posite, viz., that in the absence of any express agreement making the thing annexed personalty notwithstanding its annexation, it becomes a part of the realty during the time it is annexed, and that the right of the tenant is merely that of severance and removal. Upon the whole, judging from what appears upon the face of the opinion, for we have not access to the pleadings in the case, we do not think the case of *Shaperia* v. *Barry* is well decided. It would be quite as logical to say that replevin would lie for realty, as that realty may be converted. The case seems to us to be a departure from well settled principles which, if made at all, should be made by legislative and not judicial authority.

MARSHALL D. EWELL.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF GEORGIA.[2]
SUPREME COURT OF NEW JERSEY.[3]
SUPREME COURT OF RHODE ISLAND.[4]
SUPREME COURT OF WISCONSIN.[5]

ACTION.

Selling Goods as the Manufacture of Another.—A declaration charging defendants with fraudulently and falsely selling goods of his own fabrication as the manufacture of the plaintiff, by which the plaintiff was deprived of sales in the market, sets forth an actionable injury: "*The Mrs. G. B. Miller & Co. Tobacco Manufactory*" v. *Commerce*, 16 Vroom.

ASSIGNMENT.

Validity.—An assignment is not void in law, because it does not direct that the creditors shall be paid *pro rata* in case there be not enough of the proceeds of the assigned property to pay them in full. Unless otherwise directed by the express terms of the assignment, the law imposes that duty upon the assignee: *Lindsay* v. *Guy*, 57 Wis.

For Creditors—Remedy for Mismanagement by Assignee.—Where insolvent debtors have made an assignment for the benefit of their creditors, setting out in the deed of assignment the names of such creditors and the amounts due them, the persons so named are *cestuis que trust*, and although they may not be preferred creditors, they are interested in a just administration of the trust, and are entitled to equitable

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1882. The cases will probably appear in 107 Otto.

[2] From J. H. Lumpkin, Esq., Reporter. The cases will probably appear in 67 or 68 Geo.

[3] From G. D. W. Vroom, Esq., Reporter; to appear in 16 Vroom.

[4] From Arnold Green, Esq., Reporter; to appear in 14 Rhode Island.

[5] From Hon. O. M. Conover, Reporter; to appear in 57 Wisconsin.

relief in case of mismanagement, waste or violation of the trust by the assignees: *Cohen* v. *Morris*, 67 or 68 Geo.

If a trustee mismanages and wastes the property entrusted to him, and persists in so doing, injunction and appointment of a receiver is the proper remedy: *Id.*

Though a creditor may not have reduced his claim to judgment, yet where his debtors, who are insolvent both as a firm and individually, have set out his debt and the amount thereof in a deed of assignment made by them, and the debt is undisputed, he may assail the assignment as fraudulent, and may seek to set it aside as to property obtained from him by fraudulent representations with which the assignees are connected: *Id.*

Whether on the final hearing complainants can both attack the assignment as fraudulent, and also claim under it, or whether they will be compelled to elect between these two rights, not decided: *Id.*

Bail.

Default—Relief in case of Death.—Where the bail on recognisance in a criminal case could not reasonably anticipate and prevent a default, and with proper diligence find and surrender his principal after default before death intervened to prevent it, a proper case is made for the court, in its discretion, to relieve the surety on petition: *State* v. *Traphagen*, 16 Vroom.

Bills and Notes.

Signing in Blank—Accommodation Maker—Acceptance in Payment.—One who signs an instrument for the payment of money only (whether negotiable or not), leaving the amount blank, and entrusts it to another with authority to fill the blank with an agreed sum, will, as to third persons having no knowledge of the limitations of such authority, be bound by the act of the person to whom the instrument was entrusted, although he fills the blank with a larger sum than that agreed: *Johnston Harvester Co.* v. *McLeane*, 57 Wis.

