a statute creating a railroad commission with power to regulate freight tariffs. Subsequently by a supplemental act the legislature confined the operation of this statute to persons and property transported from one place to another within the state, and to persons and freight transported from a place without the state to a place within the state, and from a place within the state to a place without the state.

The Illinois Central Railroad Company, was an Illinois corporation leasing and operating the Chicago, St. Louis and New Orleans Railroad, extending from Cairo, Illinois to New Orleans, Louisiana. This latter corporation had been created by the legislatures of Louisiana, Mississippi, Tennessee and Kentucky as a continuous line, and had become the purchaser of certain other railroad corporations. As a condition upon which the legislature of Mississippi had granted to the Chicago, St. Louis and New Orleans Railroad Company corporate powers, it was required that it should pay and it did pay to the state the indebtedness of the corporations purchased by it as aforesaid, and under said grant of corporate powers, the said corporation was expressly given the right previously granted to the purchased corporations, "to adopt, establish and change at pleasure a tariff of charges." The Illinois Central Railroad filed a bill setting forth these facts, and an injunction was granted restraining the commissioners from interfering with it in the management of its road. The opinion was delivered by Judge HILL, who bases his decision first on the ground that the right granted to the corporation to adopt, establish and change a tariff of charges could not be interfered with without impairing the obligation of the contract, and secondly, on the ground that even in its modified form, the statute was unconstitutional as a regulation of commerce, his views on this subject being substantially the same as those of Judge HAMMOND above quoted.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

COURT OF ERRORS AND APPEALS OF MARYLAND.[2]

SUPREME COURT OF MISSOURI.[3]

COURT OF ERRORS AND APPEALS OF NEW JERSEY.[4]

SUPREME COURT OF RHODE ISLAND.[5]

ACTION.

Fraud—Joint Action for Relief.—Where partners having distinct interests have been made the victims of a fraud, the fact that the fraud

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

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

[3] From T. K. Skinker, Esq., Reporter; to appear in 78 Mo. Rep.

[4] From Hon. John H. Stewart, Reporter; to appear in 11 N. J. Eq. Rep.

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

was contrived against them all and the same means were used to deceive them all, will not entitle them to maintain a joint action for relief, unless it was through a joint transaction that the fraud was accomplished: *Levering* v. *Schnell*, 78 Mo.

Non-survival of Action for Personal Injuries—Inn-keepers—Action for Injury to Guest.—An action for injuries to the person does not survive as against the executor of the wrongdoer: *Stanley* v. *Bircher*, 78 Mo.

The obligation resting upon an inn-keeper to keep his guest safe, is one imposed by law and not growing out of contract, and for violation of it the action is an action on the case for the injury sustained, and not for breach of contract: *Id.*

AGENT.

Undisclosed Principal—Suit by.—Where a contract not under seal is made with an agent in his own name for an undisclosed principal, either the agent or the principal may sue upon it: *Balto. Coal Tar & Manufacturing Co.* v. *Fletcher*, 61 Mo.

But if the principal sues upon a contract made with an agent in the name of the latter, the defendant is entitled to be placed in the same position at the time of the disclosure of the principal as if the agent had been the real contracting party: *Id.*

ARBITRATION.

Award—When binding—Ratification—Witness.—If an award is broader than the submission, and either constitutes one entirety or its several parts are so connected as to be conditional and dependent upon one another, it will be void; but if one part is complete in itself, and is separable from and independent of the rest and that part is covered by the submission, it will be upheld, while the rest will be rejected; but even that part not within the submission will become binding if accepted by the parties: *Ellison* v. *Weathers*, 78 Mo.

No new consideration is necessary to uphold a subsequent ratification of an unauthorized award: *Id.*

An arbitrator is not a competent witness to impeach his own award: *Id.*

BILLS AND NOTES.

Promissory Note—Contingent Promise—Negotiability.—A promissory note bore upon its face a statement that it was issued as collateral to the makers' draft accepted by a third party. In an action against the indorsers of this note in their character of indorsers: *Held*, that the undertaking of the makers was a contingent one; that the amount due on the note at its maturity was uncertain; that the note was not negotiable, and that the indorsers, as indorsers, were not liable: *American National Bank* v. *Sprague*, 14 R. I.

