marriage duly solemnized *in facie ecclesiæ*, and therefore that they confer upon the wife the right of dower."

If the written contract entered into between these parties in the presence of witnesses, one of whom was a clergyman, constitutes, as we hold it does, a valid marriage *per verba de præsenti* it can make no difference if their previous relations were unlawful; nor would the fact that either party afterwards denied the marriage be sufficient to annul the contract.

The defendant derived title from Henry C. Mathewson. The evidence goes to prove that a large part of the land, at the time it was deeded was covered by tide-water, and therefore it is claimed the title was in the state: *Bailey* v. *Burges*, 11 R. I. 330; but this would not apply to the remaining portion, in which we hold the complainant entitled to dower as the lawful widow of Henry C. Mathewson. Rev. Stat. of R. I., 1857, ch. 202, s. 1.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

COURT OF ERRORS AND APPEALS OF MARYLAND.[3]

SUPREME COURT COMMISSION OF OHIO.[4]

SUPREME COURT OF WISCONSIN.[5]

BANK.

When not responsible for Stock Certificate fraudulently issued by Cashier.—A. lent money to B. for his own use, and as security for its repayment, and on his false representation that he owned, and had transferred to A. a certificate of stock to an equal amount in a national bank of which B. was cashier, received from him such a certificate, written by him in one of the printed forms which the president had signed and left with him to be used if needed in the president's absence, and certifying that A. was the owner of that amount of stock "transferable only

[1] Prepared expressly for the American Law Register, from the original opinions. The cases will probably appear in 111 U. S. Reports.

[2] From Hon. N. L. Freeman, Reporter; to appear in 109 Ill. Reports.

[3] From J. Shaaf Stockett, Esq., Reporter; to appear in 61 Md. Rep.

[4] From E. L. DeWitt, Esq., Reporter; the cases will probably appear in 40 or 41 Ohio St. Reports.

[5] From Hon. O. M. Conover; to appear in 58 or 59 Wis. Rep.

on the books of the bank on the surrender of this certificate," as was in fact provided by its by-laws. B. did not surrender any certificate to the bank, or make any transfer to A. upon its books; never repaid the money lent, and was insolvent. The bank never ratified, or received any benefit from the transaction: *Held*, that A. could not maintain an action against the bank to recover the value of the certificate: *Held*, also, that the action could not be supported by evidence that in one or two other instances stock was issued by B. without any certificate having been surrendered; and that shares, once owned by B., and which there was evidence to show had been pledged by him to other persons before the issue of the certificate to A., were afterwards transferred to the president, with the approval of the directors, to secure a debt due from B. to the bank, without further evidence that such issue of stock by B. was known or recognised by the officers of the bank: *Moores* v. *Citizens' Nat. Bank of Piqua*, S. C. U. S., Oct. Term 1883.

Bills and Notes.

Agreement to give Time.—Indefinite Indulgence.—Right to Sue.—Discharge of Endorsers.—After a promissory note had been protested, the maker asked the holder "for additional time as a favor." The holder said that he "was willing to show any reasonable favor." The maker then said that he would give paper drawn on his customers, and did so when he got it. No time for the indulgence was named: *Held*, 1. As the time granted was not specified, and the arrangement furnished no means for determining it, the holder retained the right to sue the maker at pleasure. 2. The fact that the maker afterwards delivered to the holder drafts on his customers, did not cure this defect. 3. As the proceeds of the drafts did not pay the note, the endorsers were not discharged: *Edwards* v. *The Bedford Chair Co.*, 40 or 41 Ohio St.

Certiorari.

Office of Writ—How far discretionary—Who may apply.—At common law the writ of *certiorari* was used principally in criminal cases, to remove them from an inferior tribunal to the Court of King's Bench for trial. The writ went as a matter of right on the application of the Crown, but when made by the defendant he was required to show cause. As to a private person, the writ was not a writ of right, but cause had to be shown by the petition: *Board of Supervisors* v. *Magoon*, 109 Ill.

