tinental Ins. Co., 14 Abb. Pr. (N. S.) 266; *Gay* v. *Walker*, 36 Me. 54; *Fuller* v. *Arms*, 45 Vt. 400.

In *Martin* v. *Drinan*, 128 Mass. 515, an agreement by the grantee in a deed-poll to keep in repair a building on *adjoining* land of the grantor, was held not to be a covenant, and not enforceable by a subsequent grantee of the adjoining land.

In *Bishop of Raphoe* v. *Hawkesworth*, 1 Hud. & Br. 606, lands were demised to the defendant by the bishop of R., on condition that if the defendant should grind grain grown on the demised premises, at any mill save the mill belonging to the bishop of R. for the time being, he should pay to the lessor and his successors 5*s.* for each barrel of grain so ground, as if the same had been due for rent. *The mill was not on the demised lands. Held*, enforceable by the bishop of R.'s successor against the lessee, as rent. Also, *Dunbar* v. *Jumper*, 2 Yeates 74; *Wadsworth* v. *Smith*, 11 Me. 278; *Adams* v. *Morse*, 51 Id. 497; *Bartlett* v. *Peaslee*, 20 N. H. 547; *Morse* v. *Garner*, 1 Strobh. 514.

In *Hodge* v. *Boothby*, 48 Me. 68, a deed from A. to B. reserved to C. "a right to cross said lot, and to take and haul away stone," &c. *Held*, that B., by accepting his deed, was precluded from questioning C.'s rights in the premises. See *Wickham* v. *Hawker*, 7 M. & W. 63; *Ives* v. *Van Auken*, 34 Barb. 566; *Eysaman* v. *Eysaman*, 24 Hun 430; *Rexford* v. *Marquis*, 7 Lans. 249; *Maynard* v. *Maynard*, 4 Edw. Ch. 711.

JOHN H. STEWART.

ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS OF LAW AND EQUITY.[1]

SUPREME COURT OF THE UNITED STATES.[2]

SUPREME COURT OF GEORGIA.[3]

COURT OF ERRORS AND APPEALS OF MARYLAND.[4]

COURT OF CHANCERY OF NEW JERSEY.[5]

ACCORD AND SATISFACTION.

Debtor and Creditor—Contract by Creditor to take less than Sum due—Whether Valid.—Judgment for a specific sum having been obtained by the plaintiff in an action, an agreement in writing was made between the plaintiff and defendant, whereby, in consideration that the defendant would pay part of the sum on the signing of the agreement, and the remainder to the plaintiff or her nominee by equal half-yearly instalments, the plaintiff undertook not to take any pro-

[1] Selected from late numbers of the Law Reports.

[2] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1882. The cases will probably appear in 17 Otto's Reports.

[3] From J. H. Lumpkin, Esq., Reporter. The cases will probably appear in 68 or 69 Ga. Reports.

[4] From J. Schaaf Stockett, Esq., Reporter; to appear in 60 Md. Reports.

[5] From John H. Stewart, Esq., Reporter; to appear in 37 N. J. Equity Reports.

ceedings on the judgment. The defendant duly performed all the terms of the agreement on his part. *Held*, by the Court of Appeal, reversing the decision of the Queen's Bench Division, that the agreement was not binding on the plaintiff, there being no consideration for it, and that therefore the plaintiff was entitled to issue execution for interest on the judgment debt: *Beer* v. *Foakes*, L. R., 11 Q. B. Div.

ADMIRALTY.

Time of Decree against Sureties in Stipulation under Sect. 941 of Rev. Stat. U. S.—While under sect. 941 of the Revised Statutes of the United States, it is within the power of the court to postpone a decree against the sureties in a stipulation executed under its provisions to release a vessel against which process *in rem* has issued, until the time for appeal by the principal has expired, and then to proceed only on notice; and while such is the practice in some of the circuits, there is nothing in the statute which makes this imperative, and judgment "against both principal and sureties may be recovered at the time of rendering the decree in the principal cause:" *In the Matter of Warden et al.*, S. C. U. S., Oct. Term 1882.

Quære, Whether the decree is a lien on the real estate of the stipulators after the appeal: *Id.*

AGENT.

Liability of Undisclosed Principal—Demise under Seal.—The rule that an unnamed and unknown principal shall stand liable for the contract of his agent, does not apply to a demise under seal. The relation between the owner of land and those who occupy it, is of a purely legal character; and the fact that a lessee takes a lease for an unnamed principal, but in his own name, will not render the unnamed principal liable for the rent: *Borcherling* v. *Katz*, 37 N. J. Eq.