Promissory Note—Reservation of right to pay in instalments—Negotiability.—The reservation in a promissory note of the "right to pay this note before maturity in instalments of not less than five per cent. of the principal thereof at any time the semi-annual interest becomes payable," does not render the note uncertain as to amount or time of payment, and does not prevent the note being negotiable: *Riker* v. *Sprague Mfg. Co.*, 14 R. I.

If the time of payment named in the note must certainly come, although the precise day may not be specified therein, it is sufficiently certain as to time to be negotiable: *Id.*

The indorsers of a promissory note formally and generally waived in writing demand upon the maker and notice to themselves of non-payment, and filed this waiver with the trustee and mortgagee of a mortgage deed securing the note. Subsequently, in an action against the indorsers, the plaintiffs holders of the unpaid note set out in their declaration this waiver, which had never been revoked: *Held*, that the plaintiffs were entitled to recover without offering proof of protest of the note: *Id.*

COMMON CARRIER. See *Negligence.*

Action against, for Goods destroyed by Fire, where there was an Insurance which has been paid—Measure of Damages.—An insurance company having paid the loss suffered by the insured in consequence of a fire for which a common carrier was also answerable to him, may sue the carrier in his name to its use, and the measure of damages is the full value of the goods destroyed. The right of the insurance company is worked out through the rights of the insured: if only part of the loss has been paid by the insurer, the insured is entitled to the residue, and the carrier cannot set up the insurer's payment of his part of the loss as a partial satisfaction: *Mobile & Montgomery Railroad Co.* v. *Jurey*, S. C. U. S., Oct. Term 1883.

CONFLICT OF LAWS. See *Constitutional Law; Contract; Parent and Child.*

Right of State Court to issue habeas corpus for and discharge Prisoner confined in violation of Constitution and Laws of the United States.—Subject to the exclusive and paramount authority of the national government, by its own judicial tribunals, to determine whether persons held in custody by authority of the courts of the United States, or by commissioners of such courts, or by officers of the general government acting under its laws, are so held in conformity with law, the states have the right, by their own courts, or by the judges thereof, to inquire into the grounds upon which any person, within their respective territorial limits, is restrained of his liberty, and to discharge him, if it be ascertained that such restraint is illegal, and this, notwithstanding such illegality may arise from a violation of the constitution and laws of the United States: *Robb* v. *Connolly*, S. C. U. S., Oct. Term 1883.

CONSTITUTIONAL LAW.

Statute forbidding non-residents to catch Fish—Enforcement, in another State, of Contract in violation of.—The statute of the State of Virginia, Code of 1873, cap. 100, sec. 4, which forbids non-residents to catch fish for the manufacture of manure and oil, and to manufacture manure and oil from fish caught within the waters of that State, is not in violation of Article IV. sec. 2, of the constitution of the United States: *Chambers* v. *Church*, 14 R. I.

A contract to be executed wholly in Virginia in violation of this statute will not be enforced in Rhode Island. Nor can a bill in equity

be sustained in Rhode Island for an account of profits of such a contract which has been executed: *Id.*

Provision for Cumulative Voting—When not Retroactive—Impairing Charter of Corporation.—The intent to give a retrospective operation to a law must be clearly expressed in order that it may receive such a construction; and this is equally as true of constitutional provisions as of statutes. So, where a legislative charter provided that directors of the corporation should be elected by vote of stockholders, allowing one vote for every share, and also provided that the legislature should have no power to alter, suspend or repeal the charter, and subsequently a constitutional provision was adopted providing in general terms for cumulative voting at all elections of corporation directors; *Held*, that as there was nothing in this provision specially applicable to the corporation in question, and as there were other corporations in existence when the constitution was adopted to which it could apply, in addition to those which might thereafter be incorporated, it would be held not to operate upon this particular corporation: *State* v. *Greer*, 78 Mo.

The right of corporators to vote at elections for directors, is a property right, and if the mode of voting is prescribed by an irrepealable charter, it is protected by that provision of the constitution of the United States which prohibits the states from passing laws impairing the obligation of contracts, so that the State cannot interfere with it either by constitutional or legislative enactment: *Id.*

CONTRACT.

