ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

SUPREME COURT OF NEW JERSEY.[2]

SUPREME COURT COMMISSION OF OHIO.[3]

SUPREME COURT OF RHODE ISLAND.[4]

SUPREME COURT OF VERMONT.[5]

ACTION.

Use of Property by Third Person necessarily injurious to Adjacent Land.—An allegation that the defendant knowingly permitted a third person to use the property of the defendant in a manner that was, *per se*, injurious to the adjacent land of plaintiff, imputes an actionable wrong to him: *Topf* v. *West Shore and Ont. Term. Co.*, 17 Vroom.

ADMIRALTY.

Limited Liability Act—Application of to Injuries to Persons.—The United States limited liability act of March 3, 1851, in favor of ship owners, etc., Revised Statutes U. S. §§ 4283–4285, applies to injury to the person as well as to injury to property: *Rounds* v. *Providence and Stonington S. S. Co.*, 14 R. I.

The institution and prosecution of proceedings under Revised Statutes U. S. § 4285, in a District Court of the United States, followed by a decree, is a bar to an action in this court to recover damages for personal injuries received in the marine collision which was the basis of the proceedings in the District Court: *Id.*

AGENT.

Change of Principal in same Negotiation—Evidence.—In a single undivided and continuous negotiation between A. and B., A. at one time represented one principal and at another time a different one. *Held*, that A. notwithstanding the change of principal was entitled to assume that all statements of fact made to him by B. were repeated so long as they were not corrected. The negotiation resulted in a written contract signed by the parties. *Held*, that statements made by B. after the contract were inadmissible to show what influenced A.'s principal to sign the contract, but were admissible to corroborate evidence as to what statements B. made before the contract, it being admitted that B. before and after the contract made statements as to the same matters and it being shown that the subsequent statements were asked and given as a repetition and confirmation of the preceding: *Fuller v. Atwood*, 14 R. I.

Extent of Authority—From what it may be inferred.—A debtor ap-

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[1] From Hon. N. L. Freeman, Reporter; to appear in 110 Ill. Rep.

[2] From G. D. W. Vroom, Esq., Reporter; to appear in 17 Vroom Rep.

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

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

[5] From Edwin T. Palmer, Esq., Reporter; to appear in 56 Vt. Rep.

plied to an agent of his creditor for an extension of the time of payment or a renewal of the loan, the creditor being a non-resident corporation, and the agent a resident of the State, acting generally for the creditor as to loans in this State. At the first interview the agent stated to the debtor that he would communicate with the home office in regard to the proposition made, and afterward such agent, in another interview, said he was ready to enter into the arrangement that was thereupon made: *Held*, that from these facts the debtor might properly infer that the agent received the principal's sanction for entering into the arrangement he made, and that the debtor was justified in his reliance upon the agent's authority to make it: *Union Mutual Life Ins. v. Slee*, 110 Ill.

ARBITRATION.

Conduct of Hearings.—Under an agreement of arbitration by which differences between A. and B. relative to certain premises were submitted to two arbitrators who, if they could not agree, were to call in a third and the decision of any two of the three was to be final; a third was called in and of the three two of them in the absence of the other examined the premises and heard *ex parte* statements from B., A. not being present and not having been notified; the third also examined the premises alone and heard *ex parte* statements from B. in the absence of A., and without notice to him, the information thus gained being influential in determining the award; and subsequently the three heard *ex parte* statements from A. in the absence of B. and without notice to him. *Held*, that the award was illegally made and null: 1. Because the parties interested were not notified. 2. Because the arbitrators did not act together: *Wood* v. *Helme*, 14 R. I.

Cleland et al. v. *Hedly*, 5 R. I. 163, affirmed: *Id.*

ATTORNEY.

