"1. I am of opinion that the title of the act, 'to compromise and settle the bonded indebtedness of the state of Tennessee,' sufficiently expresses the subject thereof; that it contains but one subject, the several sections of the act being pertinent to the object expressed in the title, and, therefore, it is not void, as being repugnant to sect. 17, of art. 2, of the Constitution of Tennessee.

"2. I am further of opinion that the courts of the state have no power to review or reverse the legislative action of the General Assembly, except for the reason that such action is a violation of the Constitution; and that such action, if within their constitutional power, cannot be questioned by the courts of the state upon allegations of fraud and bribery.

"3. I am also of opinion that taxpaying citizens may file their bill to protect themselves from the injurious operation of a threatened and impending act, which is alleged to be unconstitutional, although such act is about to be performed under the apparent authority of the state. The court may inquire if there exists legal authority for the act, if so, it will not impede or obstruct it. On the other hand, if it appears it is prohibited by the fundamental law, it should restrain it upon the ground that the injurious act about to be done is unauthorized by law.

"4. I am, therefore, of the opinion that the constitutionality of the act is fairly presented to this court for its decision, and that the question for our deliberation is, had the legislature the power to pass it? And in my opinion it had the power—there being no inhibition or restraint in the Constitution to prevent it from doing so.

"I therefore concur with Judge EWING in holding that the act is constitutional and valid, and that the chancellor's decree dismissing the bill should be affirmed."

It is proper to explain that no one opinion can be called the opinion of the court, but that of Mr. Justice McFARLAND discusses *all* the points on which a majority of the judges agreed, and is, therefore, selected for publication in full. H.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ARKANSAS.[2]

SUPREME COURT OF GEORGIA.[3]

COURT OF ERRORS AND APPEALS OF MARYLAND.[4]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[5]

SUPREME COURT OF MISSOURI.[6]

ACKNOWLEDGMENT.

Married Woman—Evidence.—A married woman's acknowledgment

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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 B. D. Turner, Esq., Reporter; to appear in 37 Arkansas Reports.

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

[4] From J. Shaaff Stockett, Esq., Reporter; to appear in 56 Maryland Reports.

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

[6] From T. K. Skinker, Esq., Reporter; to appear in 74 Missouri Reports.

to a deed properly certified, is *prima facie*, but not conclusive evidence against her, either that the acknowledgment was made as certified, or that the facts acknowledged were true, except as to a vendee for valuable consideration, ignorant of the falsity of the facts, and not participant in the fraud. As to him, she is estopped to deny an acknowledgment actually made: *Holt* v. *Moore*, 37 Ark.

Omission of "Purposes."—An acknowledgment of a mortgage which does not show that the mortgage was executed for the "*purposes*" therein expressed, is insufficient to admit it to record; and the mortgage is no lien upon the property, as against a subsequent purchaser, even with notice: *Ford* v. *Burks*, 37 Ark.

ATTACHMENT. See *Garnishment*.

ATTORNEY.

Power to Compromise Suit.—An attorney as such, has no power to compromise claims placed in his hands for collection, or in respect to which he may be employed to recover judgment. He can take nothing in satisfaction of the claim or judgment except money, nor can he receive a less sum than is really due thereon, without the express authority of his client obtained for the purpose. And if he assume to act without such express authority, his acts in making the compromise, or agreeing to take a less sum in satisfaction than is really due, will not bind the client unless the latter, with full knowledge of all the facts, has ratified what has been done by the attorney; though such ratification may be inferred from acquiescence, and from the facts and circumstances of the case: *Fritchey* v. *Bosley*, 56 Md.

BANK. See *Taxation*.

BANKRUPTCY.

Discharge—Subscription to Stock of Corporation—Debt of Fiduciary Character.—There is nothing of a fiduciary relation or character created by a subscription of the debtor to the stock of a corporation, more than exists in the ordinary relation of debtor and creditor; and an action to recover such subscription is barred by the discharge: *Morrison* v. *Savage*, 56 Md.