Stock-Broking Contracts—Dealing on Margins—Not enforceable, although valid in State where made.—Contracts for speculations in stocks upon margins, when the broker and the customer do not contemplate or intend that the stock purchased or sold shall become or be treated as the stock of the customer, but the real transaction is a mere dealing in the difference between prices—that is, in the payment of future profits or losses, as the event may be—are contracts of wager, dependent on a chance or casualty. Such contracts, if made in this State, are unlawful, and securities given therefor are void by force of the provisions of "the act to prevent gaming:" *Flagg* v. *Baldwin*, 11 N. J. Eq.

Such contracts, though made in another state, where they are to be presumed to be lawful and enforceable, will not be enforced here—at least against residents and citizens of this State—because their enforcement would violate the plain public policy of this State on the subject of gambling and betting evinced by the statute above mentioned. In this respect, such contracts are excepted from the rule of comity which requires the enforcement by the courts of one state of contracts made in another, if valid by the *lex loci contractus*: *Id.*

CORPORATION. See *Constitutional Law.*

COSTS.

Exceptions to Master's Report.—A party who succeeds in a substantial particular, on exceptions to a master's report, is, as a general rule, entitled to his costs in such proceeding: *Sanford* v. *Clarke*, 11 N. J. Eq.

DEBTOR AND CREDITOR. See *Equity.*

DECEDENTS' ESTATES. See *Will.*

EQUITY. See *Costs.*

Bill by Creditor to Subject Debtor's Chose in action to Payment of Debt—When not Maintainable.—A judgment creditor in the absence of fraud, trust or other ground for equitable relief, and when no statute gives equitable jurisdiction, cannot by proceedings in equity subject a *chose* in action of his debtor to the payment of his judgment: *Green* v. *Keene*, 14 R. 1.

Hence, when a judgment debtor owned letters patent and arranged with third parties to do business under these letters and to pay to his wife the profits due him under the arrangement; there being no fraud on the part of these third parties, and the payments to the wife being in accordance with a direction given by the judgment debtor, and revocable at his pleasure: *Held*, on demurrer to a bill in equity filed by the judgment creditor for an account of these profits and for the application of them to the judgment debt, there being no statute authorizing the intervention of equity, that the bill could not be sustained: *Id.*

Trade Mark—When not Protected—Misrepresentation.—A court of equity will not interpose by injunction to protect a claim to a trade-mark or label where either contains a misrepresentation: *Siegert* v. *Abbott*, 61 Md.

The complainants claiming to be the manufacturers and exclusive proprietors of certain cordial or aromatic bitters, popularly known as "Angostura Bitters;" and claiming as its trade-mark this designation, sought to enjoin the defendants, who were engaged in the manufacture of an article styled "Angostura Aromatic Bitters," from manufacturing or selling any preparation or article under the name of "Angostura Bitters," and from imitating the complainants' labels in which the bottles containing their bitters were wrapped. The labels of the complainants used when their bill was filed, stated that the bitters is prepared by Dr. S.—that it was prepared at Angostura, but is now prepared at Port of Spain. Dr. S. died some years before the bill was filed by his successors in the business, and he never lived at Port of Spain. The label also stated that the bottles bore the signature of the complainants, when in fact they bore the signature of the original inventor. *Held*, That the complainants in consequence of the misrepresentations contained in their label were not entitled to relief against the defendants: *Id.*

EVIDENCE. See *Insurance.*

EXECUTORS AND ADMINISTRATORS.

Purchase at Sale to pay Debts—Invalidity of.—Executors charged with the sale of lands to pay debts, purchasing such lands at a sheriff's sale under execution against testator, will at the instance of *cestuis que trust*, be decreed to hold such lands by a continuing trust, or held to account for the proceeds if the same have been resold to *bona fide* purchasers: *Marshall* v. *Carson*, 11 N. J. Eq.

The interest of such persons as purchasers in their own right is in

conflict with the duty which, in their fiduciary character they owe to creditors and beneficiaries under the will: *Id.*

No trustee can directly or indirectly become a purchaser, in his own behalf, of the trust property, and hold it against the *cestui que trust*: *Id.*

Deposit of Estate Funds in Bank.—An executor who deposits money to his credit, in his official capacity, in a bank of good standing, will not be liable for its loss by the failure of such bank: *Cox* v. *Roome*, 11 N. J. Eq.

Letters—Who entitled to.—Letters of administration should be granted to the person entitled to the same at the time of the application therefor; and not to the person entitled at the time of the death of the intestate: *Griffith* v. *Coleman*, 61 Md.