Lien of for value of Services, and Disbursements.—An attorney has a lien on money in his possession collected for his client, to secure a reasonable compensation for professional services and disbursements; and he can retain enough of the money to pay the general balance due him for such services and disbursements, although rendered in different suits; and when the client has deceased before the rendition of judgment, the lien secures charges for services performed for the intestate, as well as those performed for his administrator, who has entered to prosecute: *Hurlbert* v. *Brigham*, 56 Vt.

County not liable for Fee of for defending Criminal by Appointment of Court.—An attorney at law appointed by the court to defend one on a trial of an indictment, and who does defend, is not entitled to recover of the county in which the trial was had, any compensation for his services. An attorney takes his license with its burdens, among which is, to defend persons charged with crime when required by the court: *Johnson* v. *Whiteside County*, 110 Ill.

CHARITY.

Gift to when not invalid because Indefinite.—Testamentary disposition as follows: "One quarter part of my trust property to be given to educational institutions similar to those mentioned in article thirteen, and the remaining quarter part of my trust property to be given to

charitable institutions similar to those mentioned in article thirteen." *Held*, not to be invalid simply because indefinite: *Rhode Island Hospital Trust Co.* v. *Olney*, 14 R. I.

CONFLICT OF LAWS. See *Surety.*

CONTRACT. See *Corporation; Mechanics' Lien.*

CORPORATION.

Effect of Publication by Directors that they and the Stockholders are Personally Liable—Contract—Deceit.—The publication by savings bank directors that "directors and stockholders are personally responsible for its debts," does not constitute a contract with those who may make deposits; but if the statement is false it lays the foundation for an action for deceit; *Westervelt* v. *Demarest*, 17 Vroom.

CRIMINAL LAW. See *Attorney.*

Offence Committed on Border line between Counties.—There is a class of offences that may be committed by a party being in one county, upon a person or thing being at the same time in another county, when the offence may not inaptly be defined as having been committed in either county; and offences committed on the county line, or so near thereto as that the distance therefrom is inappreciable, may with propriety be regarded as having been committed in either county, and by doing so no one is deprived of any constitutional right: *Buckrice* v. *The People*, 110 Ill.

Credibility of Defendant testifying in his own behalf, how determined.—On the trial of three defendants for larceny, the court instructed the jury "that in this state the accused is permitted to testify in his own behalf; that when he does so testify he at once becomes the same as any other witness, and his credibility is to be tested by and subjected to the same tests as are legally applied to any other witness; and in determining the degree of credibility that shall be accorded to his testimony, the jury have the right to take into consideration the fact that he is interested in the result of his prosecution, as well as his demeanor and conduct upon the witness stand and during the trial; and the jury are also to take into consideration the fact, if such is the fact, that he has been contradicted by other witnesses. And the court further instructs the jury, that if, after considering all the evidence in this case, they find that the accused have wilfully testified falsely to any fact material to the issue in this case, they have the right to entirely disregard his testimony, excepting in so far as his testimony is corroborated by other credible evidence." *Held*, that there was no substantial objection to the instruction: *Rider* v. *The People*, 110 Ill.

Whatever may be the rule in other states with respect to the right of a jury to convict upon the uncorroborated testimony of an accomplice, it is well settled that the right exists here, and convictions on such testimony will not be disturbed by this court on that ground alone: *Id.*

Indecent Exposure—What Publicity Necessary.—The crime of indecent exposure is committed if a person intentionally makes such exposure in the view from the windows of two neighboring dwelling-houses: *Van Houten* v. *State*, 17 Vroom.

It is not necessary that any person should actually see such exposure if it was made in a public place with the intent that it should be seen, and persons were there who could have seen it if they had looked: *Id.*

DAMAGES.

Measure of for Delay in Manufacture of Books.—On a failure to complete the work on books, and deliver the same within the time agreed upon, it is not admissible to prove, on the question of damages, from the delay, that there may have been a demand for the books had they been ready at the proper time. If the party for whom the books were manufactured had made sales of books, and suffered a loss of profits thereon in consequence of the delay in completing the work, evidence of such facts would be competent on the question of damages: *Hill et al.* v. *Parsons et al.*, 110 Ill.