BILLS AND NOTES. See *Executors and Administrators*.

When a Sealed Instrument—Statute of Limitations.—To render a promissory note a sealed instrument it should be so recited in the body of the note. The mere addition of a seal after the signature is not sufficient: *Chambers* v. *Kingsbury*, 66 Geo.

A note in the usual form, but with a seal added after the signature, will be barred after six years from maturity: *Id.*

COMMON CARRIER.

Negligence—Limitation of Liability—Live Stock.—Though a shipper of live stock contracted with the transporting railroad that it was not to be responsible for attention, feeding or watering of the stock, but that it should afford the shipper reasonable facilities for those purposes, yet if the railroad carried the stock beyond the destination fixed by the bill

of lading, and there detained them for several days before their return, it would not be relieved from liability for failure to care for the stock after passing the proper destination: *Bryant* v. *Southwestern Railroad Co.*, 66 Geo.

CONTRACT. See *Telegraph*.

COPYRIGHT.

Infringement—Proof of Deposit of Books with Librarian of Congress, Essential—Certificate of Librarian.—The deposit with the librarian of Congress of two copies of a copyrighted publication is an essential condition of the proprietor's right, and must be proved in an action for infringement: *Merrill* v. *Tice*, S. C. U. S., Oct. Term 1881.

A memorandum of such deposit upon a copy of the record of the title page, certified by the librarian of Congress, is not competent evidence thereof: *Id.*

Whether the certificate of the librarian, under his official seal, that the books had been deposited would be competent evidence of such deposit, *quære: Id.*

CORPORATION.

Transfer of Stock—When complete.—In the absence of a legislative enactment restricting the transfer of stock to any particular mode, the transfer is complete on delivery of the certificate with power to transfer, and payment of the purchase-money, not only between vendor and vendee, but when the corporation has unjustifiably refused to make the transfer on its books, against a creditor of the vendor, who, without notice of the transfer, attaches the stock: *Merchants' Nat. Bank* v. *Richards*, 74 Mo.

CRIMINAL LAW.

Breaking Partition Fence—Trespass.—It is not a misdemeanor for one to break a partition fence between his lot and another's, and which is the common property of both. Nor is it a trespass for him to knock off the plank added to it by the other; but destruction of such fence would be a trespass: *Drees* v. *The State*, 37 Ark.

DEED. See *Name*.

Gift in restraint of Marriage—Construction of Deed—Validity.—W. H. C., in consideration of one dime and of natural love and affection, conveyed by deed certain leasehold property to his two sisters M. and E., "to have and to hold the same unto the said M. and E. as tenants in common so long as they both shall live, and from and after the death of either of them, then unto the survivor so long as she shall live and no longer, or so long as they both shall remain unmarried; and from and after the marriage of either of them, then unto the one remaining unmarried, so long as she shall live and no longer." M. married, and E., who remained unmarried, took exclusive possession of the premises. Upon an ejectment brought by M. and her husband to recover an undivided moiety of the premises, it was *held* that the purpose of the brother evidently was, not to restrain the marriage or promote the celibacy of his sisters, but to give them a small property as a home or support until they should severally marry and have husbands

to maintain them; and that there was nothing immoral or illegal in this purpose, and it was carried out by this deed without infringing any rule of law: *Arthur* v. *Cole*, 56 Md.

ERRORS AND APPEALS.

Limitation under sect. 1008 *Rev. Stat.—Applies to State Courts.*—The limitation of two years prescribed by sect. 1008 Revised Statutes for bringing writs of error to the Circuit and District Courts applies to writs of error to state courts: *Cummings* v. *Jones*, S. C. U. S., Oct. Term 1881.

