To hold that when the government finds its own property in hands but one removed from these wilful trespassers, and asserts its right to such property by the slow processes of the law, the holder can set up a claim for the value which has been added to the property by the guilty party in the act of cutting down the trees and removing the timber, is to give encouragement and reward to the wrongdoer, by providing a safe market for what he has stolen, and compensation for the labor he has been compelled to do to make his theft effectual and profitable.

We concur with the circuit judge in this case, and the judgment of the circuit court is affirmed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[2]
SUPREME COURT OF MISSOURI.[3]
SUPREME COURT OF OHIO.[4]
SUPREME COURT OF RHODE ISLAND.[5]
SUPREME COURT OF VERMONT.[6]

ACCORD.

Parol Release of Judgment for less Sum than due.—A parol release of a judgment for money, in consideration of the payment of a less sum, is invalid, although such release is indorsed upon the execution issued in the original action: *Weber* v. *Couch*, 134 Mass.

ACTION. See *Tender*.

AGENT.

Contract by Broker—Payment to Broker by Purchaser.—A broker who was not intrusted with the possession of the property, contracted in his own name to sell the same to a vendee, who had no knowledge that the broker was not the real owner but dealt with him as such. The broker notified his principals that he had sold for them, and directed

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1882. The cases will probably appear in 7 Otto's Reports.

[2] From John Lathrop, Esq., Reporter; to appear in 134 Mass. Rep.

[3] From T. K. Skinker, Esq., Reporter; to appear in 77 Mo. Reports.

[4] From E. L. De Witt, Esq., Reporter. The cases will probably appear in 38 or 39 Ohio St. Rep.

[5] From Arnold Green, Esq., Reporter; to appear in 14 R. I. Rep.

[6] From Edwin T. Palmer, Esq., Reporter; to appear in 55 Vt. Rep.

where to ship the property to the purchaser. The owners, without any knowledge that the broker had contracted in his own name, and without any conduct on their part clothing the broker with authority to receive payment for them, or any possession, actual or constructive, of the property, delivered the same to the vendee. *Held*, payment by the purchaser to the broker, under such circumstances, is not a bar to the right of recovery by the owners: *Crosby* v. *Hill*, 38 or 39 Ohio St.

BAILMENT.

Bank—Deposit of Bonds for safe keeping—Negligence.—The plaintiff delivered to the defendant bank $4000 of U. S. bonds and received this writing: "Received of J. D. Whitney four thousand dollars for safe keeping as a special deposit. S. M. Waite, C." *Held*, that it was a naked deposit without reward; that the defendant would not be liable for the robbery or larceny of the bonds, unless there was complicity or bad faith; that it was answerable only for *fraud* or for *gross* negligence; that the law demands good faith, and the same care of the plaintiff's bonds as defendant took of its own of like character: *Whitner* v. *First Nat. Bank of Brattleboro*, 55 Vt.

The facts that the safe was left open during the transaction of business, that there was no gate in the passage-way from the rear of the banking-room behind the counter and that only one person was left in charge of the bank about noon each day, do not seem so unusual as to be accounted negligence, much less gross negligence: *Id.*

The true test of gross negligence in this case is whether the defendant took the same care of these bonds as it did of its own: *Id.*

BANK. See *Bailment.*

BANKRUPTCY.

Discharge—Foreign Creditor.—A debt contracted and payable in Canada by a person resident in this state to a person resident in Canada, is not barred by a discharge under the U. S. Bankrupt Act, when the foreign creditor neither proved his debt in bankruptcy, though provable under the act, nor in any way was a party to the proceedings, nor had personal notice thereof: *McDougall* v. *Page*, 55 Vt.

BILLS AND NOTES. See *Limitations, Statute of.*

Lost Note—Right of Payee to Sue.—The payee of a lost note which is negotiable and payable to him or bearer cannot sustain an action at law to recover the amount; a court of equity alone can give relief: *Adams* v. *Edmunds*, 55 Vt.

BROKER. See *Agent.*

CONSTITUTIONAL LAW. See *Municipal Corporations.*

Regulation of Commerce—Prohibition of Sale of Oleomargerine.—The act prohibiting the manufacture or sale of oleomargerine or any other article in imitation of butter or cheese, is constitutional: *State* v. *Addington*, 77 Mo.

