

tory and ineffectual by a neglect to communicate it to another, where the rights of the two arise out of the same transaction: *Rooth v. Quin*, 7 Price 193. But where a partnership exists between persons who reside in two different countries, and a dissolution takes place

from the breaking out of a war between the two countries, the existence of the war dispenses with the necessity of giving public notice of the dissolution: *Griswold v. Waddington*, 15 Johns. 57.

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## ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.<sup>1</sup>

SUPREME COURT OF KANSAS.<sup>2</sup>

COURTS OF APPEALS OF LOUISIANA.<sup>3</sup>

NEW JERSEY PREROGATIVE COURT.<sup>4</sup>

SUPREME COURT OF OHIO.<sup>5</sup>

SUPREME COURT OF RHODE ISLAND.<sup>6</sup>

SUPREME COURT OF WISCONSIN.<sup>7</sup>

AGENT. See *Broker*.

### *Signature to Check as Agent—Knowledge by Payee of Agency.*—

Where a person acts merely as agent for another, and signs a check as agent, and the party with whom he deals has full knowledge of his agency and of the principal for whom he acts, an express disclosure of the principal's name on the face of the check or in the signature is not essential to protect the agent from personal responsibility: *Metcalf v. Williams*, S. C. U. S., Oct. Term 1881.

The ordinary rule undoubtedly is that if a person merely adds to the signature of his name the word "agent," without disclosing his principal, he is personally bound. But if he be in fact a mere agent of some principal, and is in the habit of expressing in that way his representative character in his dealings with a particular party, who recognises him in that character, it would be contrary to justice and truth to construe the instrument thus made as his personal obligation: *Id.*

### BAILMENT.

*Purchase by Bailee at Wrongful Sale by Third Person—Remedy of Owner against such Third Person*—A bailee cannot acquire title to

<sup>1</sup> 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.

<sup>2</sup> From A. M. F. Randolph, Esq., Reporter; to appear in 26 Kansas Reports.

<sup>3</sup> From Hon. Frank McGloin, Reporter; to appear in vol. 1 of his reports.

<sup>4</sup> From Hon. John H. Stewart, Reporter; to appear in 34 N. J. Eq. Reports.

<sup>5</sup> From E. L. Dewitt, Esq., Reporter; to appear in 37 or 38 Ohio St. Reports.

<sup>6</sup> From Arnold Green, Esq., Reporter; to appear in 13 Rhode Island Reports.

<sup>7</sup> From Hon. O. M. Cenover, Reporter; to appear in 53 Wisconsin Reports.

the property, adverse to that of his bailor, through a tortious seizure and sale of the property by a third person: *Enos v. Cole*, 53 Wis.

Moneys paid by the bailee at such a sale without authority from the bailor, cannot be recovered from the latter: *Id.*

The property having returned to the bailee in such a case, while the bailor might perhaps maintain an action of *trespass* against the person who seized and sold it, and recover therein at least nominal damages, he cannot, without proof of actual damage, maintain an action against such third person as for a *conversion*, and recover even nominal damages therein: *Id.*

#### BANK.

*Certification of Check—Deposit of Check or Note—Right of Depositor to Reclaim—National Bank—Sect. 5228 Rev. Stat.*—The certification of a check by the bank on which it is drawn, is equivalent to an acceptance. Such a check stands upon the same footing as an accepted bill of exchange: *Louisiana Ice Company v. State National Bank*, 1 McGloin.

