suit can be maintained, we do not see why, on the same principle, similar suits cannot be maintained against purchasers for the value of hay, corn, potatoes, or fruits raised on the farm and sold. Certainly it never has been supposed that a suit to annul the conveyance of a farm could entail such results. We do not think public policy, which is the source of the doctrine of *lis pendens*, requires that it should entail them. The doctrine is not a favorite of the courts, and will not be extended without strict necessity: *Leitch* v. *Wells*, 48 N. Y. 585. It is only because wood is a more permanent part of a farm than its other products that we feel any inclination to entertain the suit. But we are not prepared to entertain it on that account, in the absence of any charge of actual fraud. We think the complainant, if not satisfied with the personal responsibility of Peter Kiernan and his children, should have applied for an injunction, or some other preventive order, to protect her interests.

We must, therefore, sustain the demurrer and dismiss the bill with costs. Demurrer sustained.

## ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ERRORS OF CONNECTICUT.[2]
SUPREME COURT OF GEORGIA.[3]
SUPREME COURT OF ILLINOIS.[4]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[5]
SUPREME COURT OF OHIO.[6]

### ADMIRALTY.

*Jurisdiction—Damages resulting from Loss of Life—Prohibition.*—While down to a recent period the courts of admiralty have followed the rule of the common law in deciding that damages could not be recovered for an injury causing death, yet it is clearly within the power of the courts of admiralty to determine whether the recent legislation giving a right of action to those pecuniarily interested in the life of the person killed, has not wrought a corresponding change in the laws which

[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 John Hooker, Esq., Reporter; to appear in 48 Connecticut Reports.

[3] From J. H. Lumpkin, Esq., Reporter; to appear in 66 Georgia Reports.

[4] From Hon. N. L. Freeman, Reporter; to appear in 101 Illinois Reports.

[5] From John Lathrop, Esq., Reporter; to appear in 131 Massachusetts Reports.

[6] From E. L. DeWitt, Esq., Reporter; to appear in 37 or 38 Ohio St. Reports.

govern their jurisdiction: *Ex parte Gordon*, S. C. U. S., Oct. Term 1881.

A writ of prohibition, therefore, will not be granted to restrain an admiralty court from proceeding in a cause instituted to recover damages for loss of life occasioned by a collision: *Id.*

AGENT.

*Building Agreement—Architect—Extra Work.*—A builder made a written contract to furnish the materials and build a house for the defendant according to definite plans and specifications, and for a fixed sum, all the materials and work to be accepted by an architect named, who was to superintend the construction. The builder, under the direction of the architect, did certain work variant from and in addition to the specifications, which increased the cost and value of the house. *Held*, That the ordering of this work was beyond the scope of the architect's agency, and that the defendant was not liable to the builder for it: *Starkweather* v. *Goodman*, 48 Conn.

When the house was nearly completed the builder gave the defendant a written statement of the extra work and materials, to which the latter made no objection at the time. *Held*, That he was not estopped thereby from making the objection afterwards: *Id.*

ATTORNEY. See *Libel; Set-off.*

BILLS AND NOTES. See *Surety.*

*Payment—Presumption from Possession of Note—Payment of Interest.*—The possession of a promissory note in the hands of the personal representative of the payee, unexplained, is *prima facie* evidence that it has not been fully paid, and when it is produced in evidence, the burden of proof is on the maker to establish payment, by a preponderance of evidence: *Ritter* v. *Schenk*, 101 Ill.

The payment of interest on the amount claimed to be due when the note was in fact fully paid, the holder claiming compound interest, will not conclude the maker from afterwards proving a prior payment in full, where such payment of interest was made in ignorance of his rights: *Id.*

*Sale of Note—Warranty of Solvency of Maker.*—If a person sells a promissory note, the maker of which at the time is insolvent, but has not stopped payment nor been adjudged bankrupt or insolvent, and the seller does not know of the maker's actual insolvency, the seller does not warrant the solvency of the maker: *Day* v. *Kinney*, 131 Mass.

COMMON CARRIER.

*Limitation of Liability—Railroad—Last Road of Through Line.*—A general stipulation or notice in a bill of lading will not limit the liability of a common carrier; an express contract is necessary for that purpose: *Georgia R. & B. Co.* v *Gann*, 66 Geo.