So *held* where A., as accommodation-maker with B., signed a note upon the upper left-hand corner of which were the figures $45, but the amount of which was left blank with the understanding that B. should fill the blank so as to make it a note for forty-five dollars, and, before delivering the note to the payees and without their knowledge, B. filled the blank with the words "four hundred and fifty dollars," and annexed a cipher to the figures $45: *Id.*

The figures in the corner of such note were no part thereof, and an unauthorized change in them did not vitiate the note: *Id.*

One who takes the note of his debtor for the amount of a debt then past due, especially if such note is signed or endorsed by a third person and payable at a future day, will be presumed to extend the time for the payment of the debt until the day fixed in the note; and such extension is a valuable consideration for the note, and places the creditor in the position of an innocent holder thereof for value: *Id.*

Constitutional Law.

Tax on Passengers arriving from abroad illegal.—The Statute of New York of May 31st 1881, imposing a tax on every passenger from a

foreign country landing in the port of New York, who is not a citizen of the United States, and holding the vessel which brings him liable for the tax, is a regulation of commerce within the exclusive power of Congress: *State of New York* v. *The Compagnie Generale*, S. C. U. S., Oct Term 1882.

The tax in question is void because forbidden by the Constitution of the United States: *Id.*

Interstate Commerce—Right of a State to bridge Rivers lying wholly within its Borders.—The plaintiff in error, a transportation company created under the laws of Michigan, complained of a bridge across the Chicago river, and of certain regulations of the Chicago city councils providing for the closing of the drawbridge between certain hours and at certain intervals. These regulations were reasonable in themselves and necessary to the city traffic. *Held*, that in the absence of legislation of Congress, a state has full power to legislate in regard to the rivers within its borders, and also to exercise all necessary police regulations. This latter power embraces the construction of roads, canals and bridges, &c., and it can be exercised more wisely by the states than by a distant authority: *Escanaba Transportation Co.* v. *Chicago*, S. C. U. S., Oct. Term 1882.

When the state's power is exercised so as unnecessarily to obstruct the navigation of a river, Congress may interfere and remove the obstruction, and in such a conflict the state must yield to the general government: *Id.*

CONTRACT.

Vendor and Purchaser—Money deposited to Indemnify against Liens.—Money placed in the hands of a third person by the vendor and purchaser of lands, under an agreement to pay out of it assessments and taxes subsisting against the lands as liens, cannot be recovered by the vendor upon his procuring the assessment to be set aside. Such agreement held to be for the indemnity of the purchaser against liability to pay for the improvement: *Cross* v. *Hayes*, 16 Vroom.

Construction—Evidence.—By a written contract plaintiffs agreed to finish two stores in a certain manner "and also to finish *the front part of the basement*, with the stairway going up to the second story, and also the outside two cornices." In an action to recover for extra work done on the inside of the front basement wall, that the language of the contract is so vague and ambiguous that extrinsic evidence was admissible to aid in its construction and that upon such evidence it should have been submitted to the jury to determine whether the work in question was covered by the contract or not. Unaided by extrinsic evidence, this court is of the opinion that "the front part of the basement" means not merely the *external front*, but both sides of the front basement wall: *Bedard et al.* v. *Bonville*, 57 Wis.

CORPORATION. See *Evidence.*

Receiver—Right of Pledgee of Stock.—S. made a conveyance to C. of certain property upon special trust to secure the debts of S., and subsequently transferred to C. his stock in the Q. Co. as "pledge and collateral security" to secure the performance by S. of the conditions of

the trust deed; after breach in the conditions of the trust deed, C. filed a bill in equity and asked that a receiver be appointed of the Q. Co., charging that the property of the company was managed and controlled by one not a stockholder, whose control was adverse to the interests of the creditors, whose management was impairing the value of the property, and through whom it had become impracticable for C. to sell the stock pledged for any sum commensurate with its just value. C. held in pledge nearly all the stock of the Q. Co., the balance of the stock being held by F. as administrator. *Held*, that C. though not technically a creditor, was as pledgee of a majority of the stock for the benefit of the S. creditors to be considered as an equitable creditor, and as such was entitled to the protection of the court. *Held*, *further*, that the thing in litigation was in the view of equity not the stock itself but the property of the Q. Co. represented by the stock: *Chafee* v. *The Quidnick Company*, 14 R. I.