State enactments which have the effect of regulating commerce between the states are not obnoxious to that provision of the constitution of the United States which declares that "Congress shall have power to reg-

ulate commerce with foreign nations and among the several states and with the Indian tribes," unless they conflict with regulations on the same subject prescribed by Congress: *Id.*

Prohibition of Sale of Patented Articles.—For the purpose of promoting the public welfare the legislature has power to regulate or forbid the sale of patented articles, to the same extent as articles not patented, if no discrimination is made: *Palmer* v. *State*, 38 or 39 Ohio St.

License on Ferry-boats—Exemption from Taxation—Police Power—Regulation of Commerce—Tonnage Duty.—Defendant was authorized by its charter, granted in Illinois, to run a ferry between St. Louis and East St. Louis; a section of one of the incorporating acts provided "that the ferry established shall be subject to the same taxes as are now, or hereafter may be, imposed on other ferries within this state and under the same regulations and forfeitures." *Held*, that the meaning of this was that the ferry, having only one of its landings in the state of Illinois, was to be subject to the same taxation as ferries wholly within the state; and the most that can be claimed is that it exempted the ferry company from any other taxation and exactions than such as were imposed on like property similarly situated: *Ferry Co.* v. *East St. Louis*, S. C. U. S., Oct. Term 1882.

There was a proviso in the charter that nothing therein should interfere with the power of any existing municipal corporation, or any thereafter created, to exercise all such powers of police as might be properly conferred on a city corporation. *Held*, that the imposition of a license fee of $100 per boat by the city of East St. Louis under its charter, was an exercise of police power within the meaning of the proviso, and was not a regulation of commerce or a duty of tonnage within the meaning of the Constitution of the United States: *Id.*

The enrolment and licensing of the boats under the laws of the United States did not exclude the right to impose the license in question, the power to regulate commerce among the several states not interfering with the police powers of a state in granting ferry licenses: *Id.*

CONTRACT. See *Equity*.

CORPORATION.

Deed—Signature—Seal.—The granting clause of a deed, the record of which was offered in evidence, was as follows: "Know all men by these presents that the W. K. Land Company, by S. H., president, and T. S. C., secretary, * * * has granted," &c. The attestation clause and signatures were as follows: "In witness whereof, we hereunto subscribe *our* names and affix *our* seals." (Signed) "S. H., president, (Scroll); T. S. C., secretary (Scroll); W. K. Land Company (Scroll)." The certificate of acknowledgment stated that S. H., president, and T. S. C., secretary, "acknowledged that they executed and delivered the same as their voluntary act and deed." *Held*, that the deed was the deed of the corporation. The form of signature did not make it the individual deed of S. H. and T. S. C.; and one of the seals appearing on the record would be presumed to be the seal of the corporation: *City of Kansas* v. *Hannibal & St. Joseph Railroad Co.*, 77 Mo.

CRIMINAL LAW. See *Extradition.*

Alibi—Burden of Proof.—Where the evidence tends to prove the commission, by the defendant, of the crime charged in the indictment, at a particular time and place, and the defendant offers evidence tending to show that at such time he was at another place, it is error for the court to charge the jury that testimony tending to show such *alibi* was not to be considered, unless it established the fact by a preponderance of evidence. The burden of proof was not changed when the defendant undertook to prove an *alibi*, and if, by reason of the evidence in relation to such *alibi*, the jury should entertain reasonable doubt as to the defendant's guilt, he should be acquitted, although the jury might not be able to find that the *alibi* was fully proved: *Walters* v. *State*, 38 or 39 Ohio St.

Perjury—Sect. 5392 *Rev. Stats. construed.*—The defendant, who was clerk of a circuit and district court, was indicted for perjury in swearing before the district judge to his emolument returns and an account for services rendered to the United States: *Held*, that this instrument was a "written declaration" or "certificate" within the meaning of sect. 5392 of the Revised Statutes: *United States* v. *Ambrose*, S. C. U. S., Oct. Term 1882.

