however, conclusive upon the question involved in the principal case, whether the wife may insist upon the duress as a defence to the mortgage in the hands of a *bona fide* assignee of the note and mortgage, and no case has been found that discusses this question. Without considering this question further, the principal case may probably be supported on the ground that the mortgage was void, as stated by the court, though it is to be regretted that the court did not discuss the question above stated upon principle, and thereby settle a question at once important and interesting; for it can hardly be considered that a decision upon a new and important question not stating the reasons upon which it is to be sustained, will be accepted as conclusive upon subsequent cases involving similar questions.

M. D. EWELL.

Chicago.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[3]

SUPREME COURT OF NEW JERSEY.[4]

SUPREME COURT OF OHIO.[5]

AGENT.

Breach of Trust—Obtaining Renewal of Lease for his own Benefit.—Where a confidential agent of one having a lease of a theatre, who, from his position. was well acquainted with the profits of his principal in the use of the building, and who knew, some months before the old lease expired, that the latter was desirous of renewing his lease, offered privately to lease the theatre of the owner, proposing to give a larger rental than was reserved in the old lease, and denied to his principal that he was competing with him for the lease, but in fact did procure a lease to be made to himself, it was *held*, that the benefit of such lease a court of equity would hold to inure to his principal, and that the agent would hold the same as a trustee for his principal: *Davis* v. *Hamlin*, 108 Ill.

Courts of equity recognise a reasonable expectation of a tenant of a renewal of his lease as an interest of value, and hold that the act of an agent in the management of the lessee's business, in interfering with and disappointing such expectation by procuring the lease to himself, is inconsistent with the fidelity which the agent owes to the business of

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[1] Prepared expressly for the American Law Register, from the original opinions. The cases will probably appear in 109 U. S.

[2] From Hon. N. L. Freeman, Reporter; to appear in 108 Ill. Reports.

[3] From John Lathrop, Esq., Reporter; to appear in 135 Mass. Reports.

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

[5] From E. L. DeWitt, Esq., Reporter. The cases will probably appear in 39 or 40 Ohio St. Reports.

his principal, and will give the principal the benefit of the new lease: *Id.*

In applying this rule the nature of the relation is to be regarded, and not the designation of the one holding the relation. It is applied not only to persons standing in a direct fiduciary relation toward others, such as trustees, executors, attorneys and agents, but also to those who occupy any position out of which a similar duty ought, in equity and good conscience, to arise: *Id.*

ATTACHMENT. See *Officer.*

BILLS AND NOTES.

Payment of Interest in Advance—Evidence of Extension of Time.—The payment of interest in advance, upon a promissory note, is not of itself, conclusive evidence of a contract to extend the time of payment of the note for the time for which interest may have been thus paid: *Gard* v. *Neff*, 39 or 40 Ohio St.

Bona fide Purchaser—Note to Agent's order.—The facts that a promissory note, signed by an agent with his principal's name, is drawn payable to the agent's order, and is sold by him, do not constitute sufficient grounds for imputing bad faith to the purchaser in a case where the agent designed to convert the proceeds of sale to his own use: *Read* v. *Abbott*, 16 Vroom.

BROKER.

Right to sell Stock bought for Customer and held on Margin.—If a broker agrees to buy and hold certain stock for a customer, who pays a part of the purchase-money, agreeing to pay interest on the sums advanced by the broker, and, in case the stock depreciates in value, to make a "margin" of a certain sum per share in excess of the market price, this does not create the relation of pledgor and pledgee between the parties; and if, after the failure of the customer to make the necessary advances upon demand, the stock having depreciated in value, the broker sells the same at the broker's board without notice to the customer, he is not liable for a conversion of the stock: *Covell* v. *Loud*, 135 Mass.

CERTIORARI.

Religious Corporation—Decision of Ecclesiastical Tribunal—Effect of—Certiorari.—Courts of law will interpose to control the proceedings of ecclesiastical bodies where a right of property is involved, but with respect to the spiritual and temporal affairs of the church not affecting the civil rights of individuals or the property of the corporation, the ecclesiastical courts and governing bodies of the religious society have exclusive jurisdiction, and their decisions are final: *State* v. *Rector, Wardens and Vestrymen of Trinity Church*, 16 Vroom.