An express contract will not protect a common carrier from the results of its own negligence in running its trains: *Id.*

Where goods are shipped over a connecting line of railroads, the last road of the line receiving them as in good order, for transportation, is liable to the consignee for damages: *Id.*

Goods were billed from St. Louis, Missouri, to Athens, Georgia; as far as Atlanta, Georgia, through rates of freight were paid, and from Atlanta to Athens local rates were charged. *Held*, That even if this did not make the Georgia Railroad (from Atlanta to Athens) liable as the last road of a through line, still the receipt by it of the goods for transportation without exception was impliedly a receipt as in good order, and would render that road liable for damages occurring thereto: *Id.*

COURT.

*Jurisdiction—When it may be Collaterally Attacked.*—The jurisdiction of courts of limited and inferior jurisdiction can be collaterally attacked, and if the want of jurisdiction in fact exists, the judgment is an absolute nullity: *Culver's Appeal*, 48 Conn.

CRIMINAL LAW.

*Larceny—Fixtures—Trespass.*—When things attached to the realty are detached therefrom, they at once become personalty, and are the subject-matter of larceny even by the person so detaching them: *Beal* v. *State*, 66 Geo.

The difference between simple larceny and one form of trespass is that the former is the wrongful and fraudulent taking and carrying away of the personal goods of another with intent to steal the same; the latter is the taking and carrying away the personal goods or property of another without his consent: *Id.*

DEBTOR AND CREDITOR.

*Change of Possession.*—The defendant, who was in the employment of M. upon his farm, bargained with him for the purchase of a horse which M. had for some time owned and kept on the farm, when he should have earned the money to pay for it. The horse remained on the farm as before, and two years after M. sold it to the defendant, taking his receipt in full for wages earned in payment. The horse still remained on the farm and was kept in M.'s stable, the defendant continuing in his service, and feeding it from M.'s hay and grain as before, paying a certain sum per week for its keeping. The defendant took exclusive care of the horse, breaking it to harness, and keeping it shod, and claiming to own and be in possession of it. About two months after the sale the horse was attached by one of M. creditors. *Held*, that there had been no such change of possession as made the sale good against the creditors of M.: *Hull* v. *Sigsworth*, 48 Conn.

DEED.

*Boundaries—Descriptions—Surveyor's Monuments.*—It is well-settled law that the monuments established by a surveyor at the time of making the survey will always prevail over written descriptions when a contradiction exists: *People* v. *Stahl*, 101 Ill.

Any description of land or a lot, for purposes of taxation, by which it may be identified by a competent surveyor with reasonable certainty, either with or without extrinsic evidence, is sufficient: *Id.*

*Delivery—What does not amount to*—Where a deed is executed and delivered to a stranger, to be delivered to the grantee, without con-

ditions, it will be a sufficient delivery to pass the title; but the execution of a deed, and having it recorded, without the knowledge of the grantee, is not a delivery: *Byars* v. *Spencer*, 101 Ill.

Where a father made and acknowledged a deed to his two minor children, but retained it until his death, and declined to have it recorded, on the express ground that he would thereby place the title beyond his power or control, and expressed an intention, after he had made and acknowledged the deed, to sell the land if he could get a certain price, and in pursuance of that intention did offer to sell the land, it was *held* that the deed was inoperative for want of a delivery: *Id.*

*Deed Poll—Acceptance of—Liability of Grantee on Covenants.*—A grantee who has accepted a deed poll, by the terms of which he "assumes and agrees to pay" a certain mortgage on the land "and save the grantor harmless therefrom," cannot, in an action upon his agreement, no fraud in the execution or delivery of the deed being suggested, show by oral evidence that he never agreed to assume and pay the mortgage, nor authorized nor knew of the insertion of such an agreement in the deed: *Muhlig* v. *Fiske*, 131 Mass.

### Devise.

*What passes a Fee—Limitation over upon Failure of Heirs.*—A devise by a testator of *all* of his property of every description, whether real, personal or mixed, after paying all his just debts, is a devise of the fee, without the aid of a statute declaring such to be the effect of the devise: *Piatt* v. *Sinton*, 37 or 38 Ohio St.