DEED. See *Corporation.*

EQUITY. See *Insurance.*

Reformation of Contract.—By a written agreement between S. and E., S. agreed to convey land to E., "subject to" an incumbrance on it of $9000, and E. agreed to pay to S. $15,000, by conveying to him land, some of it "subject to" an incumbrance. Without any further bargain, S. delivered to E. a deed, conveying the land "subject to" the incumbrance, and also containing a clause stating that E. assumes and agrees to pay the debt secured by the incumbrance, as part of the consideration of the conveyance. E., being ill, did not read the clause in the deed respecting the assumption of the debt, but discovered it afterwards, and promptly brought this suit to have the deed reformed. He had made two payments of interest on the incumbrance. In the negotiations prior to the agreement, S., through his agent, had solicited E. to assume and agree to pay the incumbrance, but E. refused. S. understood the difference in meaning between the two forms of expression. D., the owner of the incumbrance, was no party to the transaction, and had done nothing in reliance on the deed. *Held* (1), The agreement created no liability on the part of E. to pay the debt to D.; (2) there was a departure in the deed, through mutual mistake, from the terms of the actual agreement; (3) under the special circumstances of the case E. had a right to presume that the deed would conform to the written agreement, and was not guilty of such negligence or laches in not observing the provisions of the deed as should preclude him from relief, nor was he guilty of any laches in seeking a remedy; (4) the payment by E. of interest on the incumbrance was not inconsistent with his not having assumed the payment of the debt; (5) E. is entitled to have the deed reformed: *Elliott* v. *Sackett*, S. C. U. S., Oct. Term 1882.

Relief against Unconscionable Contract.—A., who was of improvident habits and unskilled in affairs, applied to B., a real estate and mortgage

broker, to procure a loan, having previously had loans from him. B. prolonged the negotiations for a month, objecting to the security offered, which was an undivided interest worth some $10,000 in inherited realty, and finally loaned A. $2000 instead of $1000, the sum originally requested by B., taking from A. a note for the payment of $2000, six months after date, with interest at the rate of five per cent. per month, payable monthly in advance till said principal sum is paid, whether at or after maturity, and all instalments of interest in arrear to carry interest at the same rate till paid." The note was endorsed of its date, Received one month's interest to December 18th 1879, $100. When this transaction took place a statute allowed parties to make their own agreements as to interest, and prescribed six per cent. in the absence of any agreement. Subsequently A. filed a bill in equity against B. to redeem the mortgage and to reduce the rate of interest: *Held*, that in the relation of the parties B. had taken an unconscionable advantage of A., and that A. was entitled to relief: *Held, further*, that the case should be referred to a master to fix a reasonable rate of interest, not less than six per cent., on the note and unpaid instalments of interest, and to report the amount due: *Brown* v. *Hall*, 14 R. I.

Injunction against Suit at Law— When not Granted.—A bill in equity was filed to enjoin an action at law because: 1. The election was on a judgment which had been satisfied. 2. The judgment creditor was guilty of laches in delaying to bring his action. 3. The action was maliciously brought to harass and oppress. On demurrer to the bill: *Held*, that the demurrer should be sustained. As to the first allegation of the bill the remedy at law was complete. As to the second, equity will not enjoin an action at law because delayed, if brought within the statutory period of limitation. As to the third, equity will not enjoin the prosecution of legal rights because the prosecutor's motives are malicious: *Clark* v. *Clapp*, 14 R. I.

EVIDENCE. See *Criminal Law; Will.*

Sending Letter through Mail—Proof of, admissible.—In an action for the price of goods sold, upon the issue whether the plaintiff sent a bill of the goods by mail to the defendant and the defendant received it, evidence is admissible that upon the envelope containing the bill was printed a request for a return of the letter to the post-office address of the plaintiff, if not called for in ten days, and that it was not returned to him: *Heddon* v. *Roberts*, 134 Mass.

EXTRADITION. See *Process.*

Detention for different Crime.—A person extradited under the provisions of the treaty of 1842, between the United States and Great Britain, cannot be detained in custody and prosecuted for a different crime than the one specified in the warrant of extradition: *State* v. *Vanderpool*, 38 or 39 Ohio St.