There is a privity between a bank certifying a check, negotiable in form, and every holder thereof up to the time of its extinguishment. The bank may be sued by any such holder: *Id.*

When a bank receives on deposit checks, promissory notes or similar paper, the contract is usually one of deposit for collection only; and where the depositor has not drawn against such deposited paper, he can, at any time before collection, revoke the agency of the bank and reclaim the deposit: *Id.*

The depositors of banks which have formed themselves into a clearing house, are not bound by the rules and regulations or usages of the latter: *Id.*

U. S. Rev. Stats., sect. 5228, does not apply to a case like this. It does not make property belonging to others, found in the custody of a national bank at the time of its suspension, under contracts other than special deposit, liable for the debts of the bank: *Id.*

#### BANKRUPTCY.

*Assignee—Not Interested in Disputes between Secured Creditors.*—An assignee in bankruptcy represents the general or unsecured creditors only. He has nothing to do with the disputes of secured creditors among themselves, and a bill filed by him against certain secured creditors to compel them to carry out an agreement with other secured creditors, by which all were to accept a joint security, will be dismissed, it not appearing that the result would affect the general estate: *Dudley v. Easton*, S. C. U. S., Oct. Term 1881.

#### BILLS AND NOTES.

*Protest—Notice to Drawer.*—Where the notary protesting a draft, unable after diligent inquiry to ascertain the address of the drawer, directed the notice of protest to him at the place where the draft was drawn or dated; *held*, that this was sufficient: *Page v. Valery*, 1 McGloin.

#### BROKER.

*Agency for both Parties—Right to Compensation.*—The double agency of a real estate broker, who assumes to act for both parties to

an exchange of lands, involves, *prima facie*, inconsistent duties, and he cannot recover compensation from either party, even upon an express promise, until it is clearly shown that each principal had full knowledge of all the circumstances connected with his employment by the other which would naturally affect his action, and had assented to the double employment. But when such knowledge and consent are shown, he may recover from each party: *Bell v. McConnell*, 37 or 38 Ohio St.

#### COMMON CARRIER.

*Loss after Delivery to Succeeding Carrier—Arrangement with Letter for pro rata Tariff.*—In the absence of a special contract with the shipper, a common carrier is not liable for loss of the goods after delivery to the next succeeding carrier upon a through route, and such special contract cannot be implied from the fact that an arrangement existed among all the carriers constituting the through route, whereby goods were to be transported at a stipulated tariff to be apportioned among them pro rata according to distance: *St. Louis Ins. Co. v. St. L., V., T. & I. Railroad Co.*, S. C. U. S., Oct. Term 1881.

#### CONSTITUTIONAL LAW. See *Intoxicating Liquors.*

*Officer of State—When Courts will interfere with his Action.*—Where the law has vested a discretion in any executive officer of the state, the courts will not control him in its exercise: *State of Louisiana v. Jumel*, 1 McGloin.

Where, however, the discretion has been lawfully exercised by the legislative department, and there remains to such executive officer only the obligation of complying with its mandates, the courts will, if necessary, compel his obedience: *Id.*

Where the state, as the principal, commands the auditor, as its agent, to make a particular distribution of the funds in its public treasury, any proceeding intended to compel him to violate such instructions is an action against the state, which, by reason of its sovereignty, will not lie: *Id.*

#### CONTRACT.

*Illegal Employment—Action for Wages—Minor.*—No action lies to recover a minor's wages earned in violation of a statute prohibiting the employment of certain minors in manufacturing establishments: *Birkett v. Chatterton*, 13 R. I.

*Interpretation of—Parol Evidence.*—Where the language of a written contract is not entirely perspicuous, and is susceptible of two constructions, one showing an agreement apparently fair and reasonable, and the other terms highly favorable to the party preparing the writing and not likely to be knowingly accepted by the other party; *held.* that parol testimony is admissible of the prior parol negotiations, and the situation and admissions of the parties for the purpose of determining in what sense the language of the written instrument was used by them: *Mason v. Ryms*, 26 Kans.

*Signature of both Parties Unnecessary—Substitution of New Party—Novation.*—Where a contract, not required by the Statute of Frauds

to be in writing, has been reduced to writing and signed by one contracting party only, it is error to treat such contract as of no validity for the reason that it is not signed by the party to be charged: *Bacon v. Titus*, 37 or 38 Ohio St.