The rule of law that a special tribunal having judicial, or *quasi* judicial functions annexed to its powers, whose power to act in a particular case depends upon its determination of certain facts, must allow a hearing to persons whose property or personal rights may be affected by its decision, does not prevail where the act done is purely discretionary. In such cases, a court of law will not review the acts or

resolutions of such a body by writs of *certiorari*, although no reasons be assigned for the act done, or an objectionable reason be assigned. In the latter case, a party injured will be left to his redress by action: *Id.*

CONFLICT OF LAWS. See *Warehouse Receipt.*

CONSTITUTIONAL LAW.

Conditional Pardon—Right to remand Prisoner without Hearing.—The Pub. Stats. c. 218, §§ 12–14, providing that, in any case in which the governor is authorized by the Constitution to grant a pardon, he may, with the advice of the council, upon the petition of the person convicted, grant a conditional pardon, and that, where the conditions of the pardon are violated, the convict shall be arrested, and the governor and council shall "examine the case of such convict, and, if it appears by his own admission or by evidence that he has violated the conditions of his pardon, the governor with the advice of the council shall order the convict to be remanded and confined for the unexpired term of his sentence," are constitutional; and the governor and council may order the convict to be so remanded and confined without notice to him, and without giving him an opportunity to be heard: *Kennedy's Case*, 135 Mass.

Impairment of the Obligation of a Contract—Reorganization of Corporation.—A provision in an act for the reorganization of an embarrassed corporation, which provides that all holders of the mortgage bonds who do not, within a given time named in the act, expressly dissent from the plan of reorganization, shall be deemed to have assented to it, and which provides for reasonable notice to all bondholders, does not impair the obligation of a contract, and is valid: *Gilfillan* v. *Union Canal Co.*, S. C. U. S., Oct. Term 1883.

CONTRACT.

Stipulation for Architect's Certificate—Waiver of.—Suit will not lie on a building contract for money payable upon an architect's certificate, without the production of such certificate or evidence that its production has been waived; *Byrne* v. *Sisters of Charity of St. Elizabeth*, 16 Vroom.

Waiver may be express or proved by acts and conduct of the party entitled to demand it. Less evidence of waiver is requisite when it clearly appears that the contract has been fully performed: *Id.*

CRIMINAL LAW.

Pleading—Waiver of Objection to Mode of Selecting the Grand Jury.—Where a defendant pleads not guilty to an indictment, and goes to trial without making objection to the mode of selecting the grand jury, the objection is waived; even though a law unconstitutional, or assumed to be unconstitutional, may be followed in making the panel. This is the true doctrine in cases where the objection does not go to the subversion of all the proceedings taken in empanelling and swearing the grand jury, but relates only to the qualification or disqualification of certain persons sworn upon the jury or excluded therefrom, or to

mere irregularities in constituting the panel: *United States* v. *Gale*, S. C. U. S., Oct. Term 1883.

EQUITY. See *Specific Performance.*

Accidental Omission of Seals from Specialty—Bonds of Municipal Corporation.—If commissioners authorized by statute to subscribe in the corporate name of a town for stock in a railroad company, and, upon obtaining the consent of a certain majority of taxpayers, to issue bonds of the town under the hands and seals of the commissioners, and to sell the bonds and invest the proceeds of the sale in stock of the railroad company, which shall be held by the town with all the rights of other stockholders, issue, without obtaining the requisite consent of taxpayers, to the railroad company, in exchange for stock, such bonds signed by the commissioners, but on which the seals are omitted by oversight and mistake; and the town sets up the want of seals in defence of an action at law afterwards brought against it by one who has purchased such bonds for value in good faith, and without observing the omission, to recover interest on the bonds; a court of equity, at his suit, will decree that the bonds be held as valid as if actually sealed before being issued, and will restrain the setting up of the want of seals in the action at law: *Bernard Township* v. *Stebbins*, S. C. U. S., Oct. Term 1883.