DEBTOR AND CREDITOR.

Transfer of Stock in Fraud of Creditor—Remedy—Equity.—In case of a transfer of corporate stock made with intent to hinder, delay and defraud creditors: *Held*, that such transfer is void as against such creditors at common law: *Beckwith* v. *Burrough*, 14 R. I.

A. transferred certain corporate stock in fraud of his creditors. It was subsequently attached as the property of A., and after judgment against A. sold on execution. The purchaser filed a bill in equity to obtain the stock. *Held*, that the shares of stock were liable to attachment and execution sale as the property of A. notwithstanding the prior fraudulent transfer by him. *Held*, further, that the bill in equity should be maintained, the complainant having no adequate remedy at law if any: *Id.*

DECEIT. See *Corporation.*

DEED. See *Easement; Notice.*

EASEMENT.

Construction of Clause in Deed reserving.—H. in 1848 owned both the plaintiff's and defendant's premises. The deed conveying the plaintiff's contained this clause: "Said sixteen feet [east] of said house to be kept open as far back as the south end of said house." The defendant claimed a right of way, by reason of said reservation, and also by prescription. *Held*, that a right of way was not reserved; that the clause is applicable to other matters, such as obstructing light, air or the view: *Wilder* v. *Wheeldon*, 56 Vt.

EQUITY. See *Debtor and Creditor; Mortgage.*

Reversal of Decree does not affect Title of Purchaser before Appeal.—Where the title of a husband in real estate is, by a decree on bill to enforce a trust or specific agreement, vested in the wife, and before appeal or writ of error to reverse the decree the wife sells the property to a third person, in good faith, who pays a part of the price and secures the balance by mortgage on the premises, and the trustee holding for the wife conveys to such purchaser in pursuance of such decree, the title of the purchaser cannot be defeated by a reversal of the decree for error, if the court rendering it had jurisdiction of the subject-mat

ter and of the persons of the parties in interest: *Hannas* v. *Hannas*, 110 Ill.

EVIDENCE. See *Agent.*

Abstract of Title—Secondary Evidence of Contents of.—Where original evidence, such as a deed or other instrument, is lost or destroyed, secondary evidence may be introduced to prove its contents. But an abstract of title of real estate cannot be regarded as original evidence. It is but secondary evidence itself, and therefore its contents cannot be proven by other evidence in case of loss or destruction: *Thatcher* v. *Olmstead*, 110 Ill.

FRAUDS, STATUTE OF.

Parol Agreement to Convey a Lot for Church purposes—What will take the Case out of the Statute—Laches.—In pursuance of a verbal agreement of the owner of a lot of ground, to convey the same when a building should be erected thereon, and dedicated to religious worship, and the society incorporated, a subscription was raised, and the money so procured was expended in the erection of the building. It was held, that such expenditure was tantamount to the payment of the consideration, which, in connection with the taking of possession and making improvements, took the case out of the Statute of Frauds: *Whitsitt* v. *Trustees Presbyterian Church*, 110 Ill.

Laches is not available as a defence to a bill for the specific performance of an agreement to convey land, where the complainant has been in the continued possession of the premises: *Id.*

GIFT.

Inter Vivos—Trust.—B., the plaintiff's executor, deposited $800 in the defendant savings bank in the name of C. but payable to himself. He took a deposit book, which he kept and controlled. He withdrew a little more than half of it, and in a few months directed the treasurer of the bank to add to the first entry, "Payable to S. Barlow," so as to make it read, "Payable to S. Barlow, during his life and after his death to Marion Cushing." B. made his will before the deposit, in which was this provision: "I hereby confirm all gifts I have made or shall make to any of my children." C. was a grandchild. It did not appear that B. did or said anything else in relation to the deposit, or that indicated an intention to hold the pass book in trust for C. A by-law printed in the pass book provided that no deposit could be withdrawn without the production of the book. The bank had no communication with C., and understood that B. was the depositor, and so treated him. C. had no knowledge of the transaction. *Held*, 1. There was no delivery, no acceptance, and therefore the deposit could not be sustained as a gift *inter vivos;* 2. The bank did not hold the money as trustee for C.; 3. The donor did not declare himself a trustee, and did nothing equivalent to that; hence, there was no trust relation between him and the claimant: *Pope* v. *The Burlington Savings Bank*, 56 Vt.