Construction of State Statute—Decision by Circuit Court—Subsequent contrary Decision of State Court—Erroneous sustaining of Demurrer to one Replication.—The construction given by the Supreme Court of a state to a statute of limitations of the state will be followed by the United States Supreme Court in a case decided the other way in the Circuit Court before the decision of the state court: *Moores* v. *Citizens' Nat. Bank*, S. C. U. S., Oct. Term 1881.

The erroneous sustaining of a demurrer to a replication to one of several defences in the answer, requires the reversal of a final judgment for the defendant which is not clearly shown by the record to have proceeded upon other grounds: *Id.*

Practice — Verdict.—A judgment will not be reversed at the instance of the party against whom it was rendered on the ground that the verdict was for but half the amount shown by the evidence to be due if any recoverv at all was to be had: *Alderman* v. *Cox*, 74 Mo.

EXECUTION.

Levy on Real Estate—Not satisfaction.—A levy on real estate undisposed of is not *prima facie* evidence of satisfaction of the *fi. fa.*, as is the case with a levy on personalty: *Overby* v. *Hart*, 66 Ga.

That a *fi. fa.* has been levied on land, a claim interposed and dismissed, and the *fi. fa.* ordered to proceed, will not prevent a levy on other realty or require the *fi. fa.* to proceed on the original levy first: *Id.*

EXECUTORS AND ADMINISTRATORS. See *Notice.*

Promissory Note—Signing as Administrator.—An administrator who signs a note describing himself as administrator becomes personally liable, unless he expressly stipulates to pay out of the estate only: *Studebaker Bros. Man. Co.* v. *Montgomery*, 74 Mo.

GARNISHMENT.

Interrogatories— What allowable.—In a trustee process, the plaintiff may put interrogatories to the trustee calculated to elicit facts which will tend to charge him, but not to contradict or impeach him: *Nutter* v. *Framingham & Lowell Railroad Co.*, 131 Mass.

Mortgage — Right of Attaching-creditor to redeem.—An attaching-creditor cannot maintain an action to redeem land covered by his attachment from a mortgage executed by the debtor: *Fisher* v. *Tallman*, 74 Mo.

GUARDIAN AND WARD.

Settlement with Ward—What information necessary—Acquiescence. —Receipts in full and final settlement, given to a guardian by his ward after becoming of age and acquiesced in for more than four years, are *prima facie* binding upon her: *Steadham* v. *Sims*, 66 Geo.

If a guardian settle with his ward out of court, it is his duty to inform her concerning the condition of her estate, that she may act with full knowledge, but it is not incumbent on him in all cases to make a precise and detailed statement of receipts and expenditures, debts with interest on them, &c.: *Id.*

HUSBAND AND WIFE.

Divorce—Alimony—Decree for Specific Personal Property.—A decree vesting in the wife specific personal property of the husband, as alimony in gross, is valid, at least when made in pursuance of an agreement of the parties: *Crews* v. *Mooney*, 74 Mo.

Such a decree, even if it were beyond the power of the court to make it, could not be avoided in a collateral action: *Id.*

Divorce—Decree against Non-resident—Effect of.—Judgments *in personam* are not binding upon persons living beyond the limits of the state, unless they voluntarily appear and answer the suit: *Garner* v. *Garner*, 56 Md.

Where the defendant in a divorce suit is a non-resident, the jurisdiction of the court is limited to the dissolution of the marriage: *Id.*

Where the decree goes farther and says the defendant shall not marry again, such prohibition is not necessarily a part of the decree dissolving the marriage, but is in the nature of a decree *in personam*, affecting the rights of a party beyond the jurisdiction of the court, and so much of the decree is invalid: *Id.*

Purchase by Husband with Wife's Money—Bona fide Purchasers from Husband.—If a husband uses the money of his wife, with or without her consent, and thereby acquires title in himself to property, third persons who *bona fide* take title for value to such property will be protected: *Gorman* v. *Wood*, 66 Geo.