The provisions of this treaty are part of the law of the land, enforceable by the judicial tribunals of this state in behalf of a person so detained and prosecuted: *Id.*

FRAUD.

Suit by Party to Fraud— When entitled to recover.—A party, whether plaintiff or defendant, at law or in equity, who can make out his case

without introducing into it a fraud in which his opponent and himself participated, will obtain relief in spite of any effort on the part of such opponent by plea or offer of proof to set up such fraud: *Chaffee* v. *Sprague*, 14 R. I.

On a bill in equity to foreclose a pledge, the respondent submitted to the court for allowance issues to the jury whether the pledge was not given with intent to defraud the respondents' creditors: *Held*, that the issues should not be allowed: *Id.*

Frauds, Statute of.

Guaranty of Note of Third Person given for Guarantor's Debt.—An oral guaranty of the payment of the note of a third person, given in payment of a debt of the guarantor, is within the Statute of Frauds, even if the principal object of the transaction is the payment of the guarantor's own debt: *Dows* v. *Swett*, 134 Mass.

Gift.

Donatio Causa Mortis—What constitutes.—To support a *donatio causa mortis* there must be a delivery of the subject by the donor as a gift, and the delivery must be such as, in case of a gift *inter vivos*, would invest the donee with the title: *McCord* v. *McCord*, 77 Mo.

Where a father in his last illness placed a package of money in the possession of his son to take care of, and some days afterward directed the son, in case he should not get well, to take the money and, after paying funeral expenses, &c., to divide the remainder equally between himself and certain of his brothers and sisters: *Held*, that the only delivery ever made by the father being by way of bailment and not in execution or contemplation of a gift, there was no *donatio causa mortis*: *Id.*

Husband and Wife.

Divorce—Alimony—Power to modify judgment.—Jurisdiction to award alimony in divorce proceedings is purely statutory. Hence when a judgment for alimony has been made without reserve, and the time within which a new trial can be had has elapsed and there is no statutory provision for modifying the judgment, the judgment is final and cannot be changed: *Sammis* v. *Medbury*, 14 R. I.

C. obtained, in 1879, a divorce *a vinculo* from her husband G., and a decree awarding her one-half the rents of G.'s realty for her life, and one-half G.'s personalty as alimony; also one-half the rents of G.'s realty and one-half G.'s personalty as a provision for her children by G. C. subsequently married again, and in 1883 G. petitioned for a reduction in the amount of alimony, claiming that C.'s husband was well able to support her and that at the trial of the divorce petition G. was absent from the state, and through accident and mistake was not present. *Held*, that the court had no jurisdiction to consider the petition: *Id.*

Insurance.

Refusal of Company to receive Premiums—Remedy in Equity—Waiver of Stipulation for Forfeiture—Course of Business.—Where an insurance company refuses to receive from the assured a premium on a

life policy, on the ground that the policy has lapsed by reason of the non-payment of such premium on the day stipulated for its payment, and the assured claims that the company has waived the right to assert such forfeiture, equity has jurisdiction to determine, on the petition of the assured, the rights of the parties under such policy, and, if the policy is found to be in force, to compel the company to receive the premiums thereon and issue renewal receipts: *Nat. Life Ins. Co.* v. *Tullidge*, 38 or 39 Ohio St.

Although a life policy and the renewal receipts may contain a stipulation or notice that agents of the company shall not have authority to waive forfeitures where premiums have not been paid on or before the day designated for their payment, yet the course of business between the agent, the assured and the company, in giving effect to payments made when overdue, may be such that the company will be precluded from objecting to a payment tendered when overdue, where no notice had been given the assured that in the future such overdue payments would not be received, and where no part of the last eight premiums, all of which had been received by the agent when overdue, had been returned by the company: *Id.*

Accident Policy—Unnecessary Exposure to Danger.—Under a policy of insurance against accident, providing that no claim shall be made under it when the death or injury may have happened in consequence of exposure to any obvious or unnecessary danger, and containing a condition that the assured is required to use all due diligence for personal safety and protection, no recovery can be had for the death of the assured, which is caused by his being struck by a railroad train, while running along the tracks in front of it in the night time, for the purpose of getting on a train approaching in an opposite direction on a parallel track: *Tuttle* v. *Ins. Co.*, 134 Mass.