G. at the time of her death left five children, one son and four married daughters. After a litigation of some six years it was finally determined that G. died intestate. Pending the litigation, the son and one of the daughters of G. died, as also the husband of another daughter: *Held*, that the unmarried daughter was entitled to letters of administration upon the estate of the intestate: *Id.*

INJUNCTION. See *Equity.*

INSANITY. See *Insurance.*

INSURANCE. *See Common Carrier.*

Opinions of Persons not Experts admissible on question of Insanity.—Upon an issue in a suit upon a life policy as to the insanity of the insured at the time he took his own life, the opinion of a non-professional witness as to his mental condition, in connection with a statement of the facts and circumstances within his personal knowledge upon which that opinion is based, is competent evidence: *Connecticut Mut. Life Ins. Co.* v. *Lathrop*, S. C. U. S., Oct. Term 1883.

LIFE TENANT.

Principal and Income—Stock Dividend.—New shares of capital stock in a corporation representing its surplus property and distributed to its stockholders are not to be considered as income and do not belong to a life tenant: *Petition of Samuel D. Brown*, 14 R. I.

LIMITATIONS, STATUTE OF.

Cumulation of Disabilities.—The period of coverture cannot be added to that of minority of the same person in order to prevent the running of the Statute of Limitations: *Farish* v. *Cook*, 78 Mo.

MUNICIPAL CORPORATION.

Power to create Board of Health.—Under the power to preserve the health and safety of the inhabitants, a municipal corporation has the undoubted right to pass ordinances creating Boards of Health, appointing Health Commissioners with other subordinate officials, regulating the removal of house dirt, night soil, refuse, offal and filth, by persons licensed to perform such work, and providing for the prohibition, abatement and suppression of whatever is intrinsically and inevitably a nuisance: *Boehm* v. *The Mayor and City Council of Baltimore*, 61 Md.

Powers of, in this Country analogous to those of similar Bodies in England.—Power to issue Commercial Paper.—All or nearly all of the States of the Union being divided into political districts similar to those of the country from which our laws and institutions are, in great part, derived, having the same general purposes and powers of local government and administration; in the absence of local state statutes or decisions to the contrary, their general powers are to be interpreted in accordance with the analogy furnished by their prototypes, varied and modified, of course, by the changed conditions and circumstances which arise from our peculiar form of government, our social state and physical surroundings: *Claiborne County* v. *Brooks*, S. C. U. S., Oct. Term, 1883.

The power to issue negotiable paper is expressly foreign to the purposes of the creation of counties and townships, and is never to be conceded except by express legislation, or by necessary or, at least, very strong implication from such legislation: *Id.*

Police Regulations—Power to declare and abate Nuisances—Lime-Kilns.—Whatever power can be properly exercised by the municipal authorities of the city of Baltimore over the rights and property of the citizen, under the denomination of police regulations, must be derived from the Legislature of the State, by express grant or by fair and reasonable intendment: *State of Maryland* v. *Mott*, 61 Md.

Within the power granted, the degree of necessity or propriety of its exercise rests exclusively with the proper corporate authorities; but in all cases the power exercised, or attempted to be exercised, must depend upon the nature and extent of the power granted; and whenever the question of the existence or limit of power is raised, it becomes the plain duty of the courts to see that the corporate authorities do not transcend the authority delegated to them: *Id.*

A particular use of property declared a nuisance by an ordinance of a municipal corporation, does not make such use a nuisance, unless it be so in fact, according to the common-law or statutory definition of a nuisance: *Id.*

Where a city charter only confers the authority to "*prevent* and *remove* nuisances;" the mere possibility that all the lime-kilns within the limits of the city may, in the future, become nuisances, does not justify the city in prohibiting the business entirely in anticipation: *Id.*

The burning of lime is not an unlawful business or trade, and is not a nuisance in its nature *per se*, irrespective of the location, and lime-kilns not being nuisances in their nature, irrespective of their local surroundings, there is no authority in the Mayor and City Council to make them nuisances, either to health, comfort, or property, by simply declaring them so: *Id.*

National Bank.