COURT.

What Interest Disqualifies.—The fact that a judge of the Superior Court had formerly been a director of a railroad company, and was so at the time that an attorney rendered professional services to the company does not disqualify him from presiding at the trial of a suit for such services, if at that time he had ceased to be a director, owned no stock, and was not otherwise interested. It is present, not past interest that disqualifies a judge: *Johnson* v. *Marietta and North Georgia Railroad*, 67, or 68 Ga.

COVENANT. See *Damages.*

Action for Breach—Damage—Pleading.—An action may be maintained for a breach of covenant *against liability*, without alleging or proving damage resulting from such breach; but in the case of a covenant *against damage* because of liability, such damage must be proved: *Griswold* v. *Selleck*, 57 Wis.

An agreement by a purchaser of land to assume and pay an incumbrance thereon implies, at most, a covenant of indemnity against damage resulting from a breach of such agreement, and not a covenant against liability for the debt: *Id.*

CRIMINAL LAW. See BAIL.

Conspiracy—Indictment—Demurrer.—An indictment charged conspiracy on the part of two directors of a national bank to procure declaration of a dividend with knowledge of the fact that the bank had made no net profits to pay it. *Held*, the declaration of a dividend by an association is not a wilful misapplication of its funds by individual directors. It is an act done by them as officers and not in their individual capacity. There being no crime, therefore under sect 5209 of the Revised Statutes of the U. S., there could be no valid indictment under sect. 5440: *United States* v. *Britton* S. C. U. S., October Term, 1882.

Juror—Qualification—Interest.—Where a city policeman was slain, and the mayor and counsel employed counsel to prosecute the slayer, this was not alone sufficient to disqualify all grand and traverse jurors residing within the corporate limits from sitting in the case, on the

ground that they would be liable to taxation to satisfy the attorneys' fees. Such interest, if it exists at all, is too minute and remote to furnish a ground for challenge: *Doyal* v. *State*, 67 or 68 Geo.

A person over sixty years of age is not a qualified juror; and if the court is apprised of the fact in time, it is its duty to excuse such person. Although one summoned as a juror, and who is over sixty years of age, may not have offered any excuse before the jury was impaneled, yet if when his name was called in its order on the panel he made known his age and desired to be excused, there was no error in so doing, although the defendant may have exhausted all his challenges but one in order to secure such person on the jury: *Id.*

Settlement of Misdemeanor.—Where a defendant in a criminal case, who had been convicted of a misdemeanor and sentenced to pay a specified fine or serve ninety days in the chain gang, procured two other parties to give their promissory note in satisfaction thereof, and such note was accepted by the solicitor general as the equivalent of cash, the consideration was not illegal, and in a suit thereon, a plea to that effect was properly stricken: *Blaine* v. *Hitch*, 66 or 67 Geo.

Perjury by an Officer of a National Bank—Power of Notaries to administer Oath.—Prior to the passage of the Act of February 26th, 1881 (21 Stat. 352) notaries public in the several states, had no authority to administer to officers of national banks the oath required by sect. 5211, Revised Statutes, U. S. An indictment against an officer of a national bank, under sect. 5392, for a wilfully false declaration or statement in a report made under sect. 5211, verified by his oath, administered by a notary public of a state, prior to the Act of 1881, cannot be sustained: *United States* v. *Curtis*, S. C. U. S., Oct. Term, 1882.

Nolle pros—When and how entered.—At the common law, only the attorney-general could exercise the power to enter a *nolle pros.* upon an indictment, and in New Jersey, there being no statute upon the subject, this power is still reposed in the attorney-general or the several prosecutors of the pleas; but, under the long-established practice in this state, an indictment, after it passes under the control of the court, may not be discharged without the consent or under the advice of the court: *State* v. *Hickling*, 16 Vroom.