Correction of Agreement on the Ground of Mutual Mistake.—After many conversations, and after a draft agreement had been made, A., in 1870, in writing, granted to B. a license to make, use and sell, and vend to others to sell, an invention in defined districts. In 1873, B. discovered that the agreement gave him no exclusive rights, which it was the purpose of both parties to have done. He notified A., and A. at once offered to grant such right for the original consideration. In November 1873, B. refused to accept a new agreement, and took steps to terminate the existing one. A. thereupon sued B. for royalties claimed to be earned under it. B. filed a bill in equity, claiming that there was a mistake in the agreement, and praying to have it cancelled and A. restrained from prosecuting an action under it. *Held*, That there was no mistake between the parties as to the agreement made; that the minds of the parties met and an agreement was made, although the legal effect of the document which professed to express it was different from what was intended; that A. was not in default; and there was no ground for the relief prayed for: *Laver* v. *Dennett*, S. C. U. S., Oct. Term 1883.

EVIDENCE.

Right to refer to Memorandum.—Where a statement of facts alleged to have occurred a year previously is entered in a memorandum book, and the person making the entry brings suit involving the truth of the matters so stated, and while the suit is pending, the book becoming worn, he copies the statement into another book, but is unable, except as aided by the writing, to testify to material matters therein, he should not be permitted, if objection be made, to use such copy while testifying as a witness in the cause: *Lovell* v. *Wentworth*, 39 or 40 Ohio St.

Judicial Notice as to Incorporation of a City.—Where a city in this state is incorporated under the act in relation to cities, villages and

towns, the court will take judicial notice of that fact: *Potwin* v. *Johnson*, 108 Ill.

Action for Negligently causing Death—Proof of careful Habits of Deceased—Evidence as to Habits of Others.—Where a brakeman was killed while attempting to couple cars, no one being present or knowing how the accident occurred, in a suit by his personal representative to recover damages of the railway company, evidence of his prior habits as to care, prudence and sobriety is admissible, as tending to prove that the deceased was prudent, cautious and sober at the time of the injury. But such evidence would not be admissible if there were witnesses who saw the transaction, and can describe how the accident took place: *Chicago, Rock Island and Pacific Railway Co.* v. *Clark*, 108 Ill.

In an action by an administratrix to recover for causing the death of her intestate by negligence while engaged in coupling cars, evidence of the usual mode of coupling and uncoupling cars at the same place by others is inadmissible. What others did, or were in the habit of doing, does not tend to prove the issue as to due care by the deceased: *Id.*

Admissibility of Evidence of Parties—What is an Action by or against Administrators, &c.—A creditor of A. obtained judgment against him. He levied on capital stock in a corporation claimed by B. under an assignment from A., and in the original suit summoned B. as garnishee of A. to answer. Pending these proceedings A. died, and his administrator was substituted as defendant. B. and the administrator were offered as witnesses on B.'s behalf in regard to the transactions at the time of the assignment. *Held*, That the real issue was between the attaching creditor and B., and that both B. and A.'s administrator were competent witnesses on their own motion, notwithstanding the proviso in Sect. 838, Rev. Stat.: "That in actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court": *Monongahela Nat. Bank* v. *Jacobs*, S. C. U. S., Oct. Term, 1883.

EXECUTORS AND ADMINISTRATORS. See *Evidence.*

FENCE.

License to Build—Extent of.—A license to build a fence upon a division line between two adjoining tracts, will authorize a fence to be placed on the division line so as to occupy an equal space on each side of the mathematical line of division for a reasonable width, but will not authorize the erection of a fence which, like a worm or zigzag fence, is not built on the division line, but crosses it from side to side and encloses parts of the adjoining tracts: *Morton* v. *Reynolds*, 16 Vroom.

FOREIGN CORPORATION. See *Specific Performance.*

GUARDIAN AND WARD.

Suit by Guardian—Majority of Ward pending Suit.—Where an action is prosecuted by A., guardian of B., on an instrument payable

to "A., guardian of B.," the fact that the ward becomes of age pending the suit affords no ground to abate it: *Gard* v. *Neff*, 39 or 40 Ohio St.