An agreement between the parties to a contract and a third person, whereby one party is released from the obligations of the contract and the third person substituted in his stead, is a *novation*, and requires no further consideration than such release and substitution: *Id.*

#### DEBTOR AND CREDITOR.

*Conspiracy to Secrete Property—Action by Creditor who has no Lien.*—A., being a creditor of B., brought trespass on the case against C. and others, charging them with conspiring to prevent A. from obtaining payment out of the estate of B. and with receiving from B. fictitious mortgages, by means of which they took B.'s personalty and secreted it so that A. could not attach it, and thus lost his claim. It appearing that A. had no lien on B.'s estate by attachment, levy or otherwise, and was only a creditor at large of B.: *Held*, that the action could not be maintained: *Klous v. Hennessey*, 13 R. I.

#### DEED.

*Construction of—Extrinsic Evidence.*—A deed with a description otherwise uncertain should be construed with reference to the actual rightful state of the property at the time of the execution; and extrinsic evidence of that state is admissible to aid in the construction: *Whitney v. Robinson*, 53 Wis.

Where the grantee in such a deed goes into possession of land under it, and fences the same, and makes valuable improvements thereon, with the knowledge and acquiescence of the grantor, this is a practical construction of the deed, binding on the parties and those claiming under them: *Id.*

DEMURRER. See *Frauds, Statute of.*

EVIDENCE. See *Contract.*

*Witnesses in Suit removed to Federal Court—Previous Decision of State Court as to Competency.*—In a cause removed from a state court to a federal court, the competency of witnesses is to be determined by the Act of Congress (Rev. Stat., sect. 858), and is not affected by the fact that while the case was pending in the state court the witnesses were held by that court to be incompetent under the state law: *King v. Worthington*, S. C. U. S., Oct. Term 1881.

*Merchant's Account-book—Original Entries.*—A merchant's account-book was offered in evidence; it appeared that the memorandum of sales was made as they took place, on a little pass-book or blotter; that at the close of each day, or at most with a delay of but a day or two, these memoranda were copied into the journal or account-book offered in evidence; it also appeared that these pass-books or blotters had been lost or destroyed, and the party who made the copies in the account-book testified that they were correct. *Held*, no error in admitting such book of account: *Rice v. Simpson*, 26 Kans.

EXECUTION. See *Partnership*; *Sheriff's Sale*.

*Property in hands of Constable*.—Where personal property has been levied upon by a constable holding a valid execution, it is not, while in such possession, subject to levy by any other officer, constable, sheriff or marshal, holding process from the same or another court: *Jones S. & P. Co. v. Case*, 26 Kans.

EXECUTOR AND ADMINISTRATOR. See *Surety*.

*Legacy—Duty to Compound Interest—Loan of Funds to Co-executor*.—A legacy was given to an infant to be put out on bond and mortgage, and to be paid when the infant attained the age of twenty-one years, with interest accruing thereon. *Held*, that it was the duty of the executors to compound the interest as it accrued by investing it as soon as practical thereafter: *Ferrine v. Petty*, 34 N. J. Eq.

An executor who, without authority, lends such a fund to his co-executor, on inadequate security, is liable for the amount of the principal and compound interest; and the fact that such investment is stated in his account in the Orphans' Court will not exonerate him: *Id.*

*Surety—Liability for Proceeds of Lands Sold—Extent of*.—Upon an application to assess the damages on a judgment recovered against an administrator and his sureties, because of his failure to apply to the payment of the intestate's debts the proceeds of lands sold under an order of the Orphans' Court; *Held*, that as the administrator had authority to sell only the lands specified in the order of the Orphans' Court, his sureties are not liable for the proceeds of sale of any other lands, and that there can be no deduction in the administrator's favor because of his failure to exhaust the personal estate of the intestate in payment of his debts before applying the proceeds of the realty thereto: *In re Givens, adm'r*, 34 N. J. Eq.