Waiver of Proofs—Rule of Construction of Policy.—It is well settled that if a party insured calls upon the insurer to pay his loss, and the latter makes no specific objection to the form or sufficiency of such proofs of loss as are offered, or to the entire neglect to furnish such proofs, in season for the claimant to repair his error, but declines to pay the claim upon other grounds, he will be estopped from setting up defects in the proof of loss as a defence to the claim, being presumed to have waived them, or the most that the insurer can claim is that the question of waiver may go to the jury: *Mosely* v. *Mut. Fire Ins. Co.*, 55 Vt.

Policies are construed liberally in respect to the insured, strictly in respect to the company; thus, where the subject of insurance was only "goods and groceries," and there was a clause in the policy that the keeping of gunpowder for sale or on storage "upon or in the premises insured," the court held that the meaning of the word "premises," as used in the policy was "lands and tenements;" that it did not include "goods and groceries;" and, therefore, if gunpowder had been kept on "premises" not insured, it would not vitiate the policy: *Id.*

INTEREST.

How calculated on Judgment under Texas Statute—What is a Contract bearing a Specified Interest.—A note was given for the principal

debt, with interest, added to the date of maturity, at the rate of twenty per cent.; a statute of Texas provided that "all judgments * * * shall bear interest at the rate of eight per cent. per annum, from and after the date of the judgment, except when the contract upon which the judgment is founded bears a specified interest greater than eight per cent per annum, and not exceeding the highest rate of conventional interest permitted by law (twelve per cent.), in which case the judgment shall bear the same rate of interest specified in such contract and after the date of such judgnent:" *Held*, that a judgment on the above note only bore interest at eight per cent.: *Ewell* v. *Daggs*, S. C. U. S., Oct. Term 1882.

JUDGMENT. See *Accord.*

LIBEL.

Explanation of Language—Evidence.—In an action for a libel where the language used is ambiguous or ironical, the plaintiff's acquaintances may state their understanding as to whom the libellous charge refers, and what it imputes: *Knapp* v. *Fuller*, 55 Vt.

The defendant, after suit was brought, published another article referring to the plaintiff by name. It was admissible to show the *animus* in publishing the first article: *Id.*

Also, what one of the defendants said, a few days after the first publication, manifesting a hostile feeling towards the plaintiff, was admissible: *Id.*

LIMITATIONS, STATUTE OF.

Promissory Note—What is not.—An instrument, signed by the maker and witnessed by a third person, stating that the maker had received of S. a horse, for which he promised to pay S. or order a sum named in one month from date, "said horse to be and remain the entire and absolute property of the said S. until paid for in full by me," is not a promissory note, and an action upon it cannot be maintained which is brought more than six years after its date; *Sloan* v. *McCarty*, 134 Mass.

Mortgage to secure Note—Foreclosure after six Years.—An action to foreclose a mortgage, given to secure a note, may be commenced at any time within twenty-one years after its execution, notwithstanding the note is barred by the Statute of Limitations: *Riddle* v. *Howenstein*, 38 or 39 Ohio St.

Award—Specialty.—An award under seal is a specialty within the meaning of the Statute of Limitations; and this is so though the submission was by parol: *Halnon* v. *Halnon*, 55 Vt.

MORTGAGE. See *Limitations, Statute of.*

Growing Crops—Chattel Mortgage.—The owner of land may make a valid chattel mortgage of a growing crop that he has planted, which is superior to the lien acquired by another creditor's subsequent attachment: *Kimball* v. *Sattley*, 55 Vt.

The mortgagor of a farm, in possession, and after condition broken, may make a valid chattel mortgage of the growing grass thereon, which is superior to the lien acquired by another creditor's subsequent attachment: *Id.*

Municipal Corporations.