The writ was also used to bring before the Court of King's Bench the record of commissioners of the poor, and other rates, and in cases where an individual was sued in a court having no jurisdiction, and no appeal or writ of error was given by law, and in cases where the jurisdiction had been exceeded, or it appeared that the proceeding was against the law: *Id.*

A person who prosecuted a petition to alter a road over his land before the commissioners of highways, and was present at every step taken, will not be allowed by *certiorari* to question the legality of the proceeding in case the decision is adverse to him. If he acts in the matter as though the proceeding was in conformity to the law, he will be bound by the acts, and estopped from questioning its legality or regularity: *Id.*

COMMON CARRIER. See *Negligence.*

Railroad—Hauling Cars of another Company over its Line—Liability for loss.—A railway company engaged in the transportation of freights for hire as a common carrier, is bound to transport or haul upon its road the cars of any other railroad company, when requested so to do, and will hold the same relation as a common carrier to such cars that it does to ordinary freight received by it for transportation, and in case of loss will be held to the same measure and character of liability to the owner of the cars so received for transportation, as would attach in respect to any other property: *Peoria and Pekin Union Railway Co.* v. *Chicago, Rock Island and Pacific Railway Co.*, 109 Ill.

In this case the defendant railroad company's principal business was switching cars for other railroad companies. Its tracks were connected with those of the other railroads by a transfer switch, and with mills, elevators and manufactories in and around the city where its business was transacted. The plaintiff corporation brought a car, loaded with freight, to the city, and placed the same on the transfer track, with orders to the defendant to ship the same to a certain distillery, to which place it was taken and unloaded. When unloaded it was taken by the defendant, without orders from the plaintiff, to a sugar refinery, to be loaded, and then switched to the transfer track for shipment. On the same day the sugar refinery was burned, and also the car: *Held*, that the defendant was liable, as a common carrier, to the plaintiff, for the value of the car so destroyed: *Id.*

CORPORATION.

Enforcement of liability of stockholder—Failure to serve process on Stockholder—Judgment.—In an action by a creditor of an insolvent corporation to enforce the personal liability of its stockholders, where the stockholders were not all before the court, and it did not appear that those not served with process could not have been served it was error to assess upon the stockholders served the whole amount of the indebtedness of the corporation: *Bonewitz* v. *Van Wert County Bank*, 40 or 41 Ohio St.

In such action it was error to give judgment for some of the stockholders releasing them from assessment, upon the finding that they did not own stock at the time the liability sought to be enforced accrued: *Id.*

Liability of Corporation of one State doing business in another to be sued in latter—Executors and Administrators—Removal of Causes.—A corporation of one state doing business in another under a law of the latter which compels it to always have there a resident attorney upon whom all lawful process against the company may be served, may be sued in the latter state on any simple contract (as a policy of insurance not under seal) just as if that state were the only state in which the suit could be brought. And if letters of administration must be taken out for the purpose of the suit, the liability of the corporation to be sued in the latter state makes such simple contract debt assets there for the purpose of founding administration: *New England Mutual Life Ins. Co.* v. *Woodworth*, S. C. U. S., Oct. Term 1883.

But in such a case as above the foreign corporation does not lose its right to remove a suit brought against it in the state court, into the United States Court: *Id.*

COURT.

Judicial Notice—Land located in Lake.—While the court takes judicial notice of many things, such as the division of the state into counties, and of the latter into townships, according to the government surveys, it cannot take such notice of the fact that land located under scrip is in a lake which is a navigable body of water, and hence not subject to location: *Wilcox* v. *Jackson*, 109 Ill.

CRIMINAL LAW.

Voluntary Intoxication no defence—Temporary Insanity—Opinions of Witnesses not Experts.—Temporary insanity produced immediately by intoxication, furnishes no excuse for the commission of a homicide or other crime, but a fixed insanity does. Whether a party committing a crime is under the influence of a fixed insanity, or a temporary one induced immediately by intoxication, is a question of fact for the jury, and their verdict will not be disturbed unless it is clearly against the evidence: *Upstone* v. *The People*, 109 Ill.

While it is true there must be a joint union of act and intention or criminal negligence to constitute a criminal offence, yet when without intoxication the law will impute to the act a criminal intent—as, in the case of a wanton killing of another without provocation—voluntary drunkenness is not available to disprove such intent, so as to reduce the crime from murder to manslaughter: *Id.*

Voluntary intoxication furnishes no excuse for crime committed under its influence, even if the intoxication is so extreme as to make the author of the crime unconscious of what he is doing, or to create a temporary insanity: *Id.*

On the trial of one for crime, the opinions of neighbors and acquaintances of the defendant, who are not experts, may be given as to his sanity or insanity, founded on their actual observations: *Id.*

Appeal from Justice of the Peace—Jurisdiction.—If a judgment of conviction has been pronounced by a justice of the peace, upon a valid complaint, charging an offence which he had jurisdiction to hear, try and determine, a regular appeal by the defendant from such judgment confers jurisdiction upon the appellate court even though the justice may have committed errors which divested his jurisdiction: *State* v. *Boncher*, 58 or 59 Wis.

