Hence, a charge that defendant has fraudulently disposed of his property is not supported by proof that he has executed a fraudulent mortgage: *Bullene* v. *Smith*, 73 Mo.

GUARANTY.

When Notice of Acceptance not necessary—Waiver of Notice of default of Debtor—Rule as to Construction.—The rule requiring notice of the acceptance of a guaranty, and of an intention to act under it, applies only where the instrument is merely an offer, and not where it is made at the request of the creditor, or is for a valuable consideration, or is, in form, a bilateral contract: *Davis* v. *Wells*, S. C. U. S., Oct. Term 1881.

Where the guaranty is expressed to be in consideration of one dollar paid to the guarantor by the guarantee, the receipt whereof is therein acknowledged, it is binding without notice of acceptance: *Id.*

Where a guaranty declares that the guarantor thereby guarantees unto the guarantee unconditionally at all times any advances, &c., to a third person, notice of demand of payment and the default of the debtor is waived, as well as notice of the amount of the advances when made: *Id.*

But a failure or delay in giving such notice, if required, is no defence to an action on the guaranty unless loss or damage has thereby accrued, and then only for the amount of such damage: *Id.*

Notwithstanding the contract of guaranty is the obligation of a surety, it is to be construed as a mercantile instrument in furtherance of its spirit, and liberally, to promote the use and convenience of commercial intercourse: *Id.*

HIGHWAY. See *Sheriff.*

When defective—Notice.—Mere slipperiness of a highway or sidewalk, caused by either ice or snow, is not a defect for which towns and cities are liable: *Smith* v. *Bangor*, 72 Me.

The actual notice to some one of the municipal officers, required by statute, must be a notice of the identical defect which caused the injury. Notice of another defect, or of the existence of a cause likely to produce the defect, is not sufficient: *Id.*

Notice of a defect in a way cannot be proved by the admission of a town or city officer, though the declarations of such an officer, which accompanies his official acts and tend to explain them, are admissible: *Id.*

HUSBAND AND WIFE.

Married Women—Divorce.—A woman who is divorced can maintain an action against her former husband for personal service performed for him before their marriage: *Carlton* v. *Carlton*, 72 Me.

Wife's Separate Estate—Mortgage for Husband's Debt.—A married woman may, with her husband, mortgage her own lands to secure the payment of his debts or those of any other person, for the payment of which she is in no way liable: *Merchant* v. *Thompson*, 34 N. J. Eq.

Jointure—Account between Husband's Representative and Widow.—A covenant contained in a deed of jointure provided that the husband should invest his wife's separate estate, and account to her for the income and for the rents of her real estate. After the marriage he received all of her personal property and invested it, but never accounted for nor paid to her the income thereof, nor the rents of her real estate, which he also received. *Held*, that his representative was, after his decease, liable to account to her therefor, with interest, to be calculated with yearly rests: *Middaugh* v. *Trimmer*, 34 N. J. Eq.

ICE. See *Waters and Watercourses.*

INJUNCTION.

Judgment Creditor—Levy on Land in hands of Grantee.—An allegation in a bill that the defendant, by virtue of a judgment and execution at law against complainant's grantor, has seized upon and is about to sell lands to which complainant has the legal title, presents no equitable ground for enjoining such sale: *Sheldon* v. *Stokes*, 34 N. J. Eq.

INSURANCE.

Forfeiture for non-payment of Premium—Equity will not relieve against.—The facts that a policy was taken out by the assured without the knowledge of his wife, in whose favor it was made payable; that from a period prior to the falling due of the premium down to the date of his death, he was, in consequence of illness, deranged in mind, and incapable of attending to business, and for that reason alone the premium was not paid, furnish no ground upon which a court of equity can relieve against the forfeiture: *Klein* v. *New York Life Ins. Co.*, S. C. U. S., Oct. Term 1881.

In a contract of life insurance, the company take the risk of having to pay, even though the assured die the day after taking out the policy, and the assured takes the risk of having to pay premiums during his

entire life, even though they amount to more than the policy. The assured also takes the risk of forfeiture for non-payment of any premium when due. Neither party has any claim to be relieved in equity from loss consequent on these risks: *Id.*

LANDLORD AND TENANT. See *Waters and Watercourses.*

LIMITATIONS, STATUTE OF.

Joint Note—Payment by one Party.—In an action on a joint and several promissory note against one of two makers, to which he pleaded payment and limitations, evidence was admissible of payment of items of interest and of part of the principal by the co-maker, who was dead when the suit was brought, endorsed on the note in his handwriting, and of admissions by the maker sued, to take the note out of the operation of the Statute of Limitations, and show that it was the latter's debt: *Burgoon* v. *Bixler*, 54 Md.