Where there is a devise in fee, with a provision in the will that in case the devisee should die without leaving any legitimate heirs of her body, then the estate should go over to persons named, the fee taken by the first devisee is determinable only on the contingency of her dying without leaving such heirs living at the time of her death. *Niles* v. *Gray*, 12 Ohio St. 320, followed: *Id.*

### Duress.

*Threat of Prosecution of Son.*—A father may avoid a mortgage which he has been induced to sign by threats of the prosecution and imprisonment of his son: *Harris* v. *Carmody*, 131 Mass.

### Easement.

*Interrupted Use.*—An easement will not arise by prescription, where the facts show that the owner of the servient estate has habitually broken and interrupted the use whenever he thought proper to do so: *Kirschner* v. *West. & Atlantic Railroad*, 66 Geo.

*Subterranean Right of Way—Construction of Entry across.*—The general rules of law which govern the rights and obligations of the owners of dominant and servient estates, apply as well to subterranean rights of way as to those upon the surface: *Pomeroy* v. *Buckeye Salt Co.*, 37 or 38 Ohio St.

The owner of coal lands, through which another has a right of way by subterranean entry to reach coal mines in an adjoining tract, may lawfully construct an entry crossing such right of way, provided it be done without destroying or substantially interfering with the use thereof: *Id.*

EJECTMENT.

*Mesne Profits—Voluntary Division of Profits between Contestants.*—Where two parties each claimed an interest in land under a will, and with full knowledge of all the facts connected therewith, collected and voluntarily divided the rents and profits, in a subsequent action of ejectment by one against the other, he cannot recover such mesne profits: *White* v. *Rowland*, 66 Geo.

EQUITY. See *Set-off*

*Judgment Lien—Want of Notice to Defendant—Actual Knowledge.*—A court of equity will not decree a judgment lien to be invalid on the ground of the want of legal notice to the defendant, where the plaintiff has not been guilty of misconduct and the defendant had actual knowledge of the pendency of the action, unless a meritorious defence to the action be shown: *Gifford* v. *Morrison*, 37 or 38 Ohio St.

ERRORS AND APPEALS.

*Admission of Improper Evidence—Equity—Presumption.*—An error in admitting the evidence of an incompetent witness on the hearing of a chancery case, is no ground of reversal when the record contains other evidence which is competent and sufficient to sustain the decree: *Ritter* v. *Schenk*, 101 Ill.

In chancery cases it will be presumed that the court disregarded incompetent evidence on the hearing, especially where there is competent evidence on which to base its decree: *Id.*

*Reduction of Damages on Appeal.*—On error to reverse a judgment in damages, for a breach of contract, where a motion for a new trial based on the ground of an erroneous charge, and because the verdict is unsupported by the law and the evidence, is overruled, and the evidence is part of the record; and where it appears that the verdict is too large, by reason of error of the court in its rulings, or of the jury, and there is nothing necessarily implying passion or prejudice in the jury, the court may, where it can be done, ascertain from the evidence the amount of such excess, and may, on a remittitur of the same being entered, affirm the judgment as modified: *C. & M. Railroad Co.* v. *Himrod Furnace Co.*, 37 or 38 Ohio St.

EXECUTORS AND ADMINISTRATORS. See *Judicial Sale.*

*Purchase by at Tax Sale.*—An administrator of an estate, having no power or control over the land of his intestate, and not being required to pay the taxes thereon, may rightfully become the purchaser of the same, as against the heirs, at a sale for the taxes thereon, and set up his deed as color of title, under the Statute of Limitations: *Stark* v. *Brown*, 101 Ill.

FORMER RECOVERY.

*Suit for Interest—When not a Bar to Suit for Principal.*—Where a note is given, payable in one year, with interest payable semi-annually, and a suit brought two years thereafter to recover the instalments of interest then due, and a recovery therein, such judgment will be no bar to a subsequent action on the note to recover the principal. In such

case, the promise to pay interest is a distinct cause of action from the promise to pay the principal. Each promise constitutes a distinct cause of action: *Dulaney* v. *Payne*, 101 Ill.

### Frauds, Statute of.

*Agreement to pay Lien on Vessel for Debt of former Owner.*—If the owner of a vessel, subject to a lien for a debt incurred by a former owner, agrees to pay the lien, on the holder of the lien forbearing to enforce the same, this is not a promise to pay the debt of another, within the Statute of Frauds: *Fears* v. *Story*, 131 Mass.