HUSBAND AND WIFE. See *Surety.*

Divorce—Jurisdiction of Court—Non-resident Plaintiff.—This court has jurisdiction of a libel for divorce, brought by a husband residing in another state, for a cause of adultery occurring in this Commonwealth, where both parties then resided, and where the wife has since remained: *Watkins* v. *Watkins*, 135 Mass.

Loan by Wife to Firm in which Husband is a Member—Dissolution —Trust.—If a married woman lends money out of her separate estate to a partnership of which her husband is a member, and on the dissolution of which it is agreed between the partners that the partner other than the husband shall take the assets of the firm and pay all the liabilities and indemnify his partner against them, but no promise is made by the other partner to pay the debt to the wife, no trust is impressed upon the money so lent by her; and she cannot maintain a bill in equity against the two partners for the payment of the same: *Fowle* v. *Torrey*, 135 Mass.

INJUNCTION. See *Tax.*

Refusal when no Irreparable Mischief threatened.—The temporary interruption of the business of a city horse railway company for only three or four days, by moving a large house along the street lengthwise with the company's track, is not a case of irreparable damage, or such an injury but that an adequate remedy exists at law. And the further fact that the defendant proposes to move other houses over the same and other streets, when employed to do so, in view of the fact that such removals are of rare occurrence, and not likely to occur on the same street again for many years, and because it would be but a temporary interruption of the company's franchise, was held not to furnish sufficient equitable ground for decreeing a perpetual injunction: *The Fort Clark Horse Railway Co.* v. *Anderson*, 108 Ill.

LIMITATIONS, STATUTE OF.

Amendment after Expiration of Time.—Where, after the time limited by contract for bringing an action on a policy of insurance, an amendment is allowed, not changing the original cause of action or ground on which a recovery is sought, but merely changing the parties plaintiff by substituting another person as plaintiff, a plea setting up the limitation presents no defence, the suit having originally been commenced within the time limited: *Thomas* v. *Fame Ins. Co.*, 108 Ill.

But where some new cause of action has been introduced into a suit by amendment, against which the Statute of Limitations had run before making such amendment, the defendant will be entitled to present the bar of the statute as to such new claim or cause of action: *Id.*

MASTER AND SERVANT.

Liability for Negligence of Fellow-servant.—When not Affected by Statute.—A statute which provides that a bell or whistle shall be

placed on every locomotive engine, and shall be rung or sounded by the engineman or fireman sixty rods from any highway crossing, and until the highway is reached, and that "the corporation owning the railroad shall be liable to any person injured for all damages sustained" by reason of neglect so to do, does not make the corporation liable for an injury caused by negligence of the fireman in this respect, to a fellow-servant: *Randall* v. *Baltimore & Ohio Railroad Co.*, S. C. U. S., Oct. Term 1883.

Mortgage.

Absolute Conveyance with Agreement for Repurchase.—Where a debtor whose indebtedness is secured by deed of trust, conveyed, to avoid a threatened foreclosure, the mortgaged premises to his creditor by a quitclaim deed, containing a proviso that if he should pay a certain sum (being the amount due from him, with interest and back taxes), within one year, with interest thereon, the grantee should reconvey the premises to him, and the grantee also executed to the grantor a lease of the premises for one year, at a rental equal to the interest on the debt, payable monthly, which monthly rental, it was recited, was to be deemed and applied as interest, under the conditions of the quitclaim deed, it was *held*, that the transaction was but a mortgage for the payment of the indebtedness of the grantor, and was not an absolute sale and extinguishment of the prior indebtedness: *Bearss* v. *Ford*, 108 Ill.

Whether a deed for land is an absolute sale and conveyance, with an agreement for a repurchase by the grantor, or a mortgage to secure the payment of money, is a question of fact, depending upon the intention of the parties to it at the time of its execution: *Id.*

Municipal Corporation.

Liability for Insufficient Drainage.—A municipal corporation is not liable to an action for simply failing to provide drainage for surface water: *City of Springfield* v. *Spence*, 39 or 40 Ohio St.