MORTGAGE. See *Husband and Wife.*

Payment by Third Party on account of First Mortgage—Subrogation.—After a second mortgage had been taken on certain lands, a payment of part of the principal of the first mortgage was made by a brother of the mortgagor, under an agreement between the holder of the mortgage and the mortgagor and his brother, that the latter should be subrogated to the rights of the mortgagee under the mortgage for those payments. *Held*, that, as against the holder of the second mortgage, such conventional subrogation could be enforced. The payments were, in fact, made after the second mortgage was given: *Shreve* v. *Hankinson*, 34 N. J. Eq.

Lien in favor of Mortgagee for Taxes paid by him.—Subrogation.—Where it is the duty of a mortgagor to pay the taxes upon the mortgaged premises, and upon his failure to do so they are paid by the mortgagee, the latter will be subrogated to the rights of the state, which has a lien upon the land for the taxes, and upon foreclosure of the mortgage it will be proper to decree a lien upon the premises in favor of the mortgagee for the taxes so paid by him: *Sharp* v. *Thomvson*, 100 Ill.

Parol Evidence to reform Writing—Error of Fact—Bill to reform a Mortgage.—In a proceeding in equity to reform a mortgage, parol evidence is admissible to prove the real contract: *Tabor* v. *Cilley*, 53 Vt.

Courts of equity will not refuse redress if it is certain that the written contract conveys a different right, or, effectuates a different purpose from that intended by the parties; and will treat the mistake as one of fact: *Id.*

But courts of equity will not reform and enlarge a mortgage executed by one who is insolvent if the rights of third parties would be changed and injured thereby. In this case, if the mortgage had been larger when it was given, the other creditors would have instituted proceedings in insolvency before the orator's lien became absolute: *Id.*

Purchase by Mortgagee at his own Sale.—A purchase by a mortgagee at his own sale under a chattel mortgage will not be set aside and a redemption allowed, where the sale and purchase were made with the

consent of the mortgagor, and under an understanding with him: *Goodell* v. *Dewey*, 100 Ill.

MUNICIPAL CORPORATION. See *Highway.*

NATIONAL BANK.

Voluntary Liquidation—Liability to subsequent Suit by Creditor—Concurrent Bill to enforce Stockholder's Liability.—A national bank in voluntary liquidation, under sect. 5220 of the Revised Statutes, is not thereby dissolved as a corporation, but may sue and be sued by name for the purpose of winding up its business, and it is no defence to a suit by a creditor upon a disputed claim that the creditor has also filed a creditor's bill, under sect. 2 of the Act of June 30th 1876, authorizing the appointment of receivers of national banks, and for other purposes, to enforce the individual liability of its shareholders: *Central National Bank* v. *Conn. Mutual Life Ins. Co.*, S. C. U. S., Oct. Term 1881.

NEGLIGENCE.

Custom Officers—Liability of Wharf Owners to—Due Care—Contributory Negligence.—The owners of a wharf where foreign laden vessels discharge, are liable to custom officers, who are required to visit the premises in the performance of their duties, for personal injuries received while in the exercise of due care, because of the unsafe or unsuitable condition of the wharf: *Low* v. *Grand Trunk Railway Co.*, 72 Me.

A customs officer whose duty is to watch for smugglers and prevent smuggling, may be in the exercise of due care, when in the course of his duty he passes over a wharf, where a foreign laden vessel is lying, in the night-time and without a lantern: *Id.*

Where duty requires one to be concealed, as when watching for smugglers and evil-doers in the night-time, the fact that he does not carry a light is not contributory negligence in an action for damages sustained by the negligence of one whose business imposed the duty upon the plaintiff: *Id.*

Master and Servant—Independent Contractor.—The obligations existing between master and servant do not exist between employer and contractor. An employer is not liable to others for injuries resulting from the negligence of a contractor, although the employer may have known that the contractor was of bad character: *Dobson* v. *Iron Co.*, 5 or 6 Lea.

Whether a person in the performance of work for another is a servant or contractor depends upon whether he represents the will of the principal in the management and details of the work: *Id.*

Master and Servant—Superior Servant.—Where a section hand on a railroad, in consequence of the negligence of the section boss in running a "crank car" backwards, falls from the car and is injured, he may maintain an action against the company: *Railroad Co.* v. *Nelson*, 5 or 6 Lea.

NOTICE. See *Agent.*

NUISANCE. See *Sheriff.*

OFFICER. See *Acknowledgment.*

PARTNERSHIP.

Liability for Torts of Co-partner in the Business.—A partner has authority by reason of the partnership relation, and without the express assent of his co-partners, to sue in the name of all the co-partners for the recovery of a partnership debt; and if the suit be by attachment, and goods of a stranger are wrongfully seized by order of one, all the co-partners will be liable: *Kuhn* v. *Weil*, 73 Mo.