Right to issue Bonds in aid of a Railroad—Meaning of Phrase "near such township"—Estoppel—Res Adjudicata.—Under an act of the legislature of Missouri, county courts were authorized to subscribe, in behalf of townships in their respective counties, to the capital stock of any railroad company within that state, "building or proposing to build a railroad into, through or near such township," and to issue bonds in the name of the county in payment of such subscription. There was a vote of a township in favor of issuing bonds in aid of a particular railroad company. The subscription was made and the bonds issued, reciting that they were authorized by a vote of the people, and were issued under and pursuant to an order of the county court by authority of the act. When the vote was taken and the bonds issued, the company did not propose to build a road into or through the township, but it was proposing to build one from a point nine miles distant from the township to a further distance. Interest on the bonds was paid for three years. In a suit on coupons of the bonds by a bona fide holder for value: *Held*, that the courts should acquiesce in the determination by the qualified voters and the local authorities that the proposed road was near the township, and hold that there was legislative authority for issuing the bonds: *Kirkbride* v. *Lafayette County*, S. C. U. S., Oct. Term 1882.

Ordinance—Validity—Disposal of Bodies of Dead Animals.—Under the constitution of this state, a city ordinance is void which undertakes to confer upon one person the right to remove and convert to his own use the carcasses of all dead animals, not slain for food, found within the limits of the city, to the exclusion of the right of the owners of the same to remove and use them before they become a nuisance: *River Rendering Co.* v. *Behr*, 77 Mo.

National Bank.

Power to Loan on Security of Warehouse Receipt.—A national bank has power to lend money upon the note or other personal obligation of the borrower secured by the pledge of a warehouse receipt for merchandise as collateral security: *Cleveland* v. *First National Bank*, 38 or 39 Ohio St.

Negligence.

Contributory—Failure to look before crossing Highway.—In an action for personal injuries occasioned to a woman sixty-seven years old, by being knocked down by a horse and wagon, while crossing a street on some flagstones at a point where the street forms a junction with two other streets, all much travelled, in the compact part of a city, the fact that, before attempting to cross and while crossing, she did not look up or down the street but straight ahead, is not conclusive evidence of a want of due care on her part; but the question is rightly submitted to the jury: *Shapleigh* v. *Wyman*, 134 Mass.

Contributory—Sailing Boat on Sunday—Wilful Injury.—If a person sails for pleasure in his yacht on the Lord's day, in violation of the Gen. Stats. c. 84, sect. 2, and if, while he is so sailing, his yacht is injured by being negligently run into by a steamboat, his unlawful act necessarily contributes to the injury, and he cannot maintain an action there-

for against the owner of the steamboat; but if the act of those in charge of the steamboat, in running against the plaintiff's yacht, was wanton and malicious, he can maintain such action, if they were acting within the general scope of their employment, and were executing their master's business: *Wallace* v. *Merrimack River Nav. and Ex. Co.*, 134 Mass.

PARTNERSHIP.

Marshalling of Assets—When refused.—Three railroads were operating under a partnership arrangement three lines of road. B. obtained a judgment against one of the railroads for injuries received through its neglect, not knowing of the partnership. He levied his execution on an engine, tender and baggage car, owned by the three companies, and the same were sold to his agent, L.; and he had also levied upon another engine owned by the same companies, and had advertised it for sale, when he was enjoined. A bill having been brought setting up the superior rights of partnership creditors, *held*, although the rights of partnership creditors, as a rule in equity are superior to those of the individual creditors, yet the court will not enjoin where equities are equal, or where, as in this case, it does not clearly appear by allegation or proof that the partnership indebtedness existed at the time the property was seised on execution, or, especially, under the special provisions of our statute, R. L. sect. 3413, whereby a passenger, injured through the negligence of a railroad company, has a right in attaching cars, engines, &c., superior to the general equity of the partners: *Lamoille Val. Railroad Co.* v. *Bixby*, 55 Vt.

PAYMENT.

Acceptance of Promise of Third Person.—The simple acceptance, by suit or otherwise, by a third person, of a promise made to pay a debt due such third person from another, will not operate to release such other person from liability to such third person on account of such debt. To extinguish the obligation of the original debtor, it must appear that the subsequent obligation was accepted in lieu of his; otherwise the second obligation will be regarded only as collateral and additional to the first: *Briscoe* v. *Callahan*, 77 Mo.

PLEADING.