### Insurance.

*Forfeiture—Non-payment of Premium Note—Omission of Notice—Usage—Parol Agreement in Contradiction of Policy.*—If, in a policy of insurance, a forfeiture is provided for in case of non-payment of premium at the day specified, the courts cannot grant relief against it. The insurer may waive it, or by his conduct lose his right to enforce it; but that is all: *Thompson* v. *Knickerbocker Life Ins. Co.*, S. C. U. S., Oct. Term 1881.

While the taking of a note for the premium is a waiver of the primary condition of forfeiture for non-payment, yet, if there is also a condition by which the policy was to be void if the note was not paid, the non-payment of the note will work a forfeiture: *Id.*

A usage on the part of the company of giving notice of the falling due of premiums, is no excuse for non-payment upon a failure to receive such notice: *Id.*

A parol agreement, made at the time of issuing the policy, contradicting the terms of the policy itself is void, and cannot be set up to contradict the policy: *Id.*

A usage of the company not to demand punctual payment of the premiums, but to give days of grace, is a mere voluntary indulgence which cannot be construed as a permanent waiver of the clause of forfeiture, or as implying any agreement to continue the indulgence: *Id.*

Even if such circumstances were sufficient to lay ground for relieving from the forfeiture, a subsequent tender of the premium is necessary, and a failure to make such a tender will defeat plaintiff's recovery: *Id.*

The payment of the annual premium is not a condition precedent to the continuance of the policy. It is a condition subsequent, the non-performance of which may incur a forfeiture of the policy, or may not, according to the circumstances. It is always open to the insured to show a waiver of the condition, or a course of conduct on the part of the insurer which gave him just and reasonable grounds to infer that a forfeiture would not be exacted. But it must be just and reasonable ground, one on which the insured has a right to rely: *Id.*

### Interest. See *Former Recovery.*

### Judicial Sale.

*Executor's Sale—Caveat Emptor.*—The doctrine of *caveat emptor* applies to an administrator's or executor's sale, and a purchaser thereat cannot repudiate his bid because of a defective title or want of title in the intestate, when there is no fraud or misrepresentation by the

administrator or executor. Nor will equity enjoin a resale at the purchaser's risk on his refusal to comply with his bid: *Jones* v. *Warnock*, 66 Geo.

LEGACY.

*Gift to a Class—Who are included.*—The general rule with regard to legacies to a class of persons is, that those only who are embraced in the class at the time the legacy takes effect will be allowed to take: *Jones's Appeal*, 48 Conn.

But where a legacy of that kind takes effect in point of right at one time, and in point of enjoyment at another, the general rule is that all those will take who are embraced in the class at the time the legacy takes effect in point of enjoyment: *Id.*

A testator gave certain property to his son for life, and after his death to his children equally. When the testator died the son had a wife fifty-nine years of age and three adult children, but the wife afterwards died and the son married again, and had two more children, who were living at his death. *Held*, that these children were entitled to share equally with the others in the property given by the will: *Id.*

LIBEL.

*Statement by Counsel—When not Privileged.*—A defamatory statement contained in the declaration in an action, signed by counsel, if not pertinent or material to the issue, is not privileged; and, in an action of libel against the counsel, he cannot justify by showing his belief that it was true, the sources of his information, or his instructions from his client: *McLaughlin* v. *Cowley*, 131 Mass.

MALICIOUS PROSECUTION.

*Enforcement of Mortgage in violation of Agreement—Action for—Damages.*—If a mortgage-creditor contract with his debtor not to enforce his mortgage within a given time, but subsequently does so, and levies on the property of the debtor, the latter has the right to sue for the actual injury occasioned him thereby, without alleging malice or want of probable cause: *Juchter* v. *Boehm*, 66 Geo.

A right of action exists in all cases of malicious abuse of legal process, or its use without probable cause. In such cases punitive damages may be added to the actual damage sustained: *Id.*

In an action for damages for the wrongful seizure and sale, under color of legal proceedings, of a tradesman's stock, while profits which he was making may not be recovered as such, yet their amount may be proved and considered by the jury as a fact in estimating the magnitude of the injury done: *Id.*

Generally, counsel fees do not form a part of the damages recoverable in action for tort, but if the defendant has acted in bad faith, or been stubbornly litigious, or caused the defendant unnecessary trouble and expense, they may be allowed by the jury, and may be proved for that purpose: *Id.*

MASTER AND SERVANT.