HIGHWAY. See *Municipal Corporation.*

INJUNCTION.

When Defendant on Dissolution can recover no greater Damage than

Penalty of Bond.—On the dissolution of an injunction granted on condition that a bond of a specified amount be filed, and the bond was filed, with no other order as to payment of damages, which might result from granting the injunction, the defendant can recover no greater amount than the penalty of the bond. If the injunction had issued, conditioned that the orators pay all the damages sustained, the case might merit a different conclusion: *Selectmen of Glover* v. *McGaffey*, 56 Vt.

INSURANCE.

Payment of Premium after Death of Assured.—A person whose life was insured, on demand refused to pay the second annual premium, and died in about ten days after default in payment. Two days after the death, a subordinate agent of the company, and friend of the assured, being ignorant of his death, paid the premium, taking the insurance company's receipt renewing the policy. On learning of the death of the assured, the friend returned the receipt to the company and it returned the money paid by him. *Held*, that the payment by such friend, which was made and received by the company in ignorance of the fact of the death of the assured, could then amount to nothing, and that the party to whom the policy was payable acquired no rights thereby: *Miller* v. *Union Central Life Ins. Co.*, 110 Ill.

LANDLORD AND TENANT. See *Partnership.*

LIEN. See *Attorney.*

LIMITATIONS, STATUTE OF. See *Mortgage; Surety.*

MANDAMUS. See *Municipal Corporation.*

MECHANICS' LIEN.

Assignment of Contract and Lien—How enforced.—A. by special contract made July 29th 1880, engaged to build a house for B. December 1st 1880, A. assigned the contract to C. At the time of the assignment A. had taken no steps to secure a mechanic's lien. B. consented that C. should proceed under the contract and finish the house. *Held*, that B.'s consent to C.'s proceeding under the contract was a consent to the transfer of the contract to C. *Held*, further, that C. was entitled to perfect and enforce a mechanic's lien, using the name of the assignors. *Held*, further, that a mechanic's lien though inchoate is assignable, passing in equity with the debt or contract for which it is security: *McDonald* v. *Kelly*, 14 R. I.

It not appearing that C. entered into any contract with B., or that A. was ever released by B., *Held*, that C. proceeded properly in using the name of A.: *Id.*

MORTGAGE.

Claim for Amount unpaid by Foreclosure—Usury—Set-off—Equity.—When a mortgage has been foreclosed, and the premises are not worth enough to pay the mortgage debt, the excess may be pleaded as an equitable offset; and, the mortgage having been executed to both the orators, but the usury having been paid to one of them for the benefit of both; the mortgage notes having been sold and merged in a judg-

ment in the name of a third party, and then repurchased by the orators, and the mortgage foreclosed by them and in their names; an action at law having been brought to recover the usury against the party alone to whom the usury had been paid, and hence the excess could not at law be pleaded in offset. *Held*, that a bill in equity would lie to compel an equitable offset, the mortgagor being insolvent: *Smith* v. *McDonald*, 56 Vt.

Effect on Remedy under, of Running of Statute of Limitations on Mortgage Note.—The remedy on a mortgage is not lost because a personal action on the mortgage note is barred by the Statute of Limitations. The remedy on the mortgage is generally available until payment of the note is shown or may be presumed, or until the mortgagor has remained in possession for twenty years without recognising the mortgage: *Ballou* v. *Taylor*, 14 R. I.