Insurance—Declaration—Conditions in Policy.—In an action on a policy of insurance it is not necessary to set out in *hæc verba* in the declaration the several conditions in the policy, and then allege performance; or to prove that the insured did not die in a duel, or while employed on a railroad, &c.: *Tripp* v. *The Vermont Life Ins. Co.*, 55 Vt.

PRESUMPTION.

Of Death from Absence.—There is no presumption of law that a man who disappeared at an unknown date in the year 1809, was dead on the 29th day of April 1816: *Dean* v. *Bittner*, 77 Mo.

PROCESS.

Service of on one brought within Jurisdiction by Writ of Extradition.—W., a citizen of Pennsylvania, was extradited from that state upon a

requisition issued by the governor of Ohio, upon application of C., A. & Co., in a criminal prosecution instituted by them in Hamilton county. *Held*, that the service of a summons and an order of arrest, issued in a civil action brought by C., A. & Co. against W., and made upon W. directly after he had entered into a recognisance to appear before the Court of Common Pleas at its next term, and before conviction and before he had an opportunity to return to his home, was rightfully set aside: *Compton* v. *Wilder*, 38 or 39 Ohio St.

SALE. See *Tender.*

Conditional Sale—Waiver—Demand.—By a conditional sale of a wagon if the vendee failed to pay the note according to its tenor, he forfeited what he had paid, and the vendor could take the wagon. There was a failure to fully pay; but the vendor allowed the wagon to remain with the vendee; and he accepted payments after the last instalment was due. Without making a demand he brought suit to recover the balance of the note, attaching the wagon and holding it by virtue of the attachment until the trial commenced, when he entered a nonsuit, and claimed to hold it under the written contract. *Held*, if a demand were necessary the bringing of the suit was sufficient: *Matthews* v. *Lucia*, 55 Vt.

By making the attachment the defendant did not waive his right to the wagon under the conditional sale; nor was he estopped from asserting his right: *Id.*

Nor did he waive the causes of forfeiture arising from default of payment by accepting payments after the note was due: *Id.*

STATUTE.

Implied Repeal by Revision.—A statute revising the whole subject-matter of a former statute and evidently intended as a substitute for it, although it contains no express words to that effect, repeals the former: *State* v. *Roller*, 77 Mo.

SUNDAY. See *Negligence.*

SURETY.

For Administrator in Replevin Suit—Claim against Estate.—If a surety in a replevin bond given by an administrator pay a judgment in the action against the administrator, he will be entitled to recover the amount from the sureties in the probate bond of the administrator: *State* v. *Farrar*, 77 Mo.

TENDER.

Of Performance—When not required.—Where a party contracts to deliver personal property at a given time and place, and is ready and willing to comply with the terms of his contract at the contract time and place agreed upon and so notifies the other party to the contract, who then and there declares that the property if tendered would not be accepted by reason of an alleged defect therein, such party may maintain an action for breach of the contract without actual tender of the property as required by the terms of the contract: *Tullos* v. *Rogers*, 38 or 39 Ohio St.

TORT.

Joint Defendants—Apportionment of Verdict.—In an action of tort against several defendants jointly charged, the verdict cannot be apportioned among those found guilty, each being liable *in solido* without reference to the degree in which he contributed to the tort: *Keegar* v. *Hayden*, 14 R. I.

TRESPASS.

Waste—Permission of Person in Possession.—The action of trespass does not lie for waste committed upon land by permission of a person actually in possession, though the possession be unlawful. The remedy is an action of unlawful detainer, in which the party lawfully entitled may recover as well the waste and injury committed as the possession: *Hawkins* v. *Roby*, 77 Mo.

TROVER.

Conditional Sale—Partial Payment—Set-off.—The plaintiff sold a herd of cattle conditionally, taking a note therefor for $837.50 and a lien by which they were to remain his until the note was "fully paid." The vendee, without the knowledge of the plaintiff, sold a part of the cattle to the defendants, who paid him, and he paid the plaintiff, the plaintiff endorsing it on the note. In an action of trover, the note remaining unpaid, *held*, that the defendants were liable; and that the money paid by them could not be allowed in mitigation of damages: *Morgan* v. *Kidder*, 55 Vt.