Real Estate—When treated as Personal Property—Right of Surviving Partner to sell—Equitable Title of Purchaser.—Real estate purchased with partnership funds for partnership purposes, though the title be taken in the individual name of one or both partners, is, in equity, treated as personal property so far as is necessary to pay the debts of the partnership and to adjust the equities of the co-partners: *Shanks* v. *Klein*, S. C. U. S., Oct. Term 1881.

For this purpose, in case of the death of one of the partners, the survivor can sell real estate so situated; and, though he cannot convey the legal title which passed to the heir or devisee of the deceased partner, his sale invests the purchaser with the equitable ownership of the real estate and the right to compel a conveyance of the title from the heir or devisee in a court of equity: *Id.*

PATENT.

Extent of.—The scope of letters patent should be limited to the invention covered by the claim; and, though the claim may be illustrated, it cannot be enlarged by the language used in other parts of the specification: *Lehigh Valley Railroad Co.* v. *Mellon*, S. C. U. S., Oct. Term 1881.

PLEADING. See *Equity.*

PRESUMPTION OF PAYMENT. See *Equity*

RECEIVER.

Expenditure without Authority of Court.—While, as a general rule, a receiver will not be permitted to lay out more than a small sum at his own discretion, in the preservation or improvement of the property under his charge, but should, in all cases where it is practicable, or the circumstances of the case will permit, before involving the estate in expense, apply to the court for authority for so doing, this general rule should not be so rigidly enforced as to work wrong and injustice, where the receiver has acted in good faith, and under such circumstances as will enable the court to see that if previous authority had been applied for it would have been granted: *Brown* v. *Hazlehurst*, 54 Md.

SALE.

Assumpsit—Duty of Vendor and Vendee when Property is sold on Trial.—Indebitatus assumpsit lies to recover the price of an article delivered on a written order, and in such case the writing is admissible evidence: *Gibson* v. *Vail*, 53 Vt.

Ordinarily, when property is sold on trial, the vendee must notify the vendor of the failure in a reasonable time, but otherwise when the vendor agrees to examine the working of the article and learn the result himself: *Id.*

It is a species of fraud to sell an article on trial for a particular purpose, when the vendor knows, or ought to have known, from his certain knowledge, of the facilities of the vendee in using it, that it must necessarily result in failure: *Id.*

Conversations of the parties, after the written contract is made, about the setting up and manner of using milk-pans sold on trial, are admissible: *Id.*

SHERIFF.

Deputy—Power to abate Nuisance—Obstruction of Highway.—A person appointed in writing by the sheriff to act as deputy-sheriff, possesses authority such as the sheriff himself may exercise: *Turner* v. *Holtzman*, 54 Md.

The sheriff or his deputy may abate a public nuisance in a public highway: *Id.*

In an action for assault, against a person who had been authorized in writing by the sheriff to act as his deputy, at a camp-meeting, and his assistant, brought by the driver of a public coach, it was held, 1st. That the defendant, as deputy-sheriff, had the lawful authority to remove the coach of the plaintiff when he found it obstructing the public highway, and preventing other parties, who had the right to use the same, from travelling upon it, and to remove the plaintiff with it if he should resist him in its removal. 2d. That he also had the right to call to his assistance the other defendant, and such other persons as he might deem necessary in effecting the abatement of the nuisance thus caused and maintained by the plaintiff: *Id.*

SUBROGATION. See *Mortgage.*

TAXATION.

Farm Property within City Limits—Taxation of for City Purposes—When not a taking of Property without due Process of Law.—In this country and in England, the necessities of government, the nature of the duties to be performed, and custom and usage, have established a procedure in regard to the levy and collection of taxes which differs from proceedings in courts of justice, but which is still "due process of law" within the meaning of the Constitution: *Kelly* v. *City of Pittsburgh*, S. C. U. S., Oct. Term 1881.

What parts of a state, shall for local purposes, be governed by a county, a town or a city government, and the character of the land included in each, are matters of detail within the legislative discretion: *Id.*

When the taxes levied by a city upon land are clearly for a proper public purpose, and are authorized by statute, the court cannot say that such statute deprives the owner of his property without "due process of law" because the land is farm land, and does not reap the same benefits as land in the heart of the city: *Id.*

Interest in Vessel employed in Foreign Commerce—The interest of a citizen of Maryland, and resident of Baltimore, as part owner of vessels employed in foreign commerce, registered as vessels of the United States in the office of the collector of customs at Baltimore, the home port of the vessels, and the domicil and usual place of residence of their acting and managing owners, is liable for annual taxes levied on it for

municipal purposes by the authorities of that city; and such taxation does not contravene the Constitution of the United States: *Gunther* v. *The Mayor and City Council of Baltimore*, 55 Md.

TELEGRAPH.