APPORTIONMENT.

Annuity—When Apportionable.—A. and his wife conveyed their farm to B., the husband of their granddaughter, in consideration of B.'s agreement, secured by B.'s bond and mortgage on the premises, to pay A. an annuity of $250 on the first day of April, for his life, and if A.'s wife survived him, to pay her an annuity of $200 for her life. A.'s wife outlived him, and afterwards died on September 19th 1881. *Held*, that her annuity, having been evidently given for her support, was apportionable: *In re Lackawanna Iron Co.*, 37 N. J. Eq.

ASSIGNMENT.

Contract containing Provisions as to Forfeiture.—A provision in a contract, that if the contractor fails to pay for labor done or materials furnished in the performance of the contract, the other contracting parties may withhold the moneys earned under the contract, and apply them to the payment of such debts, does not deprive the contractor of his right of alienation, and his assignees, notwithstanding such a provision, will be entitled to the moneys earned under the contract in the order in which they acquired title to them: *Shannon* v. *The Mayor and Common Council of Hoboken*, 37 N. J. Eq.

BILL OF LADING. See SHIPPING.

Bills and Notes.

Acceptance of Draft by Person holding Collateral—Subsequent Indulgence to Acceptors—Discharge of Drawer.—Where a negotiable draft with a security thereon was drawn and accepted by the drawees, who held a mortgage to secure advances, and who received property of the drawer sufficient to pay the draft, after negotiation the acceptors were primarily and absolutely bound therefor to the holder; the drawer was bound to pay if the acceptors did not, and his security was equally liable with him. As to the holder, the acceptors may be regarded as makers and the drawer as a first indorser: *Parmelee* v. *Williams*, 68 or 69 Ga.

Where indulgence was granted to the acceptors in consideration of the payment of eighteen per cent. interest, and the acceptors became insolvent, the security was thereby released: *Id*

Common Carriers. See *Railroad.*

Constitutional Law.

Title of Act.—The constitution does not require that the title of an act should contain a synopsis of the law, but that the act should contain no matter variant from the title. If the title is descriptive generally of the purposes of the act, it is sufficient, and it is not necessary that it should particularize the several provisions contained in the body of the act: *Howell* v. *State*, 68 or 69 Ga.

An act, the title of which was to prohibit the sale of intoxicating liquors within certain limits, was not unconstitutional as containing matter different from the title, because it provided that no intoxicating liquors, plantation bitters, or other intoxicating bitters sold under the name of patent medicine, should be sold within such limits: *Id.*

Contracts of a State—How not Enforceable.—The state of Louisiana, by legislative and constitutional enactments, contracted with the holders of certain bonds to levy and collect a certain annual tax, and to apply the revenue derived therefrom to the payment of the principal and interest of said bonds; by a subsequent constitution the further levy of the tax was stopped and the disbursing officers prevented from using the revenue from previous levies for said purpose. Certain of the bondholders sought to obtain an enforcement of the contract by a bill in equity and a petition for a mandamus, both against the state officers. *Held*, that the state officers were bound to do as directed by the state, that the courts could not control them as against the political power in their administration of the finances of the state, and that therefore the relief prayed for could not be granted: *The State of Louisiana* v. *Jumel*, S. C. U. S., Oct. Term 1882.

Law Impairing the Obligation of Contracts—Alteration of Remedy.—Changes in the forms of action and modes of proceeding do not amount to an impairment of the obligations of a contract, if an adequate and efficacious remedy is left or substituted; *Antoni* v. *Greerhow*, S. C. U. S., Oct. Term 1882.

By statute in Virginia the interest coupons of certain state bonds were "receivable at and after maturity for all taxes, debts, dues and demands due the state." For refusal to receive these coupons there

was a remedy against the tax collector by mandamus in the Supreme Court of Appeals; by a subsequent statute the coupons were to be received by the collector, when offered, but the taxes were to be paid in cash; and proceedings could at once be instituted by the tax-payer to test in a local court, subject to appeal, the genuineness and receivability of the coupons, and if the judgment was in his favor the money was returned to him. *Held*, that the change in the remedy, after the refusal by the collector to receive the coupons in payment of taxes, was not an impairment of the contract: *Id.*

Whether the tax-collector is bound in law to receive the coupon, notwithstanding the legislation which, on its face, prohibits him from doing so, and whether if he refuses to take the coupon and proceeds with the collection by force, he can be made personally responsible in damages, undecided: *Id.*

Contract.