MUNICIPAL CORPORATION. See *Attorney.*

Ordinance as to Duration of Terms of Officers—Inconsistent Sections in Ordinance.—The provisions of a city charter as to duration of terms of officers must be strictly observed, and an ordinance beyond the scope of the powers granted by the charter is void: *State* v. *The Mayor and Common Council of Newark*, 17 Vroom.

The whole of an ordinance is not necessarily inoperative because some of its sections are inconsistent. A section not dependent on the inconsistent sections may stand: *Id.*

Distinction between Ordinance and Resolution—Mandamus.—Where a charter of a municipal corporation requires a proceeding to be instituted by an ordinance, it cannot be effected by a resolution merely, the latter being wanting in the solemnities of the former, and is not regarded as a legal equivalent: *State* v. *Barnet*, 17 Vroom.

The charter of the city of Paterson provides that any legislative act of the board of aldermen shall be by ordinance passed by a vote of a majority of its members, and in case an ordinance involves the expenditure of money, the votes of two-thirds of the members of the board shall be necessary to its passage. The board of aldermen, by resolution, directed the construction of certain sewers and drains, and passed an ordinance for the issue of bonds to pay for the same; the mayor of the city declined to sign the bonds thus ordered to be issued. *Held*, 1. That the act of the board of aldermen was legislative in its character, and could not be effected by resolution; 2. The mayor will not be compelled by mandamus to do an act against his objection in furtherance of a measure having its inception without legal authority and in violation of the charter provisions: *Id.*

Clerk of in charge of Records—Certiorari.—When a municipal corporation has a clerk whose duty by law is to keep the records thereof, unless council otherwise direct, such officer is the mere agent of the corporation, and his custody is that of the corporation. The municipal corporation is, therefore, in legal contemplation, the custodian of such records, and a writ of *certiorari* to bring up such records is properly directed to it. A return under its direction by such officer is correctly made: *State* v. *Town of Harrison*, 17 Vroom.

Responsibility of for Street partially occupied by Railroad.—In

1853, the city council of the city of Steubenville, by ordinance, authorized a railroad company to lay one main track and one side track in a street, the tracks to be parallel with the west line of the street, and the centre of the western track to be forty feet from said west line of the street The city reserved the right to require the company to cover any portion of the superstructure, except the rail, with suitable plank in such manner as the council should prescribe, and also to require the company to light said railroad with gas in such manner as the council should prescribe. The company made and left open a ditch between its tracks. This being unlighted at night, M., without fault on his part, fell into the ditch and suffered serious injury. He sued the city. The answer pleaded the said ordinance as relieving the city from responsibility for so much of the street as was occupied by, and lay between, the tracks, averring "that the place where the plaintiff fell had not been used, maintained or kept up as a street or highway since the said railroad tracks were constructed, and was in the exclusive possession and use of said railroad company. That the space between said main track of said railroad and the west line of said Water street has been kept open and in proper repair as a street, and furnished ample facilities for the passage of any and all persons who had, or might have, occasion to use it as a street." The trial court sustained a demurrer to this answer, and the plaintiff recovered a verdict and judgment. *Held*, the city's supervision of, and responsibility for, the street, subject only to the use by the company as granted, continued; and the answer was insufficient: *City of Steubenville* v. *McGill*, 40 or 41 Ohio St.

Responsibility for Negligence of Superintendent of Public Cemetery.—The principle of *respondeat superior* applies to municipal corporations, where the acts of their servants or agents refer to powers and duties ministerial in their nature and character. A city organized under the laws of Ohio, held the title to and the right of possession of a public cemetery located within its limits, which was under the management, control and regulation of a board of cemetery trustees, chosen by the electors of the corporation and removable for cause by the city council. An employee while engaged in the cemetery in improving a vault owned by the city, was injured through the carelessness and want of skill of the superintendent of the cemetery, and the negligence of the trustees. The employee worked under and obeyed the orders and directions of the superintendent, and both received their appointment from the board of trustees, subject to the approval of the council. *Held*, that the city was liable for the injuries resulting to the employee: *City of Toledo* v. *Cone*, 40 or 41 Ohio St.