Mortgage by Wife to secure Husband's Debt—Parol Evidence to identify Debt.—A mortgage was given by a husband and wife on her land to A., as security for sales of goods to be made by him to the husband. *Held*, that parol evidence was admissible to show that the liabilities which the mortgage was intended to secure were those to be incurred by the husband to a firm of which A. was a member; and that it was immaterial that the wife did not know of the existence of the firm when she executed the mortgage, or when the subsequent purchases of goods were made: *Hall* v. *Tay*, 131 Mass.

INSURANCE.

Wagering Contract—Assignment of Policy to one not having Insurable Interest.—The assignment of a policy to a party not having an insurable interest is as objectionable as the taking out of a policy in his name. Nor is its character changed because it is for a portion merely of the insurance money. To the extent in which the assignee stipu-

lates for the proceeds of the policy beyond the sums advanced by him he stands in the position of one holding a wager policy: *Warnock* v. *Davis*, S. C. U. S., Oct. Term 1881.

For all sums collected by such assignee upon the policy in excess of the moneys advanced by him the courts will compel him to account to the representatives of the deceased: *Id.*

Policy for use of Third Person—Right to recover back Premiums.—If a policy insures the life of A. for the use of B., A. cannot maintain an action against the insurer for the premiums paid by him on the policy, although the policy never took effect by reason of fraud on the part of the agents of the insurer: *Trabandt* v. *Conn. Mut. Life Ins. Co.*, 131 Mass.

JUDGMENT.

Power of Court to Set Aside—United States Courts not controlled by State Statutes or Practice of State Courts—Laches in applying for Relief.—It is a general rule that all judgments, decrees or orders are under the control of the court which pronounces them, during the term at which they are rendered, but that after the term is ended they are beyond such control: *Bronson* v. *Schulten*, S. C. U. S., Oct. Term 1881.

To this rule there has always existed an exception founded on the common-law writ of error *coram vobis* which brought before the same court where the error was committed certain mistakes of fact not put in issue or passed upon by the court, such as the death of one of the parties when the judgment was rendered, coverture of a female party, infancy and failure to appoint a guardian, error in the process or mistake of the clerk. But if the error was in the judgment itself the writ did not lie. What was formerly done by this writ is now attained by motion and affidavits: *Id.*

Some of the state courts have a larger power conferred by statute, and others have extended their power by asserting a control over their judgments and administering equitable relief in a summary way. Neither the state statutes nor the practice of the state courts can control the United States Courts: *Id.*

Negligence and laches of the party in discovering the mistake will bar his right to relief: *Id.*

LANDLORD AND TENANT.

Re-letting to Tenant after Judgment for Possession—Effect of.—A re-letting of the premises to a tenant after recovering a judgment for possession against him, is a satisfaction of the judgment, and an execution on the judgment after the new lease will be enjoined: *Barney* v. *Cain*, 37 Ark.

Sub-lease for whole of Unexpired Term—Liability of Sub-lessee.—The lessee of an estate for a term of years, at a fixed rent payable quarterly, and who had covenanted to pay taxes, demised it to another for a term equal to the whole of the unexpired term of the original lease, by a lease containing covenants by the lessee to pay rent monthly at an increased rate, and taxes, and providing that the lessor might enter and take possession for breach of covenant, and that the lessee would quit and deliver up the premises to the lessor at the end of the

term. *Held*, that this was a sub-lease and not an assignment of the original lease; and that the sub-lessee was not liable to the original lessor upon the covenant to pay the taxes in the original lease: *Dunlap* v. *Bullard*, 131 Mass.

LEGACY.

When not a Charge on Land.—Legacies and annuities, whether payable by an executor or a devisee, are not to be considered charges upon real estate, unless the intention of the testator to charge it is either expressly declared or may be fairly inferred from the will: *Owens* v. *Claytor*, 56 Md.