Grant of Exclusive Right to Non-patentable Invention.—A non-patentable invention or improvement is not the subject of an exclusive right or property, but is common property, open to all the world: *Albright* v. *Teas*, 37 N. J. Eq.

A covenant by which the covenantor restrains himself, generally and absolutely, without limitation as to time or place, from exercising his skill and knowledge, is repugnant to public policy and void: *Id.*

Corporation.

Right to Remove Directors.—A joint stock company whose directors are appointed for a definite period, has no inherent power to remove them before the expiration of that period: *Imperial Hydropathic Hotel Co.* v. *Hampson*, L. R., 23 Ch. Div.

If the articles of association of a company contain no power to remove directors before the expiration of their period of office, but authorize the shareholders by special resolution to alter any of the articles, there must be a separate special resolution altering the articles so as to give power to remove directors before a resolution can be passed to remove any of them: *Id.*

Liability of for Fraud of Agents.—Strictly speaking, corporations, while acting within the scope of the powers delegated to them, cannot be guilty of wilful fraud; yet it is settled that corporations carrying on trade or business of any kind, are equally, and to the same extent, liable for the frauds and wrongs of their agents, perpetrated in the course of their employment, as individual principals would be under like circumstances: *Western Maryland Railroad Co.* v. *The Franklin Bank of Baltimore*, 60 Md.

Sale to on Fraudulent Representation of Officer—Rescission.—A sale of chattels to a corporation may be rescinded where credit therefor was given to the corporation on the strength of contemporaneous representations of the officers as to its solvency and prosperity, which representations are shown to have been false and fraudulent when made: *Candy* v. *The Globe Rubber Co.*, 37 N. J. Eq.

Criminal Law.

Former Conviction—Ordinance.—The conviction of the defendant in

the mayor's court, under a municipal ordinance for disturbing the peace, will not protect the accused from a subsequent prosecution by the state for assault and battery, though the same transaction be involved in both cases: *De Graffenreid* v. *State*, 68 or 69 Ga.

Murder—Riot Incited by Prisoner—Evidence of Acts and Declarations of Mob.—Where at and before the killing there was a great riot by many persons who composed a mob, and the accused was one of them, and took part in the riot, incited it, and was in great part responsible therefor, he was liable for each and every illegal act committed by such mob, and what was said and done by the mob or any of its members, was proper evidence on the trial of the defendant: *McRae* v. *State*, 68 or 69 Ga.

Burglary—Evidence—Possession of Stolen Articles.—Where a burglary has been committed, and money, goods or other property which were in the house at the time of the burglary are soon thereafter found in the possession of a person who is unable to account for his possession, it raises a presumption of his guilt, and the jury would be authorized to convict upon this alone. This matter is entirely for the jury, taking into consideration the character of the accused, the nature of the property found upon his person or in his possession, the length of time which had elapsed since the burglary, and the difficulty or impossibility on the part of the accused to account for his possession of the stolen property: *Lundy* v. *State*, 68 or 69 Ga.

DESCENT. See *Will.*

DURESS.

Mortgage—In Settlement of Criminal Charge.—Where an agent of a guano company had collected money for them, and failed to return it, and another agent of the company demanded the amount, and threatened a prosecution unless it was secured, and a mortgage was given to secure the amount: *Held*, that if the mortgage was given to settle or suppress the criminal prosecution, it could not be collected. If given not for such purpose, but to secure what the defaulting agent owed his principal, it could be collected: *Wheaton* v. *Ansley*, 68 or 69 Ga.

EQUITY. See *Limitations, Statute of.*

Recovery of Fines given by City to Dispensaries—Discovery from Sheriff.—The Act of 1853, ch. 305, provides, that all fines imposed by the criminal court of Baltimore city on persons convicted of keeping houses of ill-fame, shall be divided equally between such dispensaries of said city as shall have had under their charge during the year preceding, at least 1500 patients. On demurrer for want of jurisdiction, to a bill filed by a dispensary in the city of Baltimore against a former sheriff, for a discovery and payment into court of the sums collected by him from fines imposed under said act, in order that the same might be distributed among the several dispensaries entitled to the fund, it was *Held*, that the complainant was entitled to the relief prayed for, and the demurrer to the bill was properly overruled by the court below: *Snowden* v. *The President and Managers of the Baltimore General Dispensary*, 60 Md.