*Term of Employment—Hiring by Year—When inferred.*—Where one rendering service for another under a monthly employment, says to his employer that he desires to have his employment made more per-

manent, and thereupon a specified amount per year is agreed upon, payable in semi-monthly instalments, a hiring of a year may be inferred. Express words that the employment should continue for a year are not essential: *Bascom* v. *Strillito*, 37 or 38 Ohio St.

MINES. See *Easement.*

MORTGAGE. See *Duress.*

*Neglect to Record—Postponement of in Favor of subsequent Lien.*—The existence and common use of a public office for the recording of mortgages imposes a duty on a mortgagee to record his mortgage, and on a failure to do so he will be postponed to a subsequent *bona fide* mortgagee without notice, even though there be no statute requiring mortgages to be recorded: *Neslin* v. *Wells*, S. C. U. S., Oct. Term 1881.

*Assumption of by Purchaser—Action by Mortgagee.*—Where one purchases real estate encumbered by a mortgage, and agrees to pay the mortgage-debt as a part of the consideration, the promise may be enforced by the mortgagee. *Aliter* if the conveyance in which the promise is inserted is itself a mortgage: *Bassett* v. *Bradley*, 48 Conn.

MUNICIPAL BONDS. See *Constitutional Law.*

*Authority to Execute under Seal—Omission of Seal—Validity.*—A statute authorizing a town to subscribe to a railroad, provided, as follows: "It shall be lawful for the said commissioners to borrow on the faith and credit of the said town such sum of money as the tax-paying inhabitants shall fix upon by their assent in writing * * * and to execute bonds therefor under their hands and seal." *Held*, that the requirement of a seal was directory merely, and that the omission of a seal did not invalidate bonds issued under the act: *Draper* v. *Town of Springport*, S. C. U. S., Oct. Term 1881.

MUNICIPAL CORPORATION.

*Power to License Trades—Limited to those enumerated in the Statute.*—Where the legislature, by the General Incorporation Act, declares that the corporate authorities of cities and villages organized and acting under its provisions shall have power to license certain occupations and kinds of business, specifically enumerating them, such declaration, by a familiar rule of construction, must be construed precisely as if the law, in express terms, inhibited the licensing of all trades and occupations not contained in the enumeration: *City of Cairo* v. *Bross*, 101 Ill.

NEGLIGENCE.

*Injury by successive Negligent Acts of two Persons—Right of one paying Damages to recover from the other.*—If a person leaves a hatchway in the sidewalk connected with his premises in an unsafe condition, so that an injury to a traveller on the street is liable to happen in consequence of it, and another person so interferes with the hatchway as to cause it to be more dangerous, and a traveller is injured by the hatchway, the occupant of the premises is *in pari delicto* with the other person, and cannot recover indemnity of him, if compelled to pay damages recovered in an action by the injured person: *Churchill* v. *Holt*, 131 Mass.

## PATENT.

*Re-issue—Enlargement of Claim—When inadmissible*—A claim can only be enlarged by a re-issue when an actual *bona fide* mistake has been inadvertently committed—such as a court of chancery would correct: *Miller* v. *The Bridgeport Brass Co.*, S. C. U. S., Oct. Term 1881.

In reference to such re-issues the rule of laches should be strictly applied, and no one should be relieved who has slept upon his rights and has thus led the public to rely on the implied disclaimer involved in the terms of the original patent. And when this is a matter apparent upon the face of the instrument, upon the mere comparison of the original patent with the re-issue, it is competent for the courts to decide whether the delay was unreasonable, and whether the re-issue was therefore invalid: *Id.*

*Re-issue—When invalid—New Patent for same Invention—Process—Use by Government—Suit against Officer.*—If a patent fully and clearly describes and claims a specific invention, complete in itself, a re-issue cannot be had for the purpose of expanding the claim to embrace an invention not specified in the original: *James* v. *Campbell*, S. C. U. S., Oct. Term 1881.