Liability of Pledgee of Stock held in the name of an irresponsible Clerk.—A corporation received stock as collateral security, the certificate of which was originally made out in the name of the president, as such; by direction of the corporation the stock was within a few days transferred to an irresponsible employee, who executed an irrevocable power of attorney in blank, and the certificate was so held by the company for some years. Neither the company nor the person

in whose name the stock stood collected any dividends thereon, or exercised any act of ownership over it. This plan was adopted to avoid incurring any liability on the part of the pledgees as shareholders, and the bank at the time of the transfer was in a prosperous condition, but failed several years afterward. *Held*, that the pledgee was not liable as a shareholder; *Anderson* v. *Philadelphia Warehouse Co.*, S. C. U. S., Oct. Term, 1883.

NEGLIGENCE.

Fire Escapes—Act providing for—No action to Individuals for neglect to provide.—A local act of the legislature affecting the city of Providence provided that "every building already built or hereafter to be erected in which twenty-five or more operatives are employed in any of the stories above the second story, shall be provided with proper and sufficient, strong and durable, metallic fire escapes, or stairways, constructed as required by this act, unless exempted therefrom by the inspector of buildings, which shall be kept in good repair by the owner of such building, and no person shall at any time place any incumbrance upon any such fire escapes." Other sections of the act provided remedies as follows: "Any person violating any provision of this act wherein no penalty is herein otherwise prescribed shall be fined twenty dollars for every violation thereof, and shall be fined not exceeding twenty dollars for each day's continuance of the said violation after the service of the warrant issued upon the first complaint. The Supreme Court in term time or any justice thereof in vacation may restrain by injunction any violation of this act, and may, according to the course of equity, secure the fulfilment and execution of the provisions thereof." The chief engineer of the fire department was charged with executing the provisions of the act. *Held*, that the scheme of the act was to secure safe structures as a police measure and for the general safety. *Held, further*, that it was not the scheme of the act to create any duty which could be made the subject of an action by individuals, and that no remedy in favor of individuals beyond what is expressly given in the act should be implied for mere neglect to perform the duties created by the act: *Grant* v. *The Slater Mill and Power Co.*, 14 R. I.

Hence when one employed as an operative in a building subject to the act was compelled by a fire to jump from an upper window and thereby suffered injuries, there being no fire escape on the building, and brought trespass on the case against the owner of the building to recover damages for his injuries, alleging the owner's violation of the duties imposed by the act, *Held*, on demurrer to the declaration that the action could not be maintained: *Id.*

Aldrich v. *Howard*, 7 R. I. 199, distinguished: *Id.*

Couch v. *Steel*, 3 El. & B. 402, discussed: *Id.*

When Question for Jury.—In an action against a railroad company by a passenger to recover for injuries sustained, the plaintiff's evidence must be assumed to be true, in considering the question whether there was sufficient legal evidence to sustain a recovery: *The Western Maryland Railroad Co.* v. *Stanley*, 61 Md.

In passing through a long tunnel lights are necessary, and the windows, doors and ventilators should be closed. But it does not follow that an officer should be provided for every car, or that the omission t›

shut out the gas and smoke, would, of itself, give the right to passengers to sue for the discomfort and annoyance: *Id.*

A passenger sitting close to the front door of a crowded car, when passing through a tunnel, attempted to shut the door while the car was in total darkness, in order to keep out the smoke and cinders, and in doing so was injured. In an action for damages brought by him against the railroad company it was *held*: 1st. That all the facts and circumstances taken together would warrant the finding of negligence on the part of the defendant, and justify a verdict for the plaintiff, unless the plaintiff's conduct amounted to contributory negligence. 2d. That the court below properly refused to instruct the jury that the plaintiff was chargeable with contributory negligence: *Id.*

Parent and Child.

Father entitled to Custody.—A father is entitled to the custody of his infant child unless the interests of the child forbid it: *Petition of Herman G. Vetterlein*, 14 R. I.