Bastardy Proceeding—Evidence.—A bastardy proceeding is *quasi*-criminal, and the defendant must be proved beyond a reasonable doubt to be the father of the child before he can be compelled to contribute to its support: *Van Tassel* v. *The State*, 58 or 59 Wis.

A finding by the court in such a case, that the defendant is guilty "upon a preponderance of the evidence, but not beyond a reasonable doubt," is equivalent to an acquittal: *Id.*

DAMAGES. See *Negligence.*

Exemplary Damages—Counsel Fee.—Exemplary damages may be allowed, where an agent, by false and fraudulent representations to his principal, obtains possession of his principal's goods and converts them to his own use: *Peckham Iron Co.* v. *Harper*, 40 or 41 Ohio St.

The jury, in such a case, in estimating the damages, may include the plaintiff's reasonable counsel fees as an item of compensation: *Id.*

Remote result—Disease caused by Injury—Predisposition to Disease.—The female plaintiff having testified that shortly after the injury complained of, a cancer was developed at the place on her person where she was injured, and medical testimony having been offered on both sides of the question, whether the cancer was the result of the injury, it was *held*, 1. That it was for the jury to determine, as a matter of fact, whether the cancer did result from the injury received. And in determining this question, they were required to consider all the circumstances and coincidences of the case in connection with the testimony of the professional witnesses; 2. That if the jury believed from all the evidence before them that the cancer was the natural and proximate consequence of the blow received, by the negligent act of the defendant, it would properly form an element to be considered in awarding damages for the pain and injury suffered by the female plaintiff; 3. That the fact that she may have had a tendency or predisposition to cancer, could afford no proper ground of objection to her claim. The case of *Hobbs and Wife* v. *The London and Southwestern Railroad Co.*, L. R., 10 Q. B. 111, distinguished from this case, without intimating that this court would accept that decision as an authority in any case: *Baltimore City Pass. Railway Co.* v. *Kempt*, 61 Md.

Ejectment.

Tax Deed—Recording.—Until a tax deed is properly recorded, the grantee therein has no such right to the possession of the premises as will enable him to maintain ejectment therefor: *Hewitt, Jr.*, v. *Week*, 58 or 59 Wis.

Equity.

Cancellation of Forged Bill—Discovery tending to Criminate Defendant.—A court of equity will vacate a forged paper or direct its surrender for destruction, when the forgery or fraudulent character of the paper is established by proof. A demurrer, therefore, which denies the right to an injunction restraining the defendant from selling, assigning or otherwise disposing of a certain single bill, purporting to be the single bill of the complainant, and alleged by him to be a forgery, is too broad and cannot be sustained: *Dennison* v. *Yost*, 61 Md.

Where a bill calls upon the defendant to answer charges which impute to him a punishable offence against the law, he may assert his privilege to be protected from being compelled to answer anything that may criminate himself, by a demurrer to the bill: *Id.*

Errors and Appeals.

Order to Answer.—An appeal will not lie from an order requiring the defendant to answer by a certain day, such order not being final: *Dennison* v. *Wantz*, 61 Md.

Evidence.

Gratuitous Services—Burden of Proof—Evidence of Custom.—The question being whether certain services were rendered gratuitously, evidence that a third person had been paid, or that it was customary to

pay," for similar services, is irrelevant: *Kelly* v. *Houghton*, 58 or 59 Wis.

When a party admits that services for which a claim is made against him were rendered and were worth the sum claimed, but alleges that they were rendered gratuitously, the burden of proof is upon him to show that they were so rendered: *Id.*

Parol to contradict Written Contract—Rule as to Strangers to Instrument.—The rule that the terms of a written contract must be shown by the writings alone, and that oral testimony exhibiting the various negotiations between the parties leading up to its consummation is to be excluded, applies only as between the parties to written instruments, and those claiming under them. Strangers to a written instrument, when their rights are concerned, are at liberty to show by parol evidence that the contract of the parties is different from what it purports to be on the face of the writing: *Washburn & Moen Mfg. Co.* v. *Chicago Galvanized Wire Fence Co.*, 109 Ill.

Thus, where a company claiming a patent upon an invention, settled and adjusted a suit brought by it against another for an infringement of the patent, and gave a license to manufacture under the patent upon payment of a certain royalty by the licensee, the contract providing that in case of any subsequent licenses being granted at a less royalty, the first licensee should only pay such reduced rate; on a bill by the latter to enforce such agreement, he was allowed to show by parol that a subsequent contract of settlement with another party, which on its face appeared to be a grant of a license free of royalty, in payment of the price for certain other patents transferred to the the licenser, was but a contrivance and device to cover up and conceal the fact of a grant of a license without royalty, or at a reduced rate: *Id.*

EXECUTORS AND ADMINISTRATORS. See *Corporation.*

FRAUDS, STATUTE OF.