The peremptory power of the court, where the common law prevails, is never exerted, upon the representative of the state to discharge an indictment, in whole or in part, at the instance of parties. This can only be done where such power is conferred upon the court by statute: *Id.*

Intoxicating Liquor—Indictment—Evidence.—An indictment following the words of the statute charged the defendant with keeping or maintaining a house "used for the illegal sale or keeping of intoxicating liquor." *Held*, that the charge must be construed to mean keeping for such illegal use or with knowledge that the house was so used: *State* v. *McGough*, 14 R. I.

At the trial upon this indictment the presiding justice allowed one of the defendant's witnesses to be asked in cross-examination if the witness did not tell A., a witness for the state, that if A. would mix up the testimony in F.'s case, F. would give A. twenty dollars. *Held*, error,

the inquiry being irrelevant as no connection appeared between F.'s case and the case on trial: *Id.*

The presiding justice instructed the jury, "He, the defendant, is presumed to know the kind of business which was openly being carried on in his establishment by his servants and agents. The defendant admitted that he was the keeper of the place and that he was there personally in charge of it during the time covered by the indictment. He is not only presumed to know but he is responsible." *Held*, error, the knowledge and responsibility of the defendant being for the jury to infer from the evidence, not for the court to determine as a matter of law: *Id.*

DAMAGES.

Covenant on Warranty of Title—Mesne Profits—Interest—Expenses.—In covenant brought against the grantor of a deed containing full covenants of warranty, by the grantee who had been evicted by the holder of a paramount title, the parties having agreed on the value of the land in question, the eviction having occurred within the period of limitation for action of trespass, which was four years, and no action for mesne profits having been brought, *Held*, that the plaintiff grantee was entitled to interest on the agreed value for four years prior to the entry of his judgment: *Point Street Iron Works* v. *Turner*, 14 R. I.

The grantor had been notified to defend the ejectment suit, but neither defended nor notified the grantee that he preferred to make no defence. *Held*, that the grantee should recover his reasonable expenses and counsel fees paid in defending the title: *Id.*

DEBTOR AND CREDITOR. See *Assignment.*

Novation—Agreement between Officers of Corporations.—A., the treasurer of a Rhode Island company and agent of a Massachusetts company, and B., the home agent of the latter company, arranged to transfer accounts so that a debt of A. to the Mass. company and one of B. to the R. I. company should be cancelled by B. paying the excess in cash. Before this arrangement was consummated A. received notice that B.'s agency was revoked, and B. never completed the arrangement by paying. *Held*, That the R. I. company could not, by virtue of this arrangement, maintain a suit against A. for the amount of B.'s debt to it less the amount of A.'s debt to the Mass. company: *Providence Gas Burner Co.* v. *Barney*, 14 R. I.

EJECTMENT. See *Damages.*

EXECUTION. See *Sheriff's Sale.*

EVIDENCE.

Cross-examination—Direction of Court.—When the witness is a party to the action the court may, probably, *in its discretion*, allow a broader range of cross-examination than in ordinary cases; but such latitude is not a *right* of the adverse party: *Norris* v. *Cargill et al.*, 57 Wis.

So, in an action for the breach of a contract of employment by the discharge of the plaintiff, the incompetency and disobedience of the plaintiff, and the fact that after his discharge he might have earned more than he admits he did, are matters purely defensive, and while it

may not be error to permit them to be shown on the cross-examination of the plaintiff, it is not error to refuse such permission: *Id.*

One who accepts employment to perform skilled labor impliedly undertakes that he possesses the requisite skill, and in an action for a breach of the contract of employment, evidence that he represented that he possessed such skill is immaterial and its exclusion is not error: *Id.*

Officer of Corporation—Admission by.—A declaration made by the president of a canal company about the time of the construction under his direction of a certain work for the use of the canal, with regard to the purpose of the company in building it, is competent evidence against the company: *Halsey* v. *Lehigh Valley Railroad Co.*, 16 Vroom.