In habeas corpus brought by a father for the custody of an infant child to which the mother made return showing a decree of divorce granted in 1877 on her petition, in the state of Indiana, and giving her custody of the child: *Query*, whether the decree, so far as it affected the custody of the child, had any force outside of the jurisdiction wherein it was made: *Id.*

But it appearing that the proceedings for divorce were irregular and void, that the child had for eight years been kept under its mother's influence, and in ignorance of its father, and that its nurture and education would be as well cared for by the father as by the mother. *Held*, that the father should have the custody of the child, the mother to have access to it at all reasonable times: *Id.*

Partnership. See *Action. Will.*

Liability of one holding Himself out as a Partner.—A person who is not a partner cannot be held liable by reason of having held himself out as such, by one who had no knowledge or belief of and consequently could have done nothing on the faith of such holding out. There may be cases in which the holding out has been so public and so long continued that the jury may infer that one dealing with the partnership knew it and relied upon it, without direct testimony to that effect. The nature and amount of evidence requisite to satisfy the jury may vary according to circumstances, but the rule of law is always the same: *Thompson* v. *First Nat. Bank of Toledo*, S. C. U. S., Oct. Term 1883.

Non-trading Partnerships.—Power of Members to execute Notes.—Ordinarily. partners in a non-trading firm have no implied power to bind each other by commercial paper executed in the name of the firm. To make such paper binding, it must be shown either that the making of it was consented to in advance or subsequently ratified by the other partners, or else that from the constitution and particular purposes of the firm the power is necessary or usually exercised; *Deardorf* v. *Thatcher*, 78 Mo.

This rule applied to a firm engaged in the insurance, real estate and collecting business: *Id.*

Hickman v. *Kunkle*, 27 Mo. 401, overruled: *Id.*

PATENT. See *Equity.*

RAILROAD. See *Negligence.*

RECEIVER.

Suit for Torts committed by Corporation.—An action may be maintained against the receiver of a corporation for a tort committed by the corporation before his appointment. The judgment, if for the plaintiff, will be against him in his capacity as receiver, and is leviable out of the assets in his hands: *Combs* v. *Smith*, 78 Mo.

STATUTE. See *Negligence.*

TRADE-MARK. See *Equity.*

TRUST.

Indefiniteness—Cy pres doctrine.—A testamentary gift for purposes both public and benevolent, when the will shows it to have been inspired by philanthropy and aimed at permanent good, is a charitable gift: *Pell* v. *Mercer*, 14 R. I.

A bequest of personalty in trust for such works of religion or benevolence as the executors of the will may select is a good gift to charitable uses, when it appears from the will that benevolence is used in the legal sense of charity: *Id.*

The law of charitable uses as administered by English chancery in its regular jurisdiction is a part of the law of Rhode Island: *Id.*

The Supreme Court having full chancery powers by statute has so much of the *cy pres* power as is exercised by English chancery without recourse to the prerogative powers delegated to it in particular cases by the sign manual of the crown: *Id.*

UNITED STATES.

What wearing Apparel is exempt from Duty.—A citizen of the United States arriving home from a visit to Europe, with his family, in the end of September, by a vessel, brought with him wearing apparel, bought there for his and their use, to be worn here during the season then approaching, "not excessive in quantity for persons of their means, habits and station in life," and their ordinary outfit for the winter. A part of the articles had not been worn, and duties were exacted by the collector on all those articles. *Held*, that, under sect. 2505 of the Rev. Stat., now sect. 2503, by virtue of sect. 6 of the Act of March 3d 1883, c. 121 (22 St. 521), exempting from duty "wearing apparel in actual use, and other personal effects (not merchandise) * * * of persons arriving in the United States," the proper rule to be applied was to exempt from duty such of the articles as fulfilled the following conditions: (1) Wearing apparel owned by the passenger, and in a condition to be worn at once without further manufacture; (2) brought with him as a passenger, and intended for the use or wear of himself or his family who accompanied him as passengers, and not for sale, or purchased or imported for other persons, or to be given away; (3) suitable for the season of the year which was immediately approaching at the time of arrival; (4) not exceeding in quantity or quality or value what the passenger was in the habit of ordinarily providing for himself and his family at that time, and keeping on

hand for his and their reasonable wants in view of their means and habits in life, even though such articles had not been actually worn: *Astor* v. *Merritt*, S. C. U. S., Oct. Term 1883.

UNITED STATES COURTS.

Property taken in Execution by a United States Marshal cannot be replevied in the State Court.—Where property has been levied upon by the United States Marshal under an execution upon a judgment obtained in the United States Court, his possession of the property thus obtained is a complete defence to an action of replevin brought against him therefor in the state court, without regard to the rightful ownership: *Covell* v. *Heyman*, S. C. U. S., Oct. Term 1883.