Agreement to be performed in One Year.—A verbal agreement to construct a section of a road within a year and twenty days from the date of contract was made by competent parties. The work *could* be completed within the year, and the twenty days was a precaution against contingencies: *Held*, this was not an "agreement that is not to be performed within the space of one year from the making thereof;" and an action thereon is not prohibited by the Statute of Frauds: *Jones* v. *Pouch*, 40 or 41 Ohio St.

HUSBAND AND WIFE.

Settlement by Husband on Wife—Direct conveyance to her.—A husband may settle a portion of his property upon his wife, if he does not thereby impair the claims of existing creditors and the settlement is not intended as a cover to future schemes of fraud. His direct conveyance to her, when the fact that it is intended as such settlement is declared in the instrument, or otherwise clearly established, will be sustained in equity against the claims of creditors. The technical reasons of the common law growing out of the unity of husband and wife which preclude a conveyance between them upon a valuable consideration, will not in such a case prevail in equity and defeat his purpose: *Moore* v. *Page*, S. C. U. S., Oct. Term 1883.

INTOXICATION. See *Criminal Law.*

MUNICIPAL CORPORATIONS.

Bonds of—Effect of Recitals in, and Certificates thereon.—Bonds were issued by a county in excess of ten per cent. of the assessed valuation of such county, which was the limit of the amount it had been legally authorized to issue. The bonds contained recitals that they were issued in pursuance of an election and under an Act of Assembly and the state constitution, and the required certificates of certain officers were endorsed on said bonds. *Held*, that a purchaser, the amount of the bonds issued being known, could only protect himself by an examination of the assessment, "a public record equally accessible to all intending purchasers of bonds," and by calculation determining whether the issue of bonds was within the limit: *Dixon County* v. *Field*, S. C. U. S., Oct. Term 1883.

Revocation of License—Certiorari—Costs.—Upon *certiorari* to review the action of a common council in revoking a license without notice to the licensee, the question is whether such proceeding was according to law, and not whether the license had been so violated as to justify a revocation: *Common Council of Oshkosh* v. *State*, 58 or 59 Wis.

The fact that such license expired about the time the proceedings were reviewed on the *certiorari* does not affect the right of the licensee to have the revocation set aside: *Id.*

The common council, in revoking a license, represents the city, and where it has acted in good faith, though under a mistake as to its powers, the costs on a proceeding by *certiorari* to review its action may be adjudged to be paid by the city: *Id.*

NEGLIGENCE. See *Damages.*

Fire from Threshing Machine—Contributory Negligence—Special finding of Jury.—The defendants, who had contracted to thresh the plaintiff's grain, put in operation their steam-engine (used to furnish power to the threshing-machine) within four rods and upon the windward side of several stacks of grain, on a hot, dry day when the wind was blowing a gale. The stacks were destroyed by fire communicated from the engine. *Held*, that, although the engine was furnished with all proper appliances to prevent the escape of fire, the defendants were guilty of negligence: *Martin* v. *Bishop*, 58 or 59 Wis.

But the plaintiff, whose employees were assisting the defendants, having directed the placing of the engine, and, though present and knowing the danger, not having objected when it was put in operation, was guilty of contributory negligence. The facts being undisputed, a special finding of the jury that the plaintiff was not guilty of negligence, *held* to be but erroneous conclusion of law: *Id.*

Contributory Negligence—Care bestowed after Injury—Remote Damage.—A plaintiff cannot hold the defendant responsible for an injury to himself caused even in part by his own fault in failing to use ordinary care or ordinary judgment, or for any injury not resulting from the fault of the defendant, but caused by some new intervening cause not incident to the injury caused by the defendant's wrongful act or omission of duty: *Pullman Palace Car Co.* v. *Bluhm*, 109 Ill.