A declaration respecting the management of a section of the canal, made by the supervisor of that section in response to a complaint concerning his management, is competent evidence again the company: *Id.*

Errors and Appeals.

United States Court—Practice.—Under the law of Ohio, the Auditor of Mahoning County subpœnaed the cashier of Youngstown National Bank to appear before him with his books, &c., in a matter relating to the perfecting of county tax lists. The bank filed a bill in equity in the United States Circuit Court to enjoin the auditor alleging for cause that such a proceeding on his part would unlawfully expose its business affairs, lessen public confidence in it as a depository of money, &c., and greatly impair its franchises. The Circuit Court dismissed the bill and the bank appealed: *Held*, that the appeal must be dismissed on the ground that the amount in controversy did not exceed $5000: *First National Bank* v. *James B. Hughes et al.*, S. C. U. S., Oct. Term 1882.

Fixture.

Intention of Parties—Pleading.—Whether a building, erected by one person on the land of another, with the latter's permission, is real or personal property, is a question of fact to be decided according to the actual or imputed intention of the parties: *Pope* v. *Skinkle*, 16 Vroom.

An averment in a pleading that a building erected as a dwelling-house is personalty, is an issuable averment, and is confessed by a demurrer; *Id.*

If a pleading appear on its face to be false in an essential allegation, it is bad on demurrer: *Id.*

Intoxicating Liquor. See *Criminal Law.*

Juror. See *Criminal Law.*

Limitations, Statute of.

When not barred by proceedings in Orphans' Court.—The Statute of Limitations is not suspended by a representation made by an administrator to the Orphans' Court, to procure an order to sell lands to pay debts, with respect to debts included in the representation: *Everett* v. *Williams*, 16 Vroom.

The order to sell lands to pay debts is not such an adjudication in favor of a creditor, whose debt is included therein as prevents the administrator's setting up the Statute of Limitations in an action against him for the debt: *Id.*

If the proceeds of a sale of lands under such an order are impressed with a trust for the payment of debts, the administrator is not thereby estopped from resorting to the statute at law. If relief may be had on that ground, it must be sought in a court of equity: *Id.*

The insertion of a debt not yet barred by the Statute of Limitations, in a representation of debts made by an administrator to the Orphans' Court, for the purpose of procuring an order to sell lands to pay debts, is not such an acknowledgment as takes such debt out of the statute or as estops the administrator from setting up the bar of the statute against it: *Id.*

MORTGAGE.

Of Chattels—Subsequent Mortgagee of same Chattels.—If one gives a mortgage of chattels belonging to another, the oral consent to, or ratification of, such mortgage by the owner, cannot affect the rights of one subsequently taking a mortgage of the same chattels from the owner without notice of such ratification: *Maier* v. *Davis,* 57 Wis.

MUNICIPAL CORPORATION. See *Surety.*

Power of a City to issue Bonds as a donation to a Water-power Company —The City of Ottawa, in Illinois, was incorporated in 1853, and given the ordinary powers of a municipal corporation of that class for local government; in 1869, councils were authorized by ordinance, approved at a city election, to borrow sixty thousand dollars on the bonds of the city, to be "expended in developing the natural advantages of the city for manufacturing purposes." These bonds were donated to a manufacturing company, and sold by them to Eames, and by Eames to Carey for value, but with full knowledge of all facts. *Held,* that in the absence of express power given to the city to subscribe or donate to such enterprises, the bonds were not valid in the hands of Carey, who took with full knowledge of all the facts: *City of Ottawa* v. *Carey,* S. C. U. S., Oct. Term 1882.

In Illinois, under the constitution of the state, the corporate authorities of cities cannot be invested with power to levy and collect taxes except for corporate purposes, hence the city could not borrow money nor issue bonds unless it had the power to pay the same by taxation: *Id.*

NATIONAL BANK.