Liability for Defect in Highway.—An incorporated village is not liable for an injury caused by a defect in a street crossing, when the charter does not impose upon the village the legal duty of keeping the highways in repair. And such duty is not imposed by the acceptance of a charter which merely allowed the village, as a volunteer, to take supervision of the highways, the town never having surrendered the right of control over them, nor having been released from its obligation to repair: *Parker* v. *The Village of Rutland*, 56 Vt.

NEGLIGENCE. See *Municipal Corporation; Railroad; Street.*

Comparative and Contributory.—If a plaintiff who is injured at a

highway crossing by a railway train does omit some slight precaution for his safety, and the railway company omits all care on its part, the plaintiff will not be without remedy. If the plaintiff's negligence is slight, and that of the company, when compared with that of the plaintiff is gross, a recovery may be had: *Wabash, St. L. and P. R. Co.* v. *Wallace*, 110 Ill.

NOTICE.

Unrecorded Deed—What sufficient to put on Inquiry.—In an action of ejectment the contention was over a division line, and this turned on the question whether the defendant was chargeable with notice of the contents of an unrecorded deed when he knew of the deed but not its terms. *Held*, that the defendant was put on inquiry, and that having notice of the deed he was bound by all its contents. This decision is not in conflict with *Brackett* v. *Wait*, 6 Vt. 411; *Hill* v. *Murray*, 56 Vt.

OFFICE. See *Municipal Corporation; Certiorari.*

ORDINANCE. See *Municipal Corporation.*

PARTNERSHIP.

Lease—Dissolution—Payment by one Partner for release—Contribution.—C. and M., partners, held as joint lessees a lease of certain premises for ninety-nine years, renewable forever, with covenants for payment of rent, taxes and assessments. The partnership was dissolved, and C. conveyed to M. all his undivided interest in the leasehold. The assignee of the reversion brought suit on the covenants for rent against C. and M. jointly, for arrears of rent accrued after the dissolution of the partnership. Pending the suit, M. being in default of answer, C. filed an answer denying all liability for rent, but afterwards paid to the assignee of the reversion the sum of $500, who, in consideration thereof, negotiated and executed to him a release from all and any liability arising on or growing out of the lease, and forever discharged him from all and any covenants therein and from all obligations thereof. *Held*, 1. There is not such a presumption that the above-named sum was paid on accrued rent, and not in discharge of future contingent liability on the lease as would entitle C. to recover such sum of M. as money paid for and on his account upon an implied promise to reimburse C. therefor. 2. The burden is not on M. to prove that such sum was not applied on the rent: *McHenry* v. *Carson*, 40 or 41 Ohio St.

PATENT. See *Trademark.*

PAYMENT.

By Stranger—Consideration.—Satisfaction of a debt made by a stranger for or on account of the debtor and adopted by the debtor, is a valid satisfaction: *Bennett* v. *Hill*, 14 R. I.

The debtor need not formally adopt such satisfaction before availing himself of it by plea, the plea being an adoption: *Id.*

A. being indebted to C., an agreement was made between B. and C. by which A. and B. were to carry on a business formerly owned by C.;

and B. was from the profits to pay C. the debt due from A. while C. was to accept the agreement in lieu of his claim against A. *Held*, that the agreement discharged A. from C.'s claim. *Held*, further, that the discharge of C.'s claim was a sufficient consideration for the agreement and for B.'s promise: *Id.*

Pleading.

Joinder of Claims for Tort and Breach of Contract—Election.—The petition asked damages for horses killed by defendant's train, and counted upon two distinct wrongful acts as causes of the killing: first, neglect to keep in repair a fence as required by contract; and second, negligence in running the train. A motion to require plaintiff to elect whether he would rely upon the breach of contract or the tort was overruled. *Held*, the doctrine of election applies where one wrongful act is charged, and the plaintiff is entitled to treat it as having either of two natures. But the addition of a tort to a separate and distinct act in violation of contract, does not deprive the injured party of the right to complain, at the same time, of both wrongs. Of course he cannot recover double damages: *P., C. & St. L. Railway Co.* v. *Hedges*, 40 or 41 Ohio St.