Where a municipal corporation provided a system of drainage which at the time was amply sufficient, but by the improvement of lots by individual owners thereof, such drainage becomes insufficient to save vacant lots from overflow in time of severe rain storms, a purchaser of one of such vacant lots, who, with knowledge that the lot is subject to overflow at such times, erects thereon a building, cannot maintain an action against the city for damage caused by such overflow, but must protect his own property from the same: *Id.*

Police Power—Ordinance Prohibiting Sales of Liquor after certain Hours.—The act incorporating the borough of Washington gives power to the common council to pass ordinances for the peace and good order of the borough as they may deem expedient. An ordinance prohibiting sales of vinous, spirituous and malt liquors after ten o'clock at night and before four o'clock in the morning, is not an unreasonable exercise of such power in that place: *State* v. *Inhabitants of Borough of Washington*, 16 Vroom.

Nor will such an ordinance be adjudged to be faulty because it prohibits such sales by wholesale as well as retail dealers, nor because it

prohibits druggists from selling such liquors, during the prohibited hours, for use as a beverage: *Id.*

NEGLIGENCE. See *Evidence.*

NOTICE.

Record—Mortgage—Failure to show Amount of Debt.—Under the registry laws of this state the record of a trust deed which simply recites that the grantor had, on the same date of the deed, made his promissory note, payable to, etc., without giving its amount, will not charge subsequent *bona fide* purchasers, without actual notice, with knowledge of the amount for which the note was given: *Bullock* v. *Battenhousen*, 108 Ill.

If a mortgage is given to secure an ascertained debt, the amount of that debt should be stated; and if it is intended to secure a debt not ascertained, such data should be given respecting it as will put any one interested in the inquiry upon the track leading to a discovery. If it is given to secure an existing or a future liability, the foundation of such liability should be set forth: *Id.*

OFFICER.

Not affected for Insufficiency of Affidavit for Attachment.—A writ of attachment in proper form, with the seal of the court and everything else on its face to give it validity, is a sufficient protection to the officer executing it, althongh the affidavit on which it issued was fatally defective: *Matthews* v. *Densmore*, S. C. U. S., Oct. Term 1883.

PARTNERSHIP.

Dissolution—Acceptance by Creditor of Note of One Partner—Release.—If the holder of the promissory note of a firm, after its dissolution, accepts the note of one of the partners, payable at a future date, retaining interest for said time by discount, and agrees to release the other partner, no action on the firm note can be maintained. Such agreement may be implied from the acts of the parties: *First Nat. Bank* v. *Green*, 39 or 40 Ohio St.

PLEDGE. See *Broker.*

QUO WARRANTO.

Public Office—Keeper of Jail—Judgment.—The office of the keeper of the jail authorized by the statute to be erected on the county farm in Hudson county, is of a public nature, and an intrusion into such office is remediable by an information in the nature of a *quo warranto*: *State* v. *Meehan*, 16 Vroom.

The use of that procedure is extended by statute to a usurpation of any public office: *Id.*

Where it appears that an intrusion has been consciously wrongful, a part of the judgment will be a fine or a punishment: *Id.*

RELIGIOUS CORPORATION. See *Certiorari.*

REPLEVIN.

Goods Obtained by Defendant by Replevin against Third Person.—

That the defendant in an action of replevin obtained possession of the goods in controversy by virtue of a writ of replevin against a third person, in whose possession they were, does not affect the plaintiff's right to maintain the action, without a demand, if he is the owner of the goods, and entitled to the immediate possession of them: *Kelleher* v. *Clark*, 135 Mass.

Substitution of Bond for Property—Title of Plaintiff.—One who claimed a right to the possession of personal property by virtue of a lien, obtained possession thereof from the defendant as general owner or mortgagee, by giving a bond in an action in replevin against such owner or mortgagee. On the trial the jury found for the defendant, and judgment was rendered against the plaintiff for costs, but no damages was assessed against him for the value of the property. Subsequently the general owner or mortgagee, under his claim of title, retook the property and converted the same to his own use. In an action by the plaintiff in the replevin suit to recover damages for the conversion of the same, *Held*, 1. That the possession obtained by the proceedings in replevin, under a claim to a special interest therein by virtue of a lien, did not vest in the plaintiff a greater title or interest than he claimed in the action of replevin. 2. In such a case, the rule "that the replevin bond takes the place of the property replevied to the extent of the interest of defendant in replevin," does not operate so as to vest in such plaintiff the absolute ownership in the property, nor create in him a new and independent title greater than the one claimed by him in replevin. 3. Possession obtained by a plaintiff in replevin who claims a special ownership and possession as against one claiming possession as general owner, vests in the plaintiff the title he claims, and as against the general owner, the bond takes the place of the property to an extent not exceeding the interest claimed by the plaintiff: *Lugenbeel* v. *Lemert*, 39 or 40 Ohio St.