NOTARY PUBLIC. See *Criminal Law.*

OFFICER. See *Sheriff.*

Town Marshal and Bailiff.—A town marshal may be a bailiff. There is nothing incompatible or inconsistent in the exercise of the powers and duties of both offices by the same person. The office of constable cannot be joined with that of sheriff, deputy-sheriff or clerk of the superior court; but the same person may be both a constable and a marshal: *Lewis* v. *Wall,* 67 or 68 Geo.

PARTNERSHIP.

Action against Partner for not Accounting.—The rule *omnia præsumuntur contra spoliatorem* is for wrongdoers, and should not be applied to a case where the failure to perform a duty is due solely to incapacity: *Diamond* v. *Henderson*, 47 Wis. 172, distinguished; *Knapp* v. *Edwards*, 57 Wis.

So *held*, in an action for an accounting, by one partner against another who had covenanted to keep correct books of account, but had failed to do so because incompetent, the plaintiff having known such incompetency and having condoned or waived it: *Id.*

In an action by one partner against another for an accounting, though it appears on the trial that nothing is due to the plaintiff, yet, if the defendant had unreasonably neglected to render an account to which the plaintiff was entitled, the complaint should not be dismissed, but there should be a judgment adjusting the rights of the parties, and the court may, in its discretion, impose the costs upon the defendant: *Id.*

PLEDGE. See *Corporation.*

PROCESS.

Service of Summons on Party or Witness while Attending Trial—Practice.—Service of a summons upon a person non-resident in this state while going to, attending or returning from a trial here, as a witness or party, will be set aside: *Massey* v. *Colville*, 16 Vroom.

Service upon a resident witness or party is not a nullity. But the court will control the service, and either set it aside or change the venue arising from such service, or otherwise remedy any special disadvantage which such service entails upon the defendant: *Id.*

RAILROAD.

Assault by Conductor—Action—Trespass.—A declaration against a railroad for damages alleged as follows: Plaintiff entered one of defendant's trains as a passenger, and took his seat as such. It was a freight train with the usual cab and accommodations for passengers provided on such trains. Before entering it, he inquired of the engineer if the latter would stop at Tilton. The latter replied that he did not know, but that they would stop at Beardsley's he knew, and plaintiff could walk the balance of the way. Upon this statement, plaintiff entered the car orderly and decently, with the money to pay his passage, and thereby become a passenger of said company and entitled to all privileges and treatment incident to that relation. Being thus situated, the conductor in charge of the train entered, and plaintiff asked him the same question that had been asked of the engineer, when the said conductor and servant of the company, whilst thus being treated with about matters in the line of his duty and without provocation, cursed, abused, and ill-treated plaintiff, striking him over the head and face with a large lantern from five to seven blows, thereby bruising, wounding, and cutting him in the head, face, and lips, and finally knocking him out of the car door and causing him to fall across the iron on the track, producing a severe injury of the back and hips, which continues a great source of pain and expense, etc. *Held*, that this declaration was not an action brought for a breach of contract in not carrying

plaintiff as a passenger on defendant's train, but was an action of trespass on the case, and the holding of the judge to the contrary was error: *Turner* v. *Western and Atlantic Railroad*, 67 or 68 Geo.

Evidence of the above facts was sufficient to carry the case to the jury, and the granting of a nonsuit was erroneous: *Id.*

RECEIVER. See *Assignment.*

Application of Funds to Improvements—Rights of Creditors furnishing Supplies.—The Cairo & St. Louis R. R. Co. being insolvent, a receiver was appointed at the instance of the bond-holders, under an order of the court, "to pay running expenses and expenses of the receivership, and to pay debts due by said company for labor and supplies that may have accrued in maintenance of such property within six months preceding the rendition of this decree." After the receiver took possession, Souther & Bro. intervened with a petition for payment of a claim due them for supplies, out of the net earnings, before any improvements were made upon the property. An order was made to allow this claim. The receiver moved to set aside this order. This motion remaining undisposed of, the road was sold under a decree of foreclosure and did not realize enough to pay the bonds. While in the hands of the receiver the road paid running expenses with an excess which was devoted to improvement of the property before the payment of the claims for supplies. *Held*, that the income of the receivership having been applied, with consent of the bond-holders, to make permanent improvements, thus adding to the value of the property afterward sold, the fund in court represented in equity the income which belongs to the labor and supply creditors, as well as the mortgage security, and there was, therefore, no impropriety in appropriating it as far as necessary to pay the creditors especially provided for when the receiver was appointed: *Union Trust* v. *Souther & Bro.*, S. C. U. S., Oct. Term, 1882.