Relief against Action at Law.—Equity only interferes with an action

at law where there are equitable circumstances which render it unjust, as against the defendant at law, that the suit should proceed: *Held*, in this case, that it constitutes no ground for such interference that the plaintiffs have no right to bring the action at law; nor that, if they recover, they will hold the damages in trust, in part for the defendants at law; nor that the defendants at law should be allowed to retain so much of the damages recovered as would be payable to them as one of the *cestuis que trust;* nor that there has been no breach of the covenant which is the basis of the action; nor that if there has been such breach, equity ought to relieve against it: *Long Dock* v. *Bentley*, 37 N. J. Eq.

ERRORS AND APPEALS. See *Admiralty.*

Determination of Jurisdictional Limit.—Although the appellant in the court below claimed $3000, yet as he was there awarded $1500, the matter in dispute in the Supreme Court of the United States, required to be $2500, was but $1500, and the court had no jurisdiction: *Hilton* v. *Dickinson*, S. C. U. S., Oct. Term 1882.

Decree when final.—A decree is final for the purpose of an appeal when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined: *Railway Co.* v. *Express Co.*, and *Ex parte Norton*, S. C. U. S., Oct. Term 1882.

EVIDENCE. See *Criminal Law.*

EXECUTION.

Exemption—Injunction against Sale of exempted Articles.—On a judgment against a married woman, a sheriff seized her chattels, consisting of household furniture, &c. She was living with her husband, who was insolvent and contributed but little to the family's support, and she had for several years almost entirely maintained him and her children. *Held*, that her right to claim exemption under the execution act, as "a debtor having a family residing in this state," not being clear, she therefore was not entitled to an injunction restraining the sheriff from selling the chattels which she claimed were exempt: *Muir* v. *Howell*, 37 N. J. Eq.

If her right had been clear, injunction in equity would have been appropriate relief: *Id.*

EXECUTOR.

Negligence—Failure of Bank in which Funds were deposited.—Before an order for the distribution of the proceeds of a mortgage had been made, one of the distributees died intestate, and soon afterwards one of the decedent's children applied for his share of decedent's portion, but the executor, who had charge of the fund, refused to pay him, or any one except decedent's administrator. Pending the appointment of such administrator he deposited the fund in a bank, in the name of himself, adding, "Estate of Hassel C. Jacobus," his testator. The bank was then in excellent standing, but failed before an administrator had been appointed. *Held*, that the executor was not liable for the loss of the funds: *Jacobus* v. *Jacobus*, 37 N. J. Eq.

FORMER RECOVERY.

Judgment against surviving Member of Firm.—A prior judgment concludes only parties and privies, not strangers. A judgment against the surviving member of a firm does not conclude the representatives of the deceased partner: *Buckingham* v. *Ludlum*, 37 N. J. Eq.

FRAUDS, STATUTE OF.

Recovery for Services rendered under invalid Contract.—A person rendering services under a contract invalid by the Statute of Frauds, may recover their value in an action on the *quantum meruit*: *Buckingham* v. *Ludlum*, 37 N. J. Eq.

INJUNCTION. See *Execution.*

Nuisance—When Party entitled to Equitable Relief.—A party asking to have a nuisance abated by injunction, will be entitled to relief by that process whenever he can clearly demonstrate two facts: 1st, that the injury of which he complains is such, in its nature and extent, as to call for the interposition of a court of equity; and, 2d, that the right on which he grounds his title to relief is clear, whether that fact has been made plain by the action of the appropriate tribunals for the adjudication of questions of legal right, or is so by the settled law of the state, when applied to the facts of his particular case: *Stanford* v. *Lyon*, 37 N. J. Eq.

A mandatory injunction is awarded, as of course, whenever it is the necessary and appropriate process for carrying the decree of the court into effect: *Id.*

Religious Society—Closing of Church against Pastor.—The trustees of a Methodist Episcopal church closed the church building against the duly appointed preacher, on the ground that it was not for the interest of the church that he should be its pastor, and that he was appointed against the wish of the majority of the members. *Held*, that they had no right to do so and, after answer, a mandatory injunction was issued requiring them to open the building to the preacher and the church: *Whitcar* v. *Michenor*, 37 N. J. Eq.

INSURANCE.