Evidence was not admissible in mitigation of damages to show that the identical bank bills paid for the cattle were sent to the plaintiff, he being ignorant of the sale: *Id.*

Plevin v. *Henshall*, 25 E. C. L. 21, distinguished: *Id.*

TRUST. See *Will.*

Discretion as to Payment to Cestui que Trust—When controlled by the Court.—The testator willed both realty and personalty to each of his two sons. Afterwards, being dissatisfied with the conduct of one of them, he used the following words in a codicil to the will: "I do hereby revoke the said legacies by my said will given to my said son, Jerome C. Bacon, and I do give to my son, Delos M. Bacon, all of said legacies *in trust*, as follows; that the same be kept by the said Delos M. until in the judgment of the said Delos M. the said Jerome C. shall prove himself worthy of receiving the same, and then and not till then to deliver the same to the said Jerome C. Bacon. It is further my will that if my said son, Delos M., shall not at any time judge it best to deliver said property to my said son, Jerome C., that the same shall be and remain the property of my said son, Delos M., and his heirs forever." A bill having been brought by the beneficiary to compel a surrender of the trust estate, *held*, 1. It is an *express trust* for the benefit of the orator, on condition that he proves himself worthy to have it executed in his favor, of which worthiness the trustee is made the judge. 2. But he is not the sole arbiter. His motives may be inquired into. The trustee cannot exercise his discretion and judgment from fraudulent, selfish or other improper motives; nor can he refuse to exercise them from such motives; but he must act *bona fide*, with a simple view to carry out the

intention of the testator; and the court will control his judgment and discretion to the extent of compelling an honest exercise thereof: *Bacon* v. *Bacon*, 55 Vt.

UNITED STATES.

Customs Duties—Drawback on Articles for Export made of Imported Materials—Power of Secretary of the Treasury—Jurisdiction of Court of Claims.—Under the Act of Congress of August 5th 1861, the exporter of articles manufactured from imported materials was entitled to a drawback equal in amount to the duty paid on such materials, less ten per cent., "to be ascertained under such regulations as shall be prescribed by the secretary of the treasury." The regulations were duly established by the secretary; but in this case the collector, under instructions from the secretary, refused to do the acts required by such regulations to entitle the exporter to the drawback: *Held*, 1. That the right conferred on the exporter by the act of congress could not be thus defeated. 2. That the Court of Claims had jurisdiction of such a claim, as it was founded on a law of congress and the facts raised an implied contract that the United States would refund to the importer the amount he paid to the government: *Campell et al.* v. *The United States*, S. C. U. S., Oct. Term 1882.

Customs Duties—Goods not specifically enumerated.—Under sect. 2499 of the Rev. Stat. U. S., when an article is found not enumerated in the tariff laws, the first inquiry is whether it "bears a similitude either in material, quality, texture or use to which it may be applied, to any article enumerated; if it does, and the similitude is substantial, it is to be deemed the same and charged accordingly. If nothing is found to which it bears the requisite similitude, an inquiry is to be instituted as to its component materials, and a duty assessed at the highest rates chargeable on any of the materials: *Collector* v. *Fox*, S. C. U. S., Oct. Term 1882.

UNITED STATES COURTS. See *United States.*

Jurisdiction—Question arising under Constitution and Laws of the United States—Removal of Causes.—An Illinois statute was construed by the Supreme Court of Missouri and that decision afterwards pleaded by way of estoppel in another suit, in a state court of Missouri, between the same parties, where precisely the same question was raised. An allegation was made that full faith and credit had not been given to the public acts of the state of Illinois by the decision in question, and the suit removed to the United States Court. *Held*, that any mistake in the decision of the first case could only be corrected by a proceeding instituted directly for the purpose, that the operation of the judgment in that case as an estoppel in this did not depend on the constitution or laws of the United States, but on the effect of a judgment under the laws of Missouri, and that there was consequently no right of removal: *Railroad Co.* v. *Ferry Co.*, S. C. U. S., Oct. Term 1882.

WILL.

Perpetuity—Fund for Preservation of Monument.—A provision in a will, establishing a fund for the preservation, adornment and repair of