REPLEVIN.

Cattle Impounded for wandering at Large.—Where an ordinance of a municipal corporation provided that owners of horses or mules should not permit the same to run at large within the corporate limits of the city, and subjected one violating its terms to fine therefor, if the city marshal impounded a mischievous horse running at large in the streets, the owner could not proceed against him by possessory warrant. Such action on the part of the marshal would not constitute a disappearance without consent from the possession of the owner, and a taking possession under a pretended claim without warrant or authority: *King* v. *Ford*, 65 or 66 Geo.

By the common law cattle wandering about, damage feasant, might be taken up and impounded: *Id.*

If the rights of the owner have been violated, she has a remedy not only against the marshal, but against the municipality under whose orders he acts; but the remedy is not by possessory warrant: *Id.*

SHERIFF.

Escape—Remedy against Debtor.—A sheriff who suffers an arrested debtor to escape is liable in his official character and not as bail. Hence,

if compelled to pay the debt in consequence of his default he has no remedy against the debtor: *Carpenter* v. *Fifield*, 14 R. I.

An officer who allows one lawfully arrested to go at large without taking bail suffers the escape of such person: *Id.*

SHERIFF'S SALE.

Purchase by Plaintiff—Notice of Irregularities.—When the plaintiff in the judgment and execution purchases at an execution sale, he is presumed to have notice of all defects in the record and proceedings, and will not be protected as a *bona fide* purchaser if the notice of the sale was insufficient: *Collins* v. *Smith*, 57 Wis.

SURETY.

Bond of Municipal Officer—Defence that Municipality induced the Breach.—To a declaration upon a bond, given for the faithful performance of official duty by the city treasurer, the sureties pleaded that the municipality induced and was privy to the misconduct of the treasurer, which was alleged as the breach. *Held*, that the plea was good on demurrer: *Mayor and Common Council of the City of Newark* v. *Dickerson*, 16 Vroom.

TRIAL.

Practice—Additional Instructions to Jury in absence of Counsel.—After the defendant's counsel had left the court room, the jury came in and reported that its members differed on a question of fact, and were unable to agree, whereupon the defendant being present, but his counsel absent, the presiding justice gave additional instructions to the jury, and caused the phonographic clerk to read to the jury his report of the defendant's evidence. After verdict for the plaintiff: *Held*, that the defendant had no ground for exception: *Brothers* v. *Gardiner*, 14 R. I.

UNITED STATES.

Customs Duties—Duty on Malt Liquor and the Bottles in which it is put up.—Schedule D. of section 2504 of the Revised Statutes imposes the following customs duties: "Ale, porter and beer in bottles thirty-five cents per gallon; otherwise than in bottles, twenty cents per gallon." Schedule B. of the same section imposes the following customs duties: "Glass bottles or jars filled with articles not otherwise provided for, thirty per centum *ad valorem*. All manufactures of glass * * * not otherwise provided for, and all glass bottles or jars filled with sweetmeats or preserves not otherwise provided for: forty per centum *ad valorem*." Under these provisions, the bottles in which ale and beer are imported are subject to a duty of 30 per cent. *ad valorem*, in addition to the duty of thirty-five cents per gallon on the ale and beer imported in the bottles: *Schmidt & Zeigler* v. *Badger Collector of New Orleans*, U. S. S. C., Oct. Term 1882.

UNITED STATES COURTS. See *Errors and Appeals.*