*Mortgage by one Executor to another to Secure Deficit—Continuing Liability*.—One of two executors collected a large amount of money due the estate, without his co-executor's knowledge, and, in order to secure the estate, gave a mortgage on his own lands, payable to himself and his co-executor. The property covered by the mortgage was sold under a prior mortgage, and nothing realized therefrom for the estate. *Held*, that the delinquent executor was not, by giving the mortgage, exonerated from liability to his co-executor: *Storms v. Quackenbush*, 34 N. J. Eq.

#### FRAUD.

*Retention of Property by Vendee—Effect of*.—The retention of personal property by a vendor after sale is, as against his creditors, presumptive but not conclusive evidence of fraud: *Mead v. Gardiner*, 13 R. I.

Hence, when A. conveyed to a creditor restaurant furniture of much less value than the amount of his debt, and was allowed to continue the business temporarily in order to dispose of the furniture, and derived meanwhile no benefit from continuing the business and had no agreement allowing him to redeem the property. *Held*, that the conveyance was good as against the other creditors of A.: *Id.*

*Sale of Patent—False Representation as to Novelty.*—An action may be maintained by the buyer of a patent right on the false representations of the sellers that they were possessed of a patent giving them exclusive right for an improvement in spring bed bottoms, and that there was no like patent authorized, known by the sellers, to be false, which induced the purchase, although by searching the records of the patent office the buyer might have discovered the fraud: *McKee v. Eaton* 26 Kans.

#### FRAUDS, STATUTE OF.

*Promise by Debtor to pay his Creditor's Debt to Third Person.*—Where a person agrees to satisfy his obligation to an estate by distributing the sum he holds amongst its creditors, taking their receipts, such an agreement is not in the nature of a promise to pay the debt of another, such as is required by statute to be evidenced by writing: *Decuir v. Ferrier*, 1 McGloin.

*Promise to Compensate by Will—Alternative Promise.*—A verbal promise in the alternative to compensate a party by will, either in land or money, is within the statute against frauds and perjuries: *Howard v. Brower*, 37 or 38 Ohio St.

Where the agreement sued on is within such statute, and it is fairly to be inferred from the petition that it is not in writing, the defence of the statute is available on demurrer: *Id.*

#### GIFT.

*Corporate Stock—Possession of Certificate and Power of Attorney.*—Where stock stood in a testator's name on the books of the corporation, the facts that the certificate is found in the executor's possession, and that the testator gave him a power of attorney to receive and assign any scrip or dividend due him from the company, are not conclusive evidence of a gift of the stock to the executor: *Smith v. Burnet*, 34 N. J. Eq.

INFANT. See *Contract*.

#### INJUNCTION.

*Not Granted to restrain Use of Land by Unlawful Occupant.*—Where a party enters into the possession of premises without any authority of the owner, and under pretence of a lease made by an unauthorized agent, and puts said premises to a use which is not forbidden by the law, the owner's remedy is an action at law to recover the possession, and he may not resort to equity and obtain an injunction, and thus take away the constitutional right of a trial by jury, on the ground that such use is in his judgment immoral and mischievous in its tendencies, and one calculated to injure his reputation in the community: *Boydell v. Crawford*, 26 Kans.

#### INSURANCE.

*Furniture in Particular House—Removal of.*—A policy of insurance against fire was issued on articles of furniture described as "all contained in house No. McMillen street, Providence, R. I." The insured, without the knowledge of the insurer, removed these articles

to a house in another street, where they were consumed. *Held*, that the insured could recover on the policy: *Lyons v. Providence Washington Ins. Co.*, 13 R. I.

*Waiver of Conditions by Agent.*—A policy provided that if it should become void for any cause, it should not be revived by the issue of a renewal receipt, or in any other way except by special contract for that purpose written thereon, or by the issuing of a new policy. *Held*, that it was competent for the agent, acting for the insurer, to waive this as well as other conditions of the policy, and that the insurer, after the issue of the renewal receipt, and especially after having received the premium, was estopped to deny the contract: *Shafer v. Phoenix Ins. Co.*, 53 Wis.