A testatrix, being seised of an undivided two-thirds interest in a tract of land, containing one hundred and twenty-five acres, devised to her son John forty acres thereof, and to her son Frank the remaining forty-three acres. In a subsequent clause in the will she gave to her niece Mary her bedroom furniture, and also an annuity, in the following terms: "It is likewise my will that each of my sons, Frank and John, shall pay to my said niece Mary the sum of $30 per annum, in equal instalments every two months:" *held*, that the annuity thus given must be considered as a mere charge on the devisees in respect of the land devised to them, and not a charge on the land itself: *Id.*

MALICIOUS PROSECUTION.

Malice—Proof of—When presumed.—To maintain an action for maliciously attaching the plaintiff's goods, it is not necessary to prove that the defendant, in suing out the attachment, acted dishonestly or with actual malice. If there was no probable cause to believe that the facts alleged in the affidavit for the attachment were true, the jury may presume malice: *Bozeman* v. *Shaw*, 37 Ark.

MASTER AND SERVANT.

Dangerous Machinery—Youth and inexperience of Servant—Vice-principal.—Where a servant, engaged in operating machinery, is by reason of his youth and inexperience, not aware of the danger to which he is exposed, it is the duty of his master to warn him, if he himself knows of it, and this notwithstanding the existence of that which renders the machinery dangerous is known to the servant: *Dowling* v. *Allen*, 74 Mo.

A foreman in charge of a distinct piece of work in an extensive foundry, and having under him laborers bound to obey his orders, is, as to them, a vice-principal to their employer, and not their fellow-servant, and this although another may be general foreman of the entire establishment, with authority over him: *Id.*

MECHANIC'S LIEN.

Contractor not Agent for Owner—Measure of value of Materials—Declarations of Contractor.—The Mechanic's Lien Law does not establish the relation of principal and agent between the owner and contractor. Prices agreed upon between the latter and a material-man are, therefore, not binding upon the owner. As against him only the market value of the materials can be recovered. The agreed prices will,

however, be received as *prima facie* evidence of the market value: *Deardorff* v. *Everhartt*, 74 Mo.

For the same reason, declarations of the contractor (*e. g.* that materials purchased by him were used in a particular building) are not evidence against the owner. Overruling *Morrison* v. *Hancock*, 40 Mo. 564: *Id.*

A lien cannot be enforced against a building for materials furnished to the contractor but not put into the building: *Id.*

MINING. See *United States.*

MORTGAGE. See *Acknowledgment.*

Of undivided Interest — Subsequent Partition.—A mortgage of an undivided moiety in land will not be transferred and limited to the whole of a particular part of it allotted to the mortgagor in severalty by a subsequent partition between the co-tenants to which the mortgagee was not a party nor assented: *Jackman* v. *Beck*, 37 Ark.

MUNICIPAL CORPORATION. See *Taxation.*

NAME.

Term "Junior"—Father and Son of Same Name—Presumption as to Conveyance—Evidence.—The term "Junior" is no part of a man's name: *Simpson* v. *Dix*, 131 Mass.

If a son, who bears the same name as his father, buys land in his own name, without the designation of "Junior" added thereto, there is no presumption of law that he intended that his father should take the title to the land: *Id.*

If land is conveyed to J. S., and there are two persons of that name, a father and son, there is no presumption that the father is intended; and evidence is admissible to show who is the grantee: *Id.*

NEGLIGENCE. See *Common Carrier; Master and Servant.*

Ice on Sidewalks—Contributory Negligence—Evidence.—The fact that a person noticed, on entering a building, that there was ice and snow on a plank sidewalk in front of the door, is not conclusive evidence, in an action by him against the owner of the building for an injury sustained on his way out of the building in consequence of such snow and ice, that he was not in the exercise of due care in attempting to pass over the sidewalk: *Dewire* v. *Bailey*, 131 Mass.

NEGOTIABLE INSTRUMENTS.