Evidence—Which is the Original Message and which is the Copy—Secondary proof—Statute of Frauds.—The message sent to a telegraph office to be transmitted in reply to one received is the original, and not the message received at the place to which it is transmitted. The latter must be considered as a copy, and carries with it none of the qualities of primary evidence: *Smith* v. *Easton*, 54 Md.

Ordinarily, the usual course is to show the delivery of the original message of the party sought to be charged, at the office from which it is to be telegraphed, and then show that it was transmitted and delivered at the place of its destination: *Id.*

But even where the original is produced, its authenticity must be established. And this either by proof of the handwriting, or by other proof establishing its genuineness.

The destruction of all the messages sent from the office on the day of its transmission is sufficient foundation for the admissibility of secondary evidence. But this secondary evidence can only be admitted upon proof that the copy offered is a correct transcript of a message actually authorized by the party sought to be affected by its contents: *Id.*

While the rule which permits a letter to be admitted in evidence against a party where there is no other proof of the handwriting, except the fact, that in due course it had been received in reply to a letter which had been addressed to the same party, may apply to a dispatch in answer to a communication by letter, it is inappropriate to a dispatch received in reply to a communication received by telegraph: *Id.*

A telegraphic dispatch is a sufficient compliance with the Statute of Frauds, in its requirement that a promise to guarantee the debt of another should be in writing: *Id.*

TORT.

Promise of Marriage by Married Man.—It is an actionable offence for a married man to offer himself in marriage to an unmarried woman, paying his addresses to her, and entering into a contract of marriage with her; and a declaration counting *tort-wise* for fraud is held good on demurrer: *Pollock* v. *Sullivan*, 33 Vt.

TRUSTEES.

Personal Liability for Purchases authorized by Court.—Defendants to whom a deed in trust was made of property for the benefit of the grantor's creditors, and who were authorized by order of a court of equity to complete certain houses thereby conveyed to them, in course of building when the deed was made, are responsible in their individual capacity, for work and materials furnished by a plaintiff upon their order, for the completion of the buildings, it appearing that there was no agreement on his part to look to the trust estate alone for payment. The order of court was an indemnity to the trustees for having the work done, to be allowed them out of the trust funds: *Gill* v. *Carmine*, 55 Md.

USURY.

May be taken advantage of without Plea—Renewal of Notes.—When one has paid usury he is entitled to have it deducted as an equitable offset without plea or answer: *Cross* v. *Mann*, 53 Vt.

Substituting new notes and a new mortgage for old ones does not change the debt; and usury paid on the old debt may be deducted in ascertaining the amount due on the last mortgage when foreclosed. *Id.*

Distinction between this case and those cases seeking to apply usury paid on one debt upon another debt: *Id.*

When overdue notes are transferred, usury paid to the original owner may be deducted: *Id.*

VENDOR AND PURCHASER.

Lien for Purchase-money payable in Instalments—Remedies upon default in Payment — Waiver.—If a vendor who has conveyed an absolute estate in land to his vendee and has a vendor's lien thereon for unpaid instalments of the purchase-money, upon default in payment of an earlier instalment sues upon it, and obtains a personal judgment against the vendee and causes the land to be sold under execution in satisfaction of the judgment, he cannot, upon default in payment of a later instalment, enforce his vendor's lien against the land. By electing to proceed at law, he will be deemed to have waived his remedy in equity, and the purchaser will take the land discharged of any further liability for the debt. The rule is otherwise where the vendor, instead of conveying in fee, has given a bond for a deed to be executed upon payment of the purchase-money: *Dickason* v. *Eby*, 73 Mo.

WATERS AND WATERCOURSES.

Ice-pond—Tide Waters—Dam—Prescription.—A dam built across an arm of the sea, into which a fresh-water creek empties, to exclude the salt water for the purpose of creating a fresh-water pond, upon which to cultivate and harvest ice for the market, without direct authority of the legislature or the delegated action of harbor commissioners, if the case falls within their jurisdiction, is in the same sense a public nuisance as it would be to build a solid wall across a road or street: *Dyer* v. *Curtis*, 72 Me.

Without such authority, such a dam never acquires the right to exist by prescription: *Id.*

Where, by the terms of a lease, the lessor agreed to keep up such a dam during a certain portion of the year, in consideration of the covenants of the lease, it was held to be an illegal contract: *Id.*

No rule precludes either party from showing the illegality of a lease void from public policy: *Id.*

A deed of a tide-mill privilege, mill-dam, wharf privilege and the right to flow the creek and adjoining lands to high-water mark, "and all the rights and highways connected with and belonging to said mill privilege," gives the grantee no right to ice-cutting, nor title to the ice formed upon a fresh-water pond raised by changing the dam so as to exclude the salt water: *Id.*

WHARF. See *Negligence.*