Savings Banks.

Treasurer—Not Authorized to Assign Mortgage.—The treasurer of a savings bank, by virtue of his office merely, has no implied authority to assign to a purchaser a mortgage belonging to the bank; and the fact that, by verbal consent and under direction of the investment committee of the bank, he had assigned other mortgages relating to other estates, is not sufficient to give him a general authority to assign mortgages, or to entitle the assignee to infer that he had such authority, even if this fact was known to the assignee: *Holden* v. *Phelps*, 135 Mass.

Sheriff.

Failure to deliver Mortgage taken in Partition—Payment to Attorney.—A person is liable for his failure to deliver to the proper parties the money paid him for a note and mortgage taken by him as sheriff during his term of office, for the deferred payment of purchase-money of land sold on partition, although no special order of distribution thereof had been made by the court, and the money was paid him after the expiration of his term of office: *Calvin* v. *Bruen*, 39 or 40 Ohio St.

Such liability is not discharged by paying the money to the attorney who procured the partition sale, and who was not specially authorized

to receive the same, either by the parties entitled thereto or by order of court: *Id.*

Surety.

Indemnity by Wife of Principal to one Surety—Right of Others to Share.—The rule that where a principal indemnifies one of several sureties, each is entitled to share therein, does not apply where such indemnity is furnished by a stranger for the sole and exclusive benefit of one: *Leggett* v. *McClelland*, 39 or 40 Ohio St.

When the wife of the principal mortgages her separate real estate for the exclusive use and benefit of one of her husband's sureties, such mortgage does not inure to the benefit of his co-sureties: *Id.*

Specific Performance.

Foreign Corporation—Suit against Citizen and another Foreign Corporation to obtain Delivery of Bonds.—A foreign construction company cannot maintain a bill in equity in this Commonwealth against a foreign railroad corporation and a citizen of this Commonwealth, to enforce specific performance of a covenant in a contract for the delivery of bonds and certificates of stock in payment of work to be performed by the construction company in a foreign state, and to restrain by injunction the citizen of this Commonwealth from disposing here of shares of stock and bonds of the railroad company, alleged to have been delivered to him in violation of the plaintiff's rights, although the railroad corporation has an office in this Commonwealth for the transfer of shares of its capital stock, and has appeared by attorney in the suit: *Kansas & Eastern Railroad Cons. Co.* v. *Topeka, S. & W. Railroad Co.*, 135 Mass.

Tax.

Injunction to Restrain—When not Granted.—A court of equity will not entertain a bill to restrain the collection of a tax, except in cases where the tax is unauthorized by law, or assessed upon property not subject to taxation, or where the assessment or levy has been made without legal authority, or fraud has occurred. For all other grounds the party must be left to his remedy at law, if any: *The Wabash, St. Louis & Pacific Railway Co.* v. *Johnson*, 108 Ill.

Warehouse Receipt.

Conflict of Laws—Endorsement in one State of Receipt for Goods in Another—Effect of Endorsement on Title to Goods.—The effect of the endorsement and delivery, in another state, of a private warehouse receipt for goods stored in this state, is to be determined by the law of this state: *Hallgarten* v. *Oldham*, 135 Mass.

The endorsement and delivery, by the bailor, of a receipt for goods stored in a private warehouse, in which the bailee undertakes to deliver the goods to the bailor upon the payment of charges, but not to hold or deliver to his order, do not pass the title in the goods to the indorsee, as against a creditor of the bailor, who attaches the goods before notice of such endorsement has been given to the bailee: *Id.*