Payment of Premiums by Stranger or Part Owner—Lien.—When a person, not the sole beneficial owner, pays the premiums to keep up a policy of life insurance, he is entitled to a lien on the policy or its proceeds in the following cases: (1) By contract with the beneficial owner; (2) By reason of the right of trustees to an indemnity out of their trust property for money expended by them in its preservation; (3) By subrogation to their right of some person who, at the request of trustees, has advanced money for the preservation of the property; (4) By reason of the right of a mortgagee to add to his charge any money paid by him to preserve the property: *In re Leslie*, L. R., 23 Ch. Div.

In no other cases can a lien on a policy for premiums paid be acquired either by a stranger or by a part owner of the policy: *Id.*

LANDLORD AND TENANT. See *Agent.*

LEGACY.

When Specific—Debt.—To make a legacy specific, it must appear,

either by express words or otherwise by inference resting upon a strong, solid and rational interpretation of the will, that the testator intended the legatee to take the particular thing given and nothing else: *Wyckoff* v. *The Executors of Perrine*, 37 N. J. Eq.

If a debt is the subject of a specific legacy, payment of the debt will destroy the legacy, whether it be made voluntarily or by compulsion: *Id.*

LIBEL.

Publication of Privileged Communication by Mistake—Negligence.—The defendant wrote defamatory statements of the plaintiff in a letter to W. under circumstances which made the publication of the letter to W. privileged, but by mistake the defendant placed it in an envelope directed to another person, who received and read the letter. In an action for libel: *Held*, that the letter having been written to W. under circumstances which caused the legal imputation of malice to be rebutted, the publication to the other person, though made through the negligence of the defendant, was privileged in the absence of malice in fact on his part: *Tompson* v. *Dashwood*, L. R., 11 Q. B. Div.

LIMITATIONS, STATUTE OF

Acknowledgment of Debt.—A debtor wrote to his creditor, "I thank you for your very kind intentions to give up the rent of *Tyn-y-bwrwydd* next Christmas, but I am happy to say at that time both principal and interest will have been paid in full." *Held*, that this was an acknowledgment of the debt, and was not conditional, and was sufficient to take the case out of the Statute of Limitations: *Green* v. *Humphreys*, L. R., 23 Ch. Div.

Trusts which fall within the proper, peculiar and exclusive jurisdiction of courts of equity are not subject to the Statute of Limitations: *Buckingham* v. *Ludlum*, 37 N. J. Eq.

Courts of equity are not within the terms of the Statute of Limitations, and while they follow it by analogy, they will not apply their rules, founded on analogy, when it is against conscience to do so: *Id.*

A creditor of a firm may have relief in equity, for the payment of his debt against the separate assets left by a deceased partner, if the surviving partner be insolvent and the firm assets exhausted: *Id.*

The representatives of a deceased partner cannot set up the Statute of Limitations against a creditor of the firm, so long as the surviving partner continues liable for the debt and has a right to seek contribution, from the estate of the deceased partner, for the payment of the debts of the firm: *Id.*

One partner cannot set up the Statute of Limitations against the other, in a case where there have been dealings, in respect to the partnership affairs, within six years, whether they consist in the conversion of assets into money, or the application of assets in discharge of liabilities: *Id.*

MORTGAGE. See *Duress.*

Purchaser of Land subject to—Extension of Time—Release of Mortgagor.—Generally one purchasing land subject to mortgage, not only purchases the equity of redemption, but purchases the whole estate, and

assumes the payment of the mortgage as part of the purchase-money. Generally an express agreement is made to that effect, and the deed is drawn subject to the payment of the money. In such case, as between the parties, the purchaser becomes primarily liable for the debt, and the mortgagor only security; and as between them the mortgaged property becomes the primary fund for the payment of the debt: *George* v. *Andrews*, 60 Md.

The mortgagee may, by his dealings with the purchaser and mortgagor, recognise the purchaser as the principal and the mortgagor as only security towards himself: *Id.*

A purchaser having assumed the payment of an existing mortgage, and thereby become the principal debtor, and the mortgagor a surety of the debt merely, an extension of the time of payment of the mortgage by an agreement between the holder of it and the purchaser, without the concurrence of the mortgagor, discharges him from all liability upon it: *Id.*

Municipal Corporations.