In a case where the plaintiff's arm has been broken from the negligent conduct of the defendant, and the plaintiff exercises ordinary care to keep the parts together, and uses ordinary care in the selection of surgeons and doctors, and nurses, if needed, and employs those of ordinary skill and care in their profession, and still, by some unskilful or negligent act of such surgeon, doctor or nurses, the bones fail to unite, thereby making a false joint, the defendant, if responsible for the breaking of the arm, will be liable in damages for the unfavorable result of the injury: *Id.*

Contributory—Stepping from Train while in Motion.—A young man, in vigorous health, strong, active, and in the full possession of all his physical and mental faculties, having a valise containing clothing, in his right hand, and a basket of provisions on his left arm, attempted in broad daylight, to leave a railway train while it was moving slowly, the distance from the lower step of the car to the platform being only eighteen inches, and in doing so was seriously injured. In an action of damages against the railroad company, it was *held*, that under the circumstances, in voluntarily stepping from the car when it was in motion, and when he had not the free and unrestricted use of his hands and arms, the plaintiff was not guilty of such negligence as would justify the court in taking the case from the consideration of the jury: *Cumberland Valley Railroad Co.* v. *Maugans*, 61 Md.

Contributory Negligence—When no Excuse.—Although the plaintiff may have been guilty of negligence, and such negligence may, in fact, have remotely contributed to the production of the accident, yet, if the defendant could, in the result, by the exercise of reasonable care and diligence, in view of the circumstances of the case, have avoided the accident, the plaintiff's negligence, being the more remote cause, will not excuse the defendant: *Kean* v. *Baltimore & Ohio Railroad Co.*, 61 Md.

If the plaintiff, who was injured by the alleged negligence of the railroad company, was, in fact, drunk, and failed to observe the reasonable precautions to avoid danger to himself while in the act of crossing the defendants' road tracks, or while upon the tracks of the road, though improperly there, and under circumstances to constitute negligence on his part, yet, if the defendants' servants in charge of the train, after discovering the perilous situation of the plaintiff, could, by the exercise of reasonable care and diligence, have avoided the accident, they were bound to do so. If they possessed knowledge of the plaintiff's situation, and failed to make proper and reasonable exertions whereby he could have been saved, the defendant would be liable, though it was by reason of the negligence or drunken condition of the plaintiff that he was found in the situation of danger. In such case, their failure to use due care and exertion would constitute negligence, which would form the direct and proximate cause of the injury: *Id.*

Officer.

Responsibility of Sureties on Official bond for wrongful taking under an attachment of Goods of Third Party.—The taking of goods, upon a writ of attachment, into the custody of the marshal, as the officer of the court that issues the writ, is, whether the goods are the property of the

defendant in the writ or of any other person, an official act, and therefore, if wrongful, a breach of the bond given by the marshal for the faithful performance of the duties of his office, and his sureties are liable: *Lamon* v. *Feusier*, S. C. U. S., Oct. Term 1883.

PATENT.

When Re-issue is too broad Original Patent cannot be revived by Disclaimer.—Where a patentee, who has assigned his patent, with the consent of his assignee applies for a re-issue, and in support of his application makes an affidavit that he believes that, by reason of an insufficient or defective specification the original letters patent are inoperative or invalid, and a re-issue is thereupon obtained, which is void by reason of being too broad, the original letters patent cannot be revived by a disclaimer of all the charges made in the re-issued patent. This could be done only, if at all, by surrender of the re-issued patent and the grant of another re-issue: *McMurray* v. *Mallory*, S. C. U. S., Oct. Term 1883.

PUBLIC POLICY.

Agreement as to Location of Railroad.—An agreement for the location of the route of a railroad at a particular intermediate place is not *per se* void as against public policy: *B., O. & C. Railroad Co.* v. *Ralston*, 40 or 41 Ohio St.

RAILROAD. See *Common Carrier; Negligence; Public Policy.*

Construction of Ordinance requiring a Fence along the Line of Road. The right of way through Chicago was granted to a railroad by an ordinance requiring it to build a suitable fence "of such height as the common council may direct:" *Held*, that the obligation of the railroad to build the fence was absolute, and that the right reserved to the council was only to give specific directions if it saw proper: *Hayes* v. *Mich. Cent. Railroad Co.*, S. C. U. S. Oct. Term 1883.

REMOVAL OF CAUSES. See *Corporation.*

SALE.

Conditional Sale—Right of Property.—S. S. & Co. sold and delivered a threshing-machine to K. upon the conditions: 1. That the title, ownership or possession of the machine should not pass from them to K. until the notes given for the purchase price should be paid in full. 2. That S. S. & Co. should have power to declare the notes, so given, due at any time they should deem the debt insecure, and to sell the machine at public or private sale and apply the proceeds upon the unpaid balance of the purchase price. *Held*, 1. That under the first condition the property in the machine did not pass to K. until he had paid the purchase price. 2. That the right to sell the property and apply the proceeds, as provided in the second condition, did not divest the sellers of their right of property reserved in the first condition: *Call* v. *Seymour*, 40 or 41 Ohio St.

SURETY. See *Officer.*

TAX. See *Ejectment.*