Practice.

Adjournment of Cause.—When a cause in the court for the trial of small causes has been adjourned to a particular time and place, and the justice fails to attend, but, at another place, in the absence of the parties and without the consent of the defendant, adjourns the cause to another day, he cannot, on that day, proceed to trial and judgment, although notice of the adjournment has been given defendant. Such an adjournment operates as a discontinuance of the suit: *State* v. *Summit Board of Health*, 17 Vroom.

Quo Warranto.

Discretion in Granting, at Instance of Private Relator.—The granting or withholding leave to file an information in the nature of a quo warranto, at the instance of a private relator, to test the right to an office, rests in the sound discretion of the court, even though there be a substantial defect in the title by which the office is held; thus, the court dismissed a complaint upon the relation of a private person, praying for leave to file an information against the defendant, a school committee, or acting as such, independently of the alleged defect of the committee's title; and this on the ground that he was eligible to the office and competent; that he had hired teachers in good faith and made provision for a school; that it was an annual office without emoluments: and that the best interests of the district required that he should be allowed to continue through his term: *State* v. *Mead*, 56 Vt.

Railroad.

Responsibility of for Accident when wrongful Act of Stranger intervenes.—A railroad company left a loaded car, coupled with two empty cars, standing on a switch which inclined towards their main track, the same being secured by their brakes and a railroad tie placed under the wheels of the loaded car; the cars got upon the main track and an accident occurred, the plaintiff being injured. *Held*, the company

was not irresponsible, as a matter of law, even though the cars could not have got on the main track but for the wrongful act of a stranger: *Smith* v. *New York, S. and W. R. R. Co.*, 17 Vroom.

SET-OFF. See *Mortgage.*

STREET. See *Municipal Corporation.*

Liability of Owner of Land adjacent to.—The owner of land adjacent to a street of a city is not liable for an injury resulting from the unsafe or dangerous condition of the land, where the person injured left the street and went upon the adjacent land without the knowledge and without any inducement from the owner or occupant thereof, and without invitation, express or implied: *Kelly* v. *City of Columbus*, 40 or 41 Ohio St.

The fact that the pavement was continuous from the sidewalk, over the adjacent land to the place of danger, was not, of itself, an implied invitation to a person on the pavement to go upon the adjacent lands: *Id.*

SURETY.

Statute of Limitations—Conflict of Laws—Contribution.—The plaintiff and defendant were co-sureties on a promissory note. All the parties to the note, the payee, the principal, and sureties were residents of this state. After the Statute of Limitations became a bar here, the plaintiff voluntarily and without the knowledge of the defendant, but with no fraudulent intent, went to New Hampshire, where there was no defence to the note, and there was sued by the payee, judgment rendered against him, and he was compelled to pay. *Held*, in an action for contribution, that the payment was compulsory, and not voluntary, and that the defendant was liable: *Aldrich* v. *Aldrich*, 56 Vt.

The legal right of sureties as against each other is not governed by the *lex loci contractus;* nether is there any implied obligation that they shall reside in any particular locality: *Id.*

TRUST AND TRUSTEE. See *Gift.*

TRADEMARK.

Patented Machine on which Patent has expired.—Where a patented machine becomes known to the public, by a distinctive name during the existence of the patent, any one at the expiration of the patent may make and vend such machines, and use such name; and no one, by incorporating such name into his trade mark, can take away from the public the right of so using it: *Brill* v. *Singer Manufacturing Co.*, 40 or 41 Ohio St.

Where machines, during the time they are protected by a patent, become known and identified in the trade by their mechanism, shape, external appearance or ornamentation, the patentee, after the expiration of the patent, cannot prevent others from using the same modes of identification, in machines of the same kind manufactured and sold by them: *Id.*