#### INTOXICATING LIQUOR.

*Constitutional Law—Statutory Provision as to Evidence of Illegality.*—A statute provided that "evidence of the sale or keeping of intoxicating liquors for sale in any building, place or tenement shall be *prima facie* evidence that the sale or keeping is illegal." *Held*, that this statutory provision was constitutional and valid: *State v. Higgins*, 13 R. I.

#### LEGACY.

*Bequest upon arriving at Age—Payment of.*—A testator directed his executors to invest a fund and to pay to his widow, for life or widowhood, one-third of the interest thereof, and to his children and grandchildren, whom he named, the remaining interest in designated portions; that if any such child or grandchild should die without issue, the survivors should take such decedent's share in like portions; that if any of them should die leaving lawful issue over twenty-one years of age, the executor should pay to the representatives of such decedent the principal on which such decedent had received the interest. One child died during the lifetime of the widow, leaving a daughter over twenty-one. *Held*, that the executors could pay her the principal of her share on her producing the widow's release of her interest therein: *Valentine v. Smith* 34 N. J. Ea.

#### LIBEL.

*Publication—When Libellous—Indictment.*—A publication is libellous if without charging an indictable offence it falsely and maliciously imputes conduct tending to injure reputation, to cause social degradation, or to excite public distrust, contempt or hatred: *State v. Spear*, 13 R. I.

An indictment for libel is good if it charges the publication of matter not libellous *per se*, but charges such publication with proper inducement and innuendoes to set forth and explain the defamatory statements of the publication: *Id.*

#### LIMITATIONS, STATUTE OF.

*Surety—Partial Payment by Principal.*—A payment by a principal debtor, which will take a case out of the Statute of Limitations as to him, will have the same effect as to his surety, who is present for the purpose of seeing that the payment is made and credited, and makes

no statement that any limitation shall be placed on the effect of such act: *Glick v. Crist*, 37 or 38 Ohio St.

#### MALICIOUS PROSECUTION.

*False Imprisonment—Evidence—Statements of Attorney—Damages.*—In an action for false imprisonment, proof of the circumstances of plaintiff's family, and of the filthy condition of the jail used for the imprisonment, is admissible upon the question of mental anguish, &c.: *Fenelon v. Butts*, 53 Wis.

In such an action, statements of an attorney-at-law in reference to the second imprisonment of the plaintiff, then threatened, are admissible, where such attorney had acted for the defendant throughout the proceedings which resulted in the first imprisonment, and there is evidence for the jury that he was still so acting when he made such statements; or, where there is evidence that he was a co-conspirator with the defendant; or, where such statements were made in the defendant's presence while the latter was plotting the further imprisonment of the plaintiff, and the evidence was accompanied, or might have been followed, by proof of defendant's assent: *Id.*

While proof of defendant's good faith is admissible to mitigate punitive damages, it cannot be considered to mitigate compensatory damages, including those allowed for injury to the feelings: *Id.*

#### MASTER AND SERVANT.

*Continuance of Employment after Misconduct—Estoppel.*—An employer, who continues an employee in his service after learning of negligence or misconduct upon the part of the latter, is estopped from subsequently complaining of such negligence or misconduct: *Marshall v. Sims*, 1 McGloin.

#### MECHANICS' LIEN.

*Waiver of.*—A mechanic furnishing material for the construction of a mill, under a contract with the owner, may, by his agreement as to the manner of payment, and his acts with respect to the claims of other creditors, be precluded from asserting a mechanic's lien, as against such creditors, although he has made no express promise that he will not assert such lien: *West v. Klotz*, 37 or 38 Ohio St.

*Who entitled—Superintendent of Mine.*—One employed for an indefinite time to direct the work in a mine, with authority to employ and discharge miners and procure and purchase supplies, and who, by virtue of such employment, controlled and directed the working and development of the mine, and in the performance of such duties did some manual labor, is entitled to a lien under a statute giving a lien to any person who should perform any work or labor upon any mine: *Flagstaff Silver Mining Co. v. Cullins*, S. C. U. S., Oct. Term 1881.

MORTGAGE. See *Partnership*.

NATIONAL BANK. See *Bank*.

#### NEW TRIAL.

*Verdict Contrary to Instruction—Right of Court to render Judgment according to Evidence.*—Where the evidence is clear and undisputed,

the court may direct the jury to find a general or special verdict in accordance therewith, or may itself find the fact and render judgment accordingly; and it is strongly intimated herein that the court, after setting aside a special verdict contrary to the clear and undisputed evidence, may either grant a new trial, direct the proper verdict, or render judgment according to the evidence: *Gammon v. Abrams*, 53 Wis.

A party who, after a special verdict has been set aside, does not ask for a new trial, waives it: *Id.*

A "reaper and self-binder," was delivered to a conditional purchaser in July, and used in the harvest of that season, and found defective. In January or February following, the vendor's agent called on the purchaser in relation to payment for the machine, and the purchaser said he would give nothing for it; but he still kept it and did not offer to return it until the following April. *Held*, that there was no error in setting aside a finding by the jury that the machine was returned in a reasonable time, and rendering judgment for its value: *Id.*

#### PARTNERSHIP.

*Evidence—Notoriety—Liability of one allowing himself to be held out as Partner.*—In an action against a partnership managing and operating a bank, it appeared from the evidence that one W., who was charged as a member of the banking firm, and as liable upon their certificates of deposit, was named in the advertisement of the bank as a member of the partnership, and was a subscriber to the paper containing such advertisement. It also appeared that the letter-heads used by the bank contained his name as a partner, and that he received letters which his clerk read and answered, upon such letter-heads. It was further testified to by one of the partners, that W. was a member of the firm. *Held*, that the court committed no material error in receiving in addition to such evidence, and as corroborative thereof, the general understanding and report of the community where the bank existed, to prove W. a partner: *Rizer v. James*, 26 Kan.

Where a person is held out as a member of a partnership with his own assent or connivance, he is responsible to every creditor or customer of the partnership for all its liabilities: *Id.*

*Execution—Interest of one Partner—Sale of—Rights of Purchaser.*—The interest of a copartner in the partnership property may, in Rhode Island, be attached by an individual creditor of such copartner: *Randall v. Johnson*, 13 R. I.

In such a case the sheriff may seize a chattel and deliver it to the purchaser of the interest attached, who becomes a tenant in common of such chattel with the other partners, but subject to the partnership debts and equities: *Id.*

*Mortgage to Firm without naming Individual Partners—Validity of.*—G. & W. were partners doing business under the name and style of "The Chicago Lumber Company." A. executed to "The Chicago Lumber Company" a promissory note, and also executed to "The Chicago Lumber Company" a mortgage upon real estate to secure the note. *Held*, that the absence of the names of the individual members of the partnership from the mortgage did not invalidate it; and *held*, also, that in an action upon the note and to foreclose the mort-

gage, G. & W. were authorized upon proper allegations in the petition to show that they were partners carrying on business under the name and style of the Chicago Lumber Company, and the holders and owners of the note and mortgage, and *held*, further, the court was authorized upon default in the payment of the note to foreclose and sell the mortgaged premises: *Chicago Lumber Co. v. Ashworth*, 26 Kans.

PATENT. See *Fraud*.

PAYMENT.

*When not Voluntary—Taxes*.—Payment of taxes under protest, to an officer who has a warrant for their collection, and threatens to collect by levy and sale of property, is not a voluntary payment *Ruggles v. City of Fond du Lac*, 53 Wis.

REMOVAL OF CAUSES.

*Citizenship—Foreign Corporation Operating Railroad under Lease*.—A corporation of one state, by leasing a railroad from a corporation of another state, and operating it in the latter state under franchises granted to the corporation from which it is leased, does not become a citizen of the state in which said road is operated, and if sued in such state may remove the suit to the federal courts: *Baltimore & Ohio Railroad Co. v. Koontz*, S. C. U. S., Oct. Term 1881.

SALE. See *Fraud*; *Trover*.

*Breakage—Right of Rescission*.—Where defendants purchased two hundred casks of Seltzer waters, packed in Prussia, in casks of one hundred stone jugs each, and it is shown that such casks cannot be transported without some breakage of the jugs. *Held*, that these circumstances have entered into the contract, and where the actual breakage is not beyond what is usual, the vendee cannot refuse to receive the property and rescind the contract: *Hays v. Smith*, 1 McGloin.

*Sample—Written Contract*.—A written contract of sale which does not show that it was made by sample cannot be explained or modified by proof that it was so made: *Wiener v. Whipple*, 53 Wis.

SHERIFF'S SALE.

*Waiver by Debtor of Legal Formalities—Liability of Sheriff to Creditors for Omission*.—A renunciation by an insolvent debtor in favor of a particular creditor, dispensing with any of the forms of law, by which the value of his property sold under execution is diminished, is contrary to good morals: *Tupery v. Harper*, 1 McGloin.

A sheriff, aware of the insolvency of the debtor, who executes an order of sale waiving the formalities and delays of advertisement, although such sale is consented to by the seizing creditor, is liable in damages to a creditor who has suffered by such a proceeding: *Id.*

The price brought by the property so sold will not be taken as a standard of its value: *Id.*

SURETY. See *Executors and Administrators*.

*Assignee—Objections to Creditor's Claim*.—After the damages have been assessed against an assignee and his surety, on their bond given

under the assignment act, the surety cannot have the amount of a creditor's claim deducted therefrom, on the ground that it was not presented to the assignee under oath, where such claim was allowed and included in all of the assignee's accounts, and no creditor objects thereto. He is bound to answer for all the money found due from his principal: *In re Estate of Stelle*, 34 N. J. Eq.

*Surety—Right to be Relieved.*—The right of sureties to be relieved from responsibility for the future acts or defaults of administrators or guardians is absolute, and, on a proper application, must be granted. Where, however, the sureties do not appear on the day set by the court for the hearing, their application may be treated as abandoned, and may be dismissed: *Allen v. Sanders*, 34 N. J. Eq.

#### TAXATION.

*Bank—Foreign Investments.*—The investments in foreign countries of part of the capital of a bank, if of the character usually made by banks in doing a banking business, are liable to taxation by the state in which the bank is incorporated: *Nevada Bank v. Sedgwick*, S. C. U. S., Oct. Term 1881.

Whether, if such investments had been made in fixed property subject exclusively to another jurisdiction, a different rule would apply, not considered: *Id.*

#### TRIAL.

*Order of addressing Jury.*—In an action to recover damages for assault and battery, where an issue was joined on an answer justifying the alleged trespass, the court allowed defendant to begin and close, in offering testimony and in the argument. *Held*, (1) that unless there were special reasons authorizing the court to otherwise direct, the right to begin and close was in the plaintiff. (2) Unless it affirmatively appears that special reasons did not exist, which would authorize the court to change the order of proceedings at the trial, or, that the plaintiff was prejudiced thereby, a judgment for the defendant will not be reversed: *Dille v. Ingersoll*, 37 or 38 Ohio St.

#### TROVER. See *Bailment*.

*Fraudulent Purchase of Chattels—Right of Owner—Innocent Transferee.*—H., the owner of chattels, relying on the representations of R. that he was the agent of L., agreed to sell the same to L. on credit, and H., in the belief that R. was such agent, delivered the chattels to him, when in fact he was not such agent, nor had he authority to purchase for L., as he well knew. *Held*, that the property in the chattels did not pass from H., and that L., who bought the chattels of R. and converted them to his own use, without knowledge of the fraud, was liable to H. for their value; and the fact that R., at the time the chattels were delivered to him, paid H. part of the price agreed on, will make no difference, except as to the amount of recovery against L.: *Hamet v. Letcher*, 37 or 38 Ohio St.

#### UNITED STATES COURTS. See *Evidence*.