Stolen Coupons—Purchase after Maturity—Presumption as to Previous Negotiation.—In an action of replevin for interest coupons, payable to bearer, the case was submitted on agreed facts, which stated that the bonds, to which the coupons were then attached, were before maturity stolen from the plaintiff; that after maturity they were bought by a person named, in good faith, and passed through the hands of several persons named until they came into the possession of the defendant, and that all these persons were purchasers in good faith and for value. *Held*, that there was no presumption that the thief had negotiated the coupons before maturity; and that the plaintiff was entitled to judgment: *Hinckley* v. *Merchants' Nat. Bank*, 131 Mass.

NOTICE.

Purchase by Executor—Passing Title through Third Person.—Two executors sold realty of their testator; a third party bought; on the same day he conveyed the land to one of the executors individually; some two years thereafter the latter sold to a purchaser for value; the deeds on their faces all purported to be for a fair and valuable consideration. *Held*, that in the absence of all actual notice, the facts appearing from the recorded deeds, were not sufficient to put the purchaser on notice that the sale was by an executor to himself: *Cox* v. *Barber*, 66 Geo.

PARENT AND CHILD.

Custody of Child—Who entitled to.—In deciding contests upon writs of *habeas corpus* for the custody of infant children, the principles adopted in the chancery court must govern. No rigid rules to govern the practice have or can be formulated. Subject to a few general rules to be taken as a guide, the chancellor must exercise his judgment upon the peculiar circumstances of the case, and act as humanity, respect for the parental affection and regard for the infant's best interests may prompt. All three should be considered. Neither should be conclusive: *Verser* v. *Ford*, 37 Ark.

As against strangers, the father, however poor and humble, if of good moral character and able to support the child in his own style of life, cannot be deprived of the privilege by any one whatever, however brilliant the advantage he may offer. It is not enough to consider the interest of the child alone. And as between father and mother, or other near relation of the child, where sympathies of the tenderest nature may be confidently relied on, the father is generally to be preferred: *Id.*

PARTITION. See *Mortgage.*

PARTNERSHIP.

Appropriation of Partnership Funds—Question for the Jury.—An appropriation of partnership funds or effects by one partner without the previous knowledge and consent of his copartners, to the payment of a debt which the creditor knew at the time was the private debt of the particular partner, is presumptively fraudulent: *Johnson* v. *Crichton*, 56 Md.

The presumption of fraud or *mala fides*, however, in respect to such transaction, may be rebutted by proof of authority given by the other partners, or of their knowledge and consent, or of their ratification: *Id.*

Whether such authority or consent was given by the copartner, is a question for the jury: *Id.*

SALE.

Stock of Goods—Opportunity of Inspection—Representations.—A buyer of an interest in a stock of goods and in a business, who has ample opportunity afforded him to examine the goods and the books of the business, has no right to rely upon representations of the seller concerning the value of the goods or of the amount of business which the seller has previously done: *Poland* v. *Brownell*, 131 Mass.

TAXATION.

Improvement for benefit of Particular District—Presumption as to determination of Councils—Relief from Local Assessment.—Where there is nothing upon the face of an ordinance, authorizing a particular improvement, to indicate that those who passed it judged that the improvement was for the public convenience exclusively, and not for the benefit of the particular district, the presumption is that they determined that those who were specially assessed would be specially benefited: *Mayor and Councils of Baltimore* v. *The Johns Hopkins Hospital*, 56 Md.

Whether an improvement authorized by the mayor and city council of Baltimore will benefit the property along the line of such improvement, is a question left exclusively to their judgment, and their determination in the premises is final and conclusive. The courts have no power to review such determination at the instance of the property owners specially taxed: *Id.*

If a local assessment imposed for an improvement, directed to be made, should so far transcend the limits of equality and reason that its execution would cease to be a tax, or contribution to a common burden, and become extortion and confiscation, it would be the duty of the court in such case to interfere to protect the citizen: *Id.*

Personal Liability of Owner—Assessment in Another Name.—The owner of real estate is not personally liable for taxes assessed against another as owner: *City of Jefferson* v. *Mock*, 74 Mo.