A patentee cannot claim in a patent the same thing claimed by him in a prior patent, nor what he omitted to claim in a prior patent in which the invention was described, he not having reserved the right to claim it in a separate patent and not having seasonably applied therefor: *Id.*

A patent for a machine cannot be re-issued for the purpose of claiming the process of operating that class of machines: *Id.*

The government of the United States has no right to use a patented invention without compensation to the owner of the patent: *Id.*

*Query*, whether an officer of the government can be sued for using an invention only for and in behalf of the government, and whether the Court of Claims is not the only tribunal in which the claim for compensation can be prosecuted: *Id.*

## POSSESSION.

*Record of Judgment in Action by Landlord against Tenant—Conclusiveness as to Tenant's Possession.*—The record of a judgment in a summary process for the recovery of leased premises by A. against B., is conclusive evidence against B. and his grantees that he was in possession at the time as the tenant of A.: *Richmond* v. *Stahle*, 48 Conn.

And proof that he was in such possession up to the boundary line of the demised premises: *Id.*

## RAILROAD. See *Receiver.*

## RECEIVER.

*Not liable to Suit without leave of Court—Power to Operate and Repair Railroad—Suit in Foreign State.*—A receiver in possession of a railroad, and by order of the court engaged in the business of a common carrier thereon, cannot, without leave of the court, be sued for injury

to persons or property caused by his negligence or that of his servants: *Barton* v. *Barbour*, S. C. U. S., October Term 1881.

If the adjustment of the demand involve questions of fact, the court may, in the exercise of its legal discretion, either of its own motion or on the demand of the party injured, allow him to sue the receiver in a court of law or direct a feigned issue: *Id.*

A court of equity may authorize the receiver of a railroad to keep the same in repair and to operate it in the ordinary way until it can be sold to the best advantage of all interested: *Id.*

In such case, a court of another state has not jurisdiction without leave of the court by which the receiver was appointed, to entertain a suit against him for a cause of action arising in the state in which he was appointed, and in which the property in his possession is situated, based on his negligence or that of his servants in the performance of their duty in respect to such property: *Id.*

*Certificates for Indebtedness of Railroad—Priority—Estoppel.*—If the holder of railroad bonds secured by trust deeds on the road, having notice of the appointment of a receiver, and an order of court directing him on his petition to issue certificates of indebtedness on which to raise money to discharge a chattel mortgage on the personal property of the company, and to pay taxes, current expenses, &c., and making such certificates a prior and first lien on all the property of the company, desires to question the power of the court to make such order, he must do so before such certificates are issued and sold to *bona fide* purchasers, or paid out to creditors of the company. After their issue and sale, it will be too late for him, or purchasers from him with notice of the facts, to raise the question whether the subject-matter to which the certificates were applied was within the scope of the power of the court in the preservation of the property for the benefit of all concerned: *Humphreys* v. *Allen*, 101 Ill.

RECORDS. See *Mortgage.*

REPLEVIN. See *Shipping.*

SET-OFF.

*Motion to set-off one Judgment against another—Attorneys' Fees protected.*—A motion that one judgment be set-off against another is an appeal to the equitable powers of the court, to be granted or refused upon consideration of all the facts; and in granting such motion, the claim of the attorneys for fees will be respected, wherever it appears to be right, in view of the facts, that this should be done: *Diehl* v. *Friester*, 37 or 38 Ohio St.

SHIPPING.

*Replevin by Part Owner.*—A part owner of a vessel cannot maintain replevin for his undivided part, although he owns a major interest in the vessel: *Hackett* v. *Potter*, 131 Mass.

SUBROGATION.

*Purchaser from Heir without Administration—Payment of Debts out of the Proceeds.*—If an heir, to whom lands descend subject to the debts

of his ancestor, sells the same with covenants of general warranty at private sale, without administration on his ancestor's estate, to a *bona fide* purchaser, who applies the purchase-money to discharge liens thereon created by the ancestor, and to the payment of preferred claims, such purchaser is in equity entitled, in the distribution of the purchase-money, to be subrogated to the rights and equities of the holders of such claims: *Sidener* v. *Hawes*, 37 or 38 Ohio St.

SURETY.