Power to Issue Bonds.—Under the Constitution of Illinois the corporate authorities of cities cannot be invested with power to levy and collect taxes except for corporate purposes. The charter of the city of Ottawa gave it the ordinary powers of municipal corporations of its class for local government. It was especially authorized upon a vote of the people, "To borrow money on the credit of the city, and to issue bonds therefor, and pledge the revenue of the city for the payment thereof." Bonds were issued and delivered to Cushman, to expend the same in the improvement of the water-power in the city and its immediate vicinity. In a suit on the bonds, *held*, that the question was whether the city had been invested with power to raise money by public taxation to be devoted to private persons or private corporations for developing the water-power in the city or its vicinity for manufacturing purposes, that there was nothing whatever to indicate any special authority to do this, and that the city was without such authority, and the bonds void in the hands of a purchaser with notice: *City of Ottawa* v. *Carey*, S. C. U. S., Oct. Term 1882.

Semble, That a power to subscribe to a company's stock would not of itself authorize a donation to it: *Id.*

Power to Tax Railroads—Previous Taxation by Legislature.—A municipal corporation cannot exercise any power not granted by the legislature, nor can it exercise a power which the state reserves to itself and which the legislature has provided should be exercised by its own officer (in this case the comptroller-general); and the legislature having provided for the assessment of a tax on railroad companies in this state, and its payment and collection by the comptroller-general of the state in a particular way, if power to assess and levy a tax on railroads had been conferred on a municipal corporation by a previous act, it must yield to the last act upon the subject; such corporations not only get their breath of life, but their continued existence from the legislature: *City of Albany* v. *Savannah, F. & W. Ry. Co.*, 68 or 69 Ga.

There was no power in the city of Albany to levy and collect a tax on the property of a railroad used in its business and operation as a

railroad company, the levy being on such property and not on property other than that: *Id.*

NEGLIGENCE. See *Railroad.*

NUISANCE. See *Injunction.*

PARTNERSHIP. See *Limitations, Statute of.*

PATENT.

When Invention must be Restricted to form shown.—Where the patentee is not a pioneer in the field in which his invention lies, but has merely devised a new form to accomplish results known in that field, his patent cannot be extended so as to embrace another form which is a substantial and not a mere colorable departure from his: *Duff et al.* v. *The Sterling Pump Co.*, S. C. U. S., Oct. Term 1882.

RAILROAD.

Liability on Through Tickets.—A railroad company which sells and issues tickets to passengers over its own lines of road and lines of road of other companies—known as through tickets—is liable for the sure and safe transportation of such passengers to the point of destination, notwithstanding there may be indorsed or printed on the tickets so sold and issued a notice that the company issuing and selling such tickets shall not be liable except as to its own line of road: *Central Railroad Co.* v. *Combs*, 68 or 69 Ga.

The road issuing a check for the baggage of a passenger with a through ticket, has been held liable for its safe and sure carriage and transportation, on the ground that it was a part of its undertaking, and the same principle will apply to the passenger himself: *Id.*

Injury to Train through Collision with Animal—Liability of Owner of Animal—Negligence—Consequential Damages.—A railroad company is entitled to the unobstructed use of its road, and where its cars and engine are thrown off the track and damaged in consequence of a collision with an ox which was upon the track through the negligence of its owner, the injury is the direct result of the owner's negligence, and he is liable therefor: *Annapolis & Elkridge Railroad Co.* v. *Baldwin*, 60 Md.

In an action on the case to recover for consequential damages resulting from an estray, the plaintiff, to entitle himself to consequential damages, must allege and prove that the injury was the result of the defendant's negligence. If, however, the animal escaped from his enclosure without the knowledge, and without any fault, of the defendant, he would not be liable in such action for consequential damages: *Id.*

There can be no reason for extending the rigorous rule of the common law, which holds the owner liable in an action of trespass, whether his cattle escape through negligence or not, to an action on the case by a railroad company seeking to recover consequential damages: *Id.*

SHIPPING.

Bill of Lading—Perils of the Sea—Collision.—A collision between two vessels brought about by the negligence of either of them, without

the waves or wind or difficulty of navigation contributing to the accident, is not "a peril of the sea" within the terms of that exception in a bill of lading: *Woodley* v. *Michell*, L. R., 11 Q. B. Div.

TAXATION. See *Municipal Corporation.*

TRESPASS.