If property of a third person is thus levied upon he must seek his redress in the United States Court: *Id.*

USURY. See *Interest.*

When not applicable to Discharge of Principal Debt.—A statute prescribing a legal rate of interest, and forbidding the taking of a higher rate "under pain of forfeiture of the entire interest so contracted," and that "if any person hereafter shall pay on any contract a higher rate of interest than the above, as discount or otherwise, the same may be sued for, and recovered within twelve months of the time of such payment," confers no authority to apply usurious interest actually paid to the discharge of the principal debt. A suit for recovery within twelve months after payment is the exclusive remedy: *Walsh* v. *Mayer*, S. C. U. S., Oct. Term 1883.

WILL.

Construction—Remainder—Time of Vesting.—In the absence of plain expressions, or an intent plainly inferrible from the terms of the will, the earliest time for the vesting of property will be adopted, where there is more than one period mentioned in the will: *Crisp, &c.*, v. *Crisp*, 61 Md.

A testator by his will gave his farm in A. county to his wife and brother in trust, for his wife A. E. C., to use and enjoy said farm and premises, and receive the income therefrom "until such time as they shall have an offer of one hundred thousand dollars ($100,000), and shall invest fifty thousand dollars of the proceeds of such sale in good and safe securities under the direction of the court, and pay the interest received from the said fifty thousand dollars so invested unto my wife A. E. C. during her natural life, and at her death said fifty thousand dollars, or the securities in which the same may be invested, shall go to and become the property and estate of such person or persons as would, by the now existing laws of the State of Maryland, be entitled to take an estate in fee simple in lands by descent from me, and the heirs, executors and administrators of such person or persons *per stirpes*, and not *per capita*." *Held*, that the remainder in said fifty thousand dollars vested in the persons who were the heirs of the testator at the time of his death: *Id.*

Direction to continue Business—Power of Executors—Individual Assets used by Firms.—The testator (P. B.), by his will, authorized and empowered his executors to continue his interest in the firms of "P.

Ballantine & Sons" and "Ballantine & Company," and to form said firms into a joint stock company, or companies; to receive and hold stock in the same, in the place and stead of his interest or interests therein, for the benefit of his estate, &c. On bill filed for construction of the will, *Held*, that the executors were authorized to continue in the business of the firms all the property of the testator embarked therein at the time of his decease, including real estate owned by him individually and as a partner, and that held in trust by him for the firm: *Ballantine* v. *Frelinghuysen*, 11 N. J.

That the executors have power to act in forming a corporation, and to convey thereto the testator's interest in the firms, which includes the above-named real estate; and to receive stock in proportion to his interest: *Id.*

That in making such conveyance and appraisement, lands and buildings owned by him individually, but used by the firms in conducting their business so that they cannot be separated, for which rent was allowed, shall be valued at their fair present value, not as partnership, but individual property: *Id.*

That lands owned by him which have been built upon and appropriated by the firms so that they cannot be separated in use from buildings on the lands of the firms, will be likewise valued as his, as of the time of appropriation: *Id.*

That lands conveyed to the testator, paid for out of partnership funds and bought for the purpose of being used in the partnership business, in equity are held in trust, and form part of the joint estate of the partnership: *Id.*

Undue Influence—Presumption of.—Where a mother, mentally enfeebled by reason of disease, and in a position where one of her two sons could exercise an improper influence over her, made a will leaving nearly all her property to this son, the burden is upon him to show that such instrument was executed without the exercise of undue influence by him; *Dale* v. *Dale*, 11 N. J. Eq.

Proof of Execution—Witnesses.—The evidence offered in support of a paper propounded as a will showed that it was written in a language not understood by the supposed testatrix; that the witnesses attested not at her request, but at the request of one of the legatees; and that she neither said nor did anything, nor was anything said or done in her presence which indicated that she knew she was making a will. *Held*, that the execution of the paper as a will was not proven; *Miltenberger* v. *Miltenberger*, 78 Mo.

A legatee whose interest as such in the establishment of a will still continues, will not be allowed to testify to its due execution, notwithstanding he may not have signed as an attesting witness. The statute only disqualifies him in express terms in the case in which he has so signed, but it would defeat the manifest policy of the statute to allow him to testify when he has not so signed. *Id.*