Corporation—Exemption in Charter—To what Property applicable. A provision in the charter of a corporation that it shall pay a certain tax on its capital stock in lieu of all other taxes, exempts from taxation only the property of the corporation necessary for its business: *Bank of Commerce* v. *State of Tennessee*, S. C. U. S., Oct. Term 1881.

The charter of a bank provided for the payment of a tax on its capital stock "in lieu of all other taxes." It also authorized the bank to purchase ground for use as a place of business, and to hold property conveyed to it to secure debts. The bank bought a lot and erected a building, using the first floor for its business, and renting the other floors. It also purchased three other lots at a sale under a trust-deed made to it to secure a loan. *Held*, that the bank was liable for taxes on the part of the building not used for its business, and also on the other three lots of ground: *Id.*

TELEGRAPH.

Liability of Company for Negligence—Conditions—Repeating—Measure of Damages—Trade terms in Message—Illegal Transaction.—When a telegraph company, for a compensation, receives a message for transmission, it is bound to perform its contract with integrity, skill and diligence; and if, by reason of the want of any of these qualities, the message be improperly transmitted, and injury accrues, the company will be liable: *West. Union Tel. Co.* v. *Blanchard*, 66 Geo.

If it is necessary for the company, in transmitting messages with integrity, skill and diligence, to have them repeated, the duty of so doing devolves upon it, not upon the sender: *Id.*

The company cannot, by any rule or regulation of its own, protect itself against damages resulting from every degree of negligence except

gross negligence or fraud. Nor cán it limit the damages to be recovered to a return of the amount of toll paid: *Id.*

A message in these terms, "Cover two hundred September and one hundred August," was shown to be the ordinary expressions used in the cotton trade, meaning that the person receiving the message should sell for the sender two hundred bales of cotton deliverable in August and one hundred deliverable in September: *Held*, that it was not such an obscure message as would limit the usual liability of the company: *Id.*

An agent can recover from his principal expense and loss incurred in carrying out a contract, even though such contract be illegal; and if such loss is caused by the negligent transmission of a telegram, the principal, upon reimbursing the agent, may recover from the telegraph company: *Id.*

The illegality of the contract would not relieve the company from liability for its negligence: *Id.*

TRESPASS. See *Criminal Law.*

UNITED STATES COURTS. See *Judgment.*

UNITED STATES.

Patent for Land—Conclusiveness of—Mining Claim—Validity of.—A patent in a court of law is conclusive as to all matters properly determinable by the Land Department, when its action is within the scope of its authority—that is, when it has jurisdiction under the law to convey the land. In such court the patent is unassailable for mere errors of judgment: *St. Louis S. & R. Co.* v. *Kemp*, S. C. U. S., Oct. Term 1881.

On the other hand, a patent may be collaterally impeached in any action, and its operation as a conveyance defeated by showing that the department had no jurisdiction—that is, that the law did not provide for selling them, or that they had been reserved or dedicated to special purposes, or had been previously transferred to others: *Id.*

There is nothing in the Acts of Congress which limits the size of a mining claim for which a patent may issue. The limitations in sects. 2330, 2331 Rev. Stat. relate to locations, and not to patents: *Id.*

The owner of contiguous locations may consolidate them into one and present but a single application for a patent therefor, and such patent may be granted by the Land Department: *Id.*

WILL.

Executory Devise—Surviving Children—Grandchildren.—A will bequeathed property to the executors of the testator, in trust for the sole and separate use of the testator's daughter for life, "and from and after her death in trust for such child or children as she may leave, his, her or their assigns for ever, but if my said daughter shall die leaving no children or child, then to my right heirs living at the time of their death." *Held*, that such bequest created an executory devise which vested on the death of the life usee in such of her children as survived her. A child who died before the life usee, took nothing: *White* v. *Rowland*, 66 Geo.

Grandchildren cannot take under a bequest to children unless there be something in the will to indicate such intention by the testator: *Id.*