Possession of Land—What Constitutes.—Where a person holds under a paper title, apparently good, to a parcel of land described by name, courses and distances, and is in the actual and undeniable possession of a part of the land; in such case possession of part is a possession of the whole of the land covered by, or embraced in, his title papers; and such title, with such possession, are sufficient to maintain the action of trespass *quare clausum fregit*: *Parker* v. *Wallis*, 60 Md.

Where all that the defendant had done was to dig sand on and from the land from time to time, and sell the same; his entries thereon for that purpose were but successive acts of trespass against the true owner, if he was not owner himself: *Id.*

TRIAL.

Charge of Court—Prayer for Instructions.—Where instructions granted by the court give to the party the benefit of all the law asked by his own prayers, he cannot be heard to object to such instructions because they do not give more: *Repp* v. *Berger*, 60 Md.

TRUST. See *Will.*

UNITED STATES COURTS.

How far Bound to follow State Law.—While the statute of Illinois giving the right of redemption, first to the mortgagor, then to the judgment creditors, is a rule of property obligatory upon the federal court, it is competent for the latter by rules to prescribe the mode in which redemption from sales under its own decrees may be effected, as that the redemption-money shall be paid to the clerk of the court, and not to the officer holding the execution, as required by the statute: *Life Ins. Co.* v. *Cushman et al.*, S. C. U. S., Oct. Term 1882.

WATER.

Diversion of Stream—Grant to Non-riparian Landowner.—A riparian owner cannot, except as against himself, confer on one who is not a riparian owner any right to use the water of the stream, and any user by a non-riparian proprietor, even under a grant from a riparian owner, is wrongful if it sensibly affects the flow of the water by the lands of other riparian proprietors: *Ormerod* v. *Todmorden Joint Stock Mill Co.*, L. R., 11 Q. B. Div.

Taking of Water by Non-riparian Owner—Injunction.—The owner of land not abutting on a river, with the license of a riparian owner, took water from the river, and after using it for cooling certain apparatus returned it to the river undiminished and unpolluted. *Held*, that a lower riparian owner could not obtain an injunction against the landowner so taking the water, or against the riparian owner through

whose land it was taken: *Kensit* v. *Great Eastern Railroad Co.*, L. R., 23 Ch. Div.

WAY.

Adverse and Exclusive Use—Abandonment.—In an action to recover damages for the obstruction of a private right of way claimed over the land of the defendant, it is necessary, in the absence of an express grant, for the plaintiff to prove an adverse, exclusive and uninterrupted enjoyment of the right of way for twenty years: *Cox* v. *Forrest*, 60 Md.

The use of a way over the land of another, whenever one sees fit, and without asking leave, is an adverse use, and the burden is upon the owner of the land to show, that the use of the way was by license or contract, inconsistent with a claim of right: *Id.*

By *exclusive*, the law does not mean, that the right of way must be used by one person only, but simply that the right should not depend for its enjoyment upon a similar right in others, and that the party claiming it, exercises it under some claim existing in his favor, independent of all others. Nor does the law mean by "an uninterrupted and continuous enjoyment," that a person shall use the way every day for twenty years, but simply that he exercises the right more or less frequently, according to the nature of the use to which its enjoyment may be applied, and without objection on the part of the owner of the land: *Id.*

When the right was thus established by an adverse, exclusive, and continuous user for twenty years, it required the same length of time for one to lose it by abandonment or discontinuance: *Id.*

WILL.

Testamentary Capacity.—If a testatrix has given instructions for her will, and it is prepared in accordance with them, the will will be valid though at the time of execution the testatrix merely recollects that she has given those instructions, but believes that the will which she is executing is in accordance with them: *Parker* v. *Felgate*, L. R., 8 P. D.

Devise to Children—Taking by Latter as Purchasers.—Where a testator devises all his property to his wife for life or widowhood, and directs that upon her death or marriage, the same be equally divided between his two children, their heirs and assigns forever, the children take the property by purchase and not by descent: *Donnelly* v. *Turner*, 60 Md.

Enforcement of Contract to Execute—Execution of Power.—There can be no doubt of the legal right of one, having the exclusive ownership of property, to enter into a contract to execute a will in favor of the other contracting party. And if a will executed under these circumstances be subsequently cancelled, the aid of a court of equity can be invoked: *Wilks* v. *Burns*, 60 Md.

But where the power of disposition by will is given to a person having no reversionary interest, an attempted execution of the power by a will made in conformity with the terms of an alleged contract, is invalid. The power is not thereby exhausted, and such will is revoked by a subsequent will duly admitted to probate: *Id.*