*For Agent of Insurance Company—Omission of Company to Collect Balances due.*—An agent of an insurance company gave a bond, with sureties, to the company, conditioned for the faithful performance of his duties as agent, according to the by-laws of the company. A by-law required that the agents of the company should render monthly accounts, and pay each month the balance due to the company. The agent rendered his accounts regularly: but, one month did not pay the whole balance due from him, and, thereafter, for more than a year his indebtedness to the company increased from month to month until it exceeded the penal sum in the bond, when, for the first time, the sureties were notified. *Held*, That these facts did not discharge the sureties: *Watertown Fire Ins. Co.* v. *Simmons*, 131 Mass.

*Agreement with Principal to reduce Rate of Interest.*—A memorandum made by the holder on the back of a promissory note, to the effect that the rate of interest after a certain day will be less than that stated in the body of the note, is not an alteration of the note, and does not discharge a surety of the maker, although written in pursuance of an agreement between the holder and the maker of the note without the knowledge of the surety: *Cambridge Savings Bank* v. *Hyde*, 131 Mass.

TAX.

*Personal Judgment for Taxes—Effect upon the Lien.*—The recovery of a personal judgment by the state, against the owner of real estate for taxes due thereon, does not discharge the lien given by the statute for such taxes, and hence is no bar to an application by the collector for judgment against the property. The state may have a personal judgment against the owner for the taxes, and at the same time, or at any other time, enforce payment against the land itself by a proceeding *in rem*; but the payment of either judgment will be a satisfaction of both: *People* v. *Stahl*, 101 Ill.

TRADEMARK.

*Character of Word used—Injunction.*—A trademark, to be protected from infringement, must designate the origin or ownership of the article to which it is applied. A mere general description by words in common use, of a kind of article or its nature and qualities, cannot of itself become a trademark: *Larrabee* v. *Lewis*, 66 Ga.

"Snowflake," as applied to bread or crackers, is a mere description of whiteness, lightness and purity: *Id.*

An arbitrary word, not descriptive of the character or quality of the article to be sold, may be used to designate particular goods, and may become a trademark: *Id.*

In Georgia, to have a word or words claimed as a trademark pro-

tected by injunction from use by another, it should appear that the defendant's use of them was with the intent to deceive or mislead the public: *Id.*

## TRUST.

*Conveyance for use of Wife and Children—Power of Sale—Bona fide Purchaser.*—Where a deed conveyed land to the wife of the grantor for her use for life, provided that it should be used by the grantor's children together with his wife as a home, and at her death be divided among them, and with power in the wife "at any time in her discretion to sell and convey the said property by deed, provided the proceeds of such sale are invested in other real estate for the uses expressed," a *bona fide* purchaser from the wife would acquire a good title, and would not be bound to see to the application of the proceeds: *Guill* v. *Northern*, 66 Geo.

*Use of Trust Funds by Trustee—Compound Interest.*—Where a trustee refuses to account for the profits arising from his use of the money, or has so mingled it with his own that he cannot separate and account for the profits that belong to the *cestui que trust*, the latter is allowed compound interest. This rule applies especially to cases involving a wilful breach of duty: *State* v. *Howarth*, 48 Conn.

## UNITED STATES. See *Patent.*

## WILL.

*Failure to establish Will after Caveat—Costs against Propounder—Liability of Legatees.*—Where a will is propounded and *caveat* is filed, upon failure to establish the will, the court cannot go further than to enter up judgment for costs against the propounder. Though parties beneficially interested as legatees may have aided the propounder by employing counsel and subpœnaing witnesses, they are not such parties to the record as that a judgment for costs can be entered against them: *Frances* v. *Holbrook*, 66 Geo.

Whether one who propounds a will at the instance or for the benefit of another can recover from the latter by assumpsit the costs which he had incurred by failing to establish the will, *Quære? Id.*

*Destruction of—Evidence as to Contents—Sanity.*—Where a will duly executed and attested was destroyed, with the connivance of a part of the heirs of the testator, and no copy appeared to be in existence, in a suit by a devisee not a party to such destruction, it was *held*, that the latter was only required to show, in general terms, the disposition which the testator made of his property by the instrument, and that it purported to be his will, and was duly attested by the requisite number of witnesses: *Anderson* v. *Irwin*, 101 Ill.

On a bill to establish a will destroyed after the testator's death, proof of the sanity of the testator is not indispensable in the absence of any proof that he was not in his sound mind, and in such case the disposition made by him of his property may of itself afford sufficient evidence of